

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. Nos. 64 & 65 of 2016

T.P.Reena

... Appellant
in both appeals

Vs.

T.John Peter

... Respondent
in both appeals

Prayer: Appeals filed under Section 19 of the Family Courts Act, 1984 against the impugned order and decree dated 28.11.2015 made in O.P.No.176 of 2010 and O.P.No.71 of 2011 on the file of the Principal Family Court, Chennai.

For Appellant
(in both appeals) : Mr.I.Jenkins William

For Respondent
(in both appeals) : Mr.S.Kingston Jaison

COMMON JUDGMENT

(Delivered by M.M.Sundresh,J.)

These appeals arise out of the common order passed by the Family Court, Chennai. One appeal is filed for divorce on the ground of cruelty and the other for restitution of conjugal rights. The divorce petition is filed by the respondent and the restitution of conjugal rights is filed by the appellant. The trial Judge, after lengthy discussion, allowed the divorce petition while dismissing the petition filed for restitution of conjugal rights.

2. The marriage between the parties took place in the year 1998. From the pleadings, it appears that there was a continuous problem between the parties. There are allegations as against counter allegation with respect to adultery. In the year 2008, the respondent left for Libya. He was employed in Libya

for a period of nine months. The respondent is a Professor. The appellant gave a complaint of man-missing initially. After coming to know that the respondent is in Libya she sent various mails in Exs.P19 to P23. One of the mails we have perused. To put it mildly, the appellant has used unparliamentary words against the respondent and one other lady Professor. When the respondent returned from Libya, he was accordingly arrested pursuant to the complaint given by the appellant which has been registered and in view of the pendency of the lookout notice, he was brought to Chennai and thereafter, final report was filed.

3. Under those circumstances, the respondent filed a petition for divorce. Though the divorce petition has been filed on the ground of cruelty, the allegation of adultery with two named persons was made. The appellant has also filed petition for restitution of conjugal rights. She further filed a petition for custody which became infructuous as the child born from the wedlock has attained majority. In the counter affidavit filed in the divorce petition, the appellant has denied the allegation with respect to the adultery. However, she has not stated anything about the same in the petition filed by her for restitution of conjugal rights.

4. The Family Court after considering the materials available on record, including the factum of arrest, complaint against the family members of the respondent, lookout notice, registration of the FIR and the allegations made, was pleased to grant decree of divorce. Reliance has been made on Exs.P19 to P23. The Family Court also took note of the fact that the allegation made against the appellant was not denied in the petition filed for restitution of conjugal rights. Challenging the same, the present appeals are before us.

5. Learned counsel appearing for the appellant would submit that on mere surmises, the decree for divorce has been granted. The appellant is ready and willing to live with the respondent. The complaint given and the materials will have to be seen in relation to the facts prevalent at the relevant point of time. It is the respondent who was living in adultery. The Court below was not correct in holding that the adultery is proved as against the appellant, though divorce was sought for on the ground of cruelty alone, even according to the respondent. Thus, both the orders will have to be set aside and consequently, the petition filed for the restitution of conjugal rights will have to be allowed.

6. Learned counsel appearing for the respondent would submit that it is a case where the appellant has slapped the parents of the respondent in the public place. It is further submitted that

the appellant went to the place of the respondent and created problems. She was always suspecting the character of the respondent. On one occasion, she slapped the fellow lady Professor. The Family Court has considered the relevant materials including Exs.P19 to P23 and granted decree for divorce. Now, for more than a decade, parties are living apart. The appellant has also been granted the alimony pursuant to the order passed in matrimonial case. Sufficient care has been taken for the welfare of the child also. Therefore, the appeals will have to be dismissed.

7. Thereafter, multiple proceedings have been initiated between the parties including suit for partition filed on behalf of the minor child by the appellant as against the respondent and his family members. The fact that the respondent was arrested following the registration of FIR and the lookout notice are not in dispute. From Mumbai he has been brought to Chennai and the criminal case ultimately ended in acquittal. According to the respondent, he went to Libya with the knowledge of the appellant. We have also perused the materials especially Exs.P19 to P23. The appellant has used very strong and unparliamentary words which are beyond decency against the respondent. Though it can be termed as an expression of anger, the words are so severe and not even capable of reproducing in the order. After giving the complaint for man missing, the appellant has given a further complaint against the respondent. The materials would show that the intention behind the complaint given followed by the lookout notice and the arrest was to harass the respondent. The complaint also included the parents of the respondent and the case is still pending. The mother of the respondent has been discharged. In the meanwhile, the father of the respondent is stated to have died, which according to the respondent, was due to the harassment caused by the conduct of the appellant.

8. From the above, one thing is clear. The parties by their own conduct created a situation in which they cannot live together any longer. The allegation made against them are very severe. We are not inclined to go into the allegations of adultery because both the parties have not filed their case on that basis. Though the respondent filed a petition for divorce on the ground of cruelty, adultery has not been pleaded as a basis for divorce but perhaps a factor which can be taken as a ground for cruelty. Similarly, the appellant has also sought for restitution of conjugal rights. This is a case where we do not find any reason for raising the plea of adultery. The said plea has also not been proved and substantiated.

9. Under those circumstances, we are of the view that inasmuch as the allegation made on the ground of adultery by the appellant has not been proved, the same itself is a ground for giving divorce for cruelty. Apart from the same, the materials on record would clearly establish conduct of the appellant. However, we are not inclined to accept the reasoning of the Family Court with respect to the adultery made out against the appellant. The Family Court ought not to have gone into the said issue of adultery. Secondly, inasmuch as in the petition filed by the respondent for cruelty, the appellant having denied it, the Family Court ought to have held that in the petition filed for restitution of conjugal rights the said factum is not denied. Anyone who makes a case of adultery will have to substantiate the allegations made. Here, even the respondent though not asked for, has not proved the allegations of adultery against the appellant. In such view of the matter, we are of the view that the findings of the Family Court on this aspect cannot be accepted.

10. Accordingly, we are inclined to dismiss the appeal by upholding the decree for divorce on the ground of cruelty sans adultery as held by the Court below. Since the case for divorce on the ground of cruelty is made out, the appeal filed against the restitution of conjugal rights is also dismissed.

11. At this stage, learned counsel appearing for the appellant has produced the following judgments (i) R.George Thomes v. S.Lilly Samuel reported in 1996(I) CTC 31 (ii) R.Balasubramanian v. Vijayalakshmi Balasubramanian reported in (1999) 7 SCC 311 (iii) Chetan Dass v. Kamla Devi reported in (2001) 4 SCC 250 and (iv) Bibekananda Mukhopadhyay v. Supriya Chatterjee reported in (2009) 16 SCC 324.

12. In the light of the discussion made above, we do not find any reason to go into the aforesaid judgments. As discussed above, we are not holding that the appellant has committed adultery. Though giving of the complaint per se cannot be a ground to hold that the case of cruelty is made, considering the facts of the case, especially, the fact that it involves other occurrence as well, and in the light of the discussion made above, particularly the correspondence between the parties, which is inclusive of mails sent, we are of the view that the case of cruelty is made out, more so, when the appellant has not substantiated the ground of adultery as made out against the respondent.

In fine, these appeals are dismissed. No costs. Consequently, connected CMP No. 3187 of 2018 and CMP No.524 of 2016 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm

To:

1.The Principal Judge,
Family Court,
Chennai.

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

+1cc to Mr.S.Kingston Jerold, Advocate Sr.17439
+2cc to Mr.I.Jenkins William, Advocate Sr.17150
+2cc to Mr.I.Jenkins William, Advocate Sr.17151

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srg 25/06/2019

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