

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1136 of 2018

Jobitha

... Appellant

Vs.

J.T.Deiveegan @ James Deiveegan ... Respondent

Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869 to set aside the fair and decreetal order dated 20.02.2018 passed in I.D.O.P.No.234 of 2016 on the file of Principal District Court, Erode and allow the appeal.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.K.Arangeswaran

J U D G M E N T

The appellant / wife has filed the present Civil Miscellaneous Appeal under under Section 55 of the Indian Divorce Act, 1869 seeking to set aside the fair and decreetal order dated 20.02.2018 passed in I.D.O.P.No.234 of 2016 on the file of Principal District Court, Erode and to allow the appeal.

2. The appellant / wife had filed I.D.O.P.No.234 of 2016 for dissolving the marriage held between the appellant and the respondent on 08.06.2006 at Sacred Heart Church in Gobichettipalayam, Erode District. The case of the appellant / wife is that they started marriage life at respondent's house in Karattadipalayam and from the day one, the respondent is very suspicion in nature, therefore, he caused misery to the appellant by his words. Again, within four months from the date of marriage, the appellant and the respondent quarreled bitterly, due to his unwarranted suspicion character. Thereafter, the appellant became pregnant and gave birth to a son, namely, Thiyanesh on 21.05.2007. However, the appellant did not return to the respondent's house, due to the endless trouble and harassment inflicted on the appellant during pregnancy.

3. It is the further case of the appellant that the respondent used to follow the appellant wherever she visits and spied on her actions without her knowledge. The actions of the respondent caused mental agony to the appellant. That apart, due to compromise efforts of the elders, the appellant and the respondent started to live together, but the same was persisted only for a short time. The appellant left the matrimonial home in June 2010 following a quarrel with the respondent due to his suspicious character and demand for additional dowry of 5 sovereigns of gold and Rs.5 Lakhs cash. From the year 2010, the appellant is living separately. Due to the act of the respondent, the child got scared and was staying the School Principal's room and did not come out of the room. Hence, on all the above said grounds, the appellant herein filed a petition for divorce on the ground of desertion and cruelty.

4. Per contra, it is case of the respondent that the appellant always used to talk to her neighbours un-necessarily without doing any house hold work and the same caused quarrel among them. The appellant has suppressed the real facts and filed a petition for divorce and the appellant often used to go to her parents house and she will not turn up and that she is willing to continue to be in her parents house. Further, the respondent/husband denies all the allegations abusing and assaulting and he also denies the allegation that he used to follow all her actions as a spy. Moreover, all the allegations mentioned are only for the purpose of obtaining divorce.

5. The court below after considering the pleadings, counter averments and evidences on record, had denied to grant divorce to the appellant on the ground of cruelty and desertion in I.D.O.P.No.234 of 2016. Aggrieved against the order, the appellant is before this Court.

6. The learned counsel for the appellant has submitted that the dismissal order passed by the court below is illegal and unsustainable. The court below failed to appreciate the scope of the appellant and said the dismissal had caused mental agony to the appellant, as they are living separately from the year 2010 onwards. When no steps have been taken by the respondent for restitution of conjugal rights for the past six years, the court below has failed to consider the cruelty caused and dismissed the petition without any legal reasons.

7. The learned counsel for the appellant further contended that the court below had failed to note that no legal steps were initiated for guardianship of the minor son by the respondent herein and justification of the learned Judge in appreciating the gesture of respondent following the minor child had vitiated the order under Appeal and hence seeks to set aside the order passed by the court below.

8. The learned counsel for the respondent submitted that the appellant was always ready and willing to live with her parents only and she often quarreled with the respondent. The respondent is a calm and quite man, he is musical a teacher and is taking tuition for musical classes and by the said income he had managed his family, but in the year 2010 unnecessarily, the appellant had quarelled with the respondent's sister and went away from the matrimonial home. Further, on 21.05.2011, the respondent had lodged a complaint to the All Women Police Station, Gobi to reunion with his wife and children. But the appellant refused to reunion with the respondent. Due to paralysis, the father of the respondent is bedridden, the respondent's help is very much needed to his ailing father, however, the appellant was always thinking about her care free life with her parents. The respondent always willing to live with the appellant and his child, therefore, he seeks to dismiss the petition filed by the appellant.

9. Heard the learned counsel on either side and perused the documents placed on record.

10. Admittedly, the respondent is the father of the child and he is the natural guardian, therefore, he has followed the child, which no one can question the same. Further, from the averments it is seen that the respondent had only followed the son to the school and no cruelty was done by the respondent to his son. The respondent was always in touch with the appellant's family and the appellant alone, left the respondent, there is no desertion on the side of respondent. The appellant was always fond of her parents, therefore, she used to often stay in her parents house and often quarrel with the respondent's parents.

11. Upon perusal of the averments available on record, it is seen that the marriage between the appellant and the respondent was solemnized on 08.06.2006. The appellant always used to stay in her parents home without caring for the respondent. The respondent being a music teacher, had managed his family in a good manner by taking tuition and only in the year 2010, the appellant went away from the respondent and did not turn back inspite of several panchayat being held on 21.05.2011. The respondent / husband has given a complaint in All Women Police Station seeking for reunion with the wife and children. The police enquired and advised to live together in the family, but the appellant refused to live with the respondent and laid a condition that he should come out of his parents and that they should live in a separate house. The respondent's situation, at that point of time, was to take care of his father, who was bed

ridden due to paralysis attack, however, the appellant did not consider the said situation, but chosen to live with her parents only.

12. On perusal of the pleadings, it could be seen that the appellant and the respondent are living in the same street, viz., four houses away from the appellant's house. It is also admitted by the appellant that she and her husband are known to each other from child hood. Further, the appellant had left the matrimonial house in June, 2010 and it was also an admitted fact that the respondent is the only son to his father and he is taking care of his father and the financial capacity of the parties are well known to each other.

13. Besides the above, demand of dowry has not been established by any substantial material or evidence that only due to the said demand, the appellant had left the house. From the counter, it is found that the appellant was in the habit of talking to the neighbours by not doing house hold work, which habit was not appreciated by the respondent, who asked to refrain the appellant from doing so and asked the appellant to do house hold work and this is the main reason for the matrimonial dispute.

14. With regard to the plea of 'Desertion', in the year 2010, the appellant has left the matrimonial house, but, till the present CMSA filed in the year 2018, she had only deserted the respondent. Also, the appellant's contention that the respondent kept on following the respondent and his son, amounts to cruelty, is not acceptable.

15. It is not the case of the appellant / wife that the respondent / husband had caused her cruelty by trying to marry somebody else. etc It is the wife / appellant, who had gone out and staying with her parents and now, she is working in the Government Organisation. The learned counsel for the respondent also brought to the notice of this Court that the appellant got the said job on the ground that she is a destitute woman and that has not been proved by placing any evidence, hence the said plea need not be gone into.

16. It is pertinent to note that since the respondent / husband used to scold the appellant for not doing house hold work, the said issue would have been easily corrected, but instead of that, the appellant has dragged the matter up to this Court seeking divorce. The other issue, viz., 'suspicion' in the minds of the respondent, is not been proved by a specific incident or act. As the respondent, who is the father of the child is the natural guardian, he has got every right to see the child that too when the mother is not ready to show the child.

Here in this case, even assuming that the respondent had followed his son upto the school, he did not cause any problem, threat and any injury to the child and if any such incident had taken place, the appellant / wife would have immediately given a complaint regarding the same to the police authorities or atleast would have informed the same to her parents and no such evidence has been produced to substantiate the same.

17. It is to be noted that one Jaya, who is a witness on the side the appellant / wife had deposed that only because 'she is coming and talking to the appellant, the respondent / husband had tortured her', the said statement cannot be accepted, as the respondent / husband always stated that the wife is going, sitting and talking to neighbours without doing house hold work.

18. On a perusal of the evidences, it is seen that the appellant / wife had laid a condition that if she has to live with the respondent, he has to take her and set up a separate residence and then only she will be living with him. The evidence of the respondent / husband is that he is taking care of his old aged father and he is not able to set up a new house, hence the respondent wanted the appellant come and live with him in his house, the same has not been accepted by the wife, due to which, they could not reunite. The respondent/husband has also stated that he has not stayed apart from the appellant, because both the houses are nearer to each other and there is no question of desertion.

19. When this Court considered the allegations made by the appellant / wife against the respondent / husband, which are vague in nature, without any valid reason to show cruelty and when there is no cogent evidence produced before this Court in this appeal filed by the appellant / wife, who had alleged that the respondent / husband has caused cruelty, the same has to be refuted. The allegation that the respondent had demanded Rs.5,00,000/- is not found to be true and if at all the respondent has demanded dowry, the appellant would have given a complaint before the police for demand of such dowry. In the absence of proof, this ground is also rejected. There was no evidence produced to show that the respondent treated the appellant in a cruel manner. The respondent being the father of the child, who has got right and interest over the minor child and when the appellant has not allowed him to see the child, the respondent, who is living in the next door, had gone to school to have the glimpse of the child and he has not troubled his son and there is no evidence to show that the respondent tortured or caused any hardship to the child. From the year 2010, the appellant had deserted herself from the matrimonial house and no valid reason stated for her desertion from matrimonial home. In

the absence of any material to show that the respondent / husband had treated her cruelly and it is the wife, who had ill-treated the husband, this Court is not inclined to accept the contention of the appellant / wife . Hence for all the said reasons, the Civil Miscellaneous Appeal deserves to be dismissed.

Accordingly, the present Civil Miscellaneous Appeal is dismissed and the order passed in I.D.O.P.No.234 of 2016 on the file of Principal District Court, Erode is confirmed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Erode, Erode District.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1 cc to M/s.S.Kaithamalaikumar, Advocate, sr.103829

+1 cc to M/s.K.Arangeswaran, Advocate, sr.103803.

rp(co)
krd 24/9

C.M.A.No.1136 of 2018

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