

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 31.07.2019
CORAM:
THE HONOURABLE MR. JUSTICE T.RAJA
C.M.S.A. No.38 of 2013

V.Rajamanikam : Appellant/Petitioner

Vs

Tamilarasi : Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act read with 100 CPC against the judgment and decree passed by the learned Principal District Judge, Vellore dated 20.02.2013 in H.M.C.M.A. No.3/2012 confirming the judgment and decree passed in H.M.O.P.No.79 of 2006 dated 12.01.2012 on the file of the Sub Judge, Vellore.

For Appellant : Mr.K.S.Narayanan

For Respondent : Mr.E.Kannadasan
Legal Aid Counsel

O R D E R

V.Rajamanickam has filed this CMSA against the impugned judgment and decree passed by the learned Principal District Judge, Vellore passed in H.M.C.M.A No.3 of 2012 dated 20.02.2013, confirming the dismissal order dated 12.01.2012 passed in H.M.O.P No.79 of 2006 by the learned Sub Judge, Vellore, on the ground that whether the Court below is correct in holding that without the knowledge and consent of the appellant/husband, the respondent/wife undergone family planning and also obtained all types of loan and spent the same to the welfare of her brothers will not amount to mental cruelty and that when the appellant and the respondent got married on 28.08.1989 and also blessed with two children, viz., a daughter aged about 31 years and a son aged about ..completed BDS, the appellant had been physically assaulted by the respondent's brother and his friends. Such an incident of attack amounted against the appellant would not amount to physical cruelty. Thirdly, it was argued that when the parties have separated from the year 2006 and not seen eye to eye till now. Such a long separation cannot be taken as a ground for dissolution of the marriage, as the matrimonial life of the appellant and the respondent have completely virtually come to end.

2. Learned counsel for the appellant submitted that when the marriage of the petitioner and the respondent was solemnized on 28.08.1989 at Chitranjandas Kalyanamandapam, Saidapet, Vellore, two children were born to them, viz., one daughter, Divyabharathi and one son by name R.Dhilipan Raj. Thereafter, the respondent, without even informing the appellant, underwent family planning simply rejecting the objections raised by the appellant. Thereafter, in the year 1996, the respondent repeatedly insisted her mother to be with her in the house of the appellant. When the appellant has been working as Administrative Officer in the LIC, the respondent was employed in NLC, drawing a monthly salary of Rs.15,000/-. The appellant was allotted official quarters by the LIC office. But the respondent, for the reason best known to her, did not like to live with the appellant in the official quarters allotted to him. On the contrary, the respondent went to the NLC quarters allotted to her, avoiding the LIC quarters allotted to the appellant and they started living in the NLC quarters. The modus operandi of the respondent is to avoid LIC staff quarters for the purpose of their family members. As a result, the mother and brothers of the respondent used to unnecessarily quarrel with the appellant even for flimsy reasons. The appellant was happily leading the life with the respondent. The appellant hoped that the respondent would realise her matrimonial obligation but that hope did not last long. Finally, they got separated from the year 2006, for the reason that the appellant was physically assaulted by the respondent and their family members. Moreover, the appellant/husband was not respectfully or fairly treated on the premise that he belongs to a lower caste, although both of them belong to the same caste. Finally, the appellant filed HMOP No.79 of 2006 on the file of the Sub Court, Vellore, under Section 13(1)(ia) for dissolution of marriage on the ground that he has been subjected to both physical and mental cruelty.

3. A two page counter affidavit was filed by the respondent/wife objecting the case of the appellant by stating that she was living in her official quarters allotted by the LIC justifying her separation and her continues stay with her parents in NLC quarters.

4. When the serious allegation was raised by the appellant/husband indicating that there was a repeated physical attack made against the appellant/husband with the help of the respondents' family members viz., brother and her friends, nowhere it was not denied by the respondent. This allegation was substantiated by the appellant by filing proof affidavit by all those witnesses and the same has been completely overlooked by the trial court. After the dismissal of the HMOP, the appellant took up the matter to the learned Principal District Judge, Vellore by filing H.M.C.M.A. No.3 of 2012, wherein by order

dated 20.02.2013, the Appellate Court, repeating the same mistake error committed by the trial court without discussing any of the issues raised more particularly, physical attack perpetuated against the appellant/petitioner by the respondent joining hands with her brother and his friends, giving unacceptable reason that it is quite common to see the ups and downs seen in the matrimonial life, without meeting the serious allegations placed before the courts below with substantial evidence, dismissed the appeal. Therefore, the impugned judgment passed by both the courts below not answering the claim made by the appellant are liable to be reversed and the marriage solemnized on 28.08.1989 should be dissolved. Concluding his argument, learned counsel for the appellant would also submit that admittedly, the daughter of the appellant got married without the knowledge of the appellant.

5. Even when steps were taken to see his son, who was also completed BDS, the respondent and her family members physically prevented the appellant from seeing him. That also would go to show that the respondent had not physically cruelled the appellant. In any event, since they were living separately from the year 2006, i.e., for the past 13 years, as per the law laid down by the Apex Court in the case of Samar Ghosh v. Jaya Ghosh reported in 2007(4) SCC 511 that where there has been long continuous separation it has been concluded that the matrimonial bond is beyond repair as a result, the marriage becomes a fiction though supported by a legal tie. Therefore, the respondent also till date has not come forward to appeal against the order dismissing her application filed under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. He further submit that the parties had not come together in view of the long separation and on this basis, prayed for allowing the appeal.

6. Legal Aid Counsel appointed by this Court appearing for the respondent also submitted that admittedly, the parties are not living together and they got separated from the year 2006 and that itself cannot be taken a ground for divorce dissolving the marriage solemnized on 28.08.1989 between the parties. Referring to reply to the argument advanced by the learned counsel for the appellant that the respondent joining hands with their brothers along with his friends assaulted the appellant, he submitted that even the proof affidavit filed by the third party before the trial court has not specifically mentioned the date of the incident, on what date and in which month, the alleged incident took place and the same was rightly prescribed. However, coming to the long separation from 2006, learned counsel for the respondent was unable to differ from the arguments made by the learned counsel for the appellant that the matrimonial life has completely come to a deadlock.

7. When it is admitted case of both parties that from the year 2006, they are living separately in two different official quarters viz., when the appellant was allotted by LIC Life Insurance Corporation Quarters, he has been living separately and when the respondent was also allotted another official quarters by NLC, she has been living with father, mother family members. Besides during the pendency of this proceedings, the daughter of the appellant was given marriage by the respondent, the appellant was not invited and consulted before finalising her daughter's marriage, which would definitely caused mental cruelty to the appellant. Secondly, it was also submitted that the respondent has not even allowed to the appellant to have any visitation right to see either his son or daughter. When the respondent has also not even tried to write any letter or make any effort for restitution of conjugal rights after their separation from the year 2006 and after her application filed under section 9 of the Hindu Marriage Act, it goes without saying that both the appellant and the respondent are living separately from the year 2006. Therefore, the ratio laid down by the Apex Court in the case of Samar Ghosh v. Jaya Ghosh reported in 2007(4) SCC 511, the relevant portion is extracted hereunder:

"(xiv)Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

8. It clearly shows that when there has been long period of continuous separation, it may fairly be concluded that matrimonial bond cannot be brought back.

9. Therefore, in the aforementioned facts and circumstances, this Court is of the considered opinion that no purpose would be served by compelling the parties to live together. In addition thereto, the various allegations made by the appellant before the trial Court and also before the Appellate Court have not been adverted by both the courts below and moreover, when there has been long suppression of thirteen years between the parties, it is not known as to why the courts below have completely overlooked the desertion committed by the respondent. Therefore, this Court finds no impediment to allow the appeal by taking note of the fact that the concurrent findings of the courts below completely overlooked the vital and crucial issue raised by the appellant. Such a perverse finding cannot be allowed to stand.

10. In view of the aforesaid, the appeal filed by the appellant is allowed. The judgments and decree passed by the courts below are set aside. The marriage solemnized between the appellant and the respondent on 28.08.1989 is hereby dissolved. The Legal Aid Counsel appearing for the respondent, appointed by this Court is directed to get the remuneration fee of Rs.5000/- from the respondent. There shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Vellore.

2.The Sub Judge, Vellore.

Copy to: The Section Officer, V.R Section,
High Court, Madras.

The Secretary,
T.N. Legal Services Authority,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate, SR.No.65796.

+2ccs to Mr.K.S.Narayanan, Advocate, SR.No.65796. (21/02/2020)

C.M.S.A. No.38 of 2013

SAI (CO)
CSR: 18.02.2020

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