

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM

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

C.M.A.NOS.735 AND 736 OF 2016

A.Jebasingh Prasad

.. Appellant in  
both C.M.As.

vs.

C.Jebakani Metilda

.. Respondent in  
both C.M.As.

Appeals filed under Section 19 of the Family Courts Act, 1994, against the fair and decretal order dated 25.05.2015 in D.O.P.Nos.256 of 2007 and 925 of 2008 on the file of the Principal Family Judge, Coimbatore.

For Appellant : Mr.S.Veeraraghavan

For Respondent : No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

These appeals have been filed against the dismissal of the petition filed seeking divorce primarily on the ground of desertion and the consequential order for restitution of conjugal rights filed By the respondent. They are disposed of by way of common order.

2.Heard the learned counsel appearing for the appellant. On the last occasion, learned counsel appearing for the respondent submits that change of vakalat has been given. Therefore, we direct the Registry to verify the aforesaid fact. But it appears that no change of vakalat has been filed. Learned counsel for the respondent also filed a memo to the effect that papers have been taken back by the respondent last year itself. Therefore, we are inclined to proceed with the matter on merits.

3.The marriage between the appellant and the respondent was solemnized in the year 1995. Two children are born out of the wedlock and both of them have attained majority now. The appellant is working in Railway as Technician. The respondent has been working as a teacher. It appears that she got transferred and thereafter joined in the said place. According to the appellant, she did it on her own volition whereas according to the respondent, it was done with the consent.

4.It is the case of the appellant that the respondent left on her own whereas it is the case of the respondent that she was forcibly sent out in the year 2006. There was a legal notice issued by the appellant, to which, the respondent replied twice. According to her, she was willing to rejoin notwithstanding the harassment meted out to her by the appellant and his parents but she was not allowed to get inside the matrimonial home. At the time of filing the petitions, the appellant was 39 years old and the respondent was 37 years old. Now, the appellant is stated to be 53 years old and the respondent is nearing 50 years. With the aforesaid factual background, let us decide the appeals.

5.The Court below declined to grant decree on the ground of coercion, holding that there is no material to hold so. On the issue pertaining to desertion, it was held that the respondent was driven out of the matrimonial home and therefore, no case of desertion is made out. It was further held that no sufficient material was produced to show that the appellant made sufficient efforts to bring the respondent into the matrimonial home.

6.Learned counsel appearing for the appellant submitted that the evidence let in coupled with the submission made by the respondent have not been taken into consideration properly. There is absolutely no material for holding that the dowry demand has been made out. She has not taken any steps to come back except by way of reply made to the legal notice issued under Ex.P1. Now, years have rolled on and the parties are living separately. The children have attained majority. The Court below has also committed an error in giving a finding that the respondent is ready and willing to live with the appellant. If she alleges that she was ill-treated, it is for her to substantiate the same. Non-believing of evidence of R.W.2 is not correct since he is only a neighbour. Therefore, the appeals will have to be allowed.

7.The age of the parties is not in dispute and so also the attaining of majority of the children. The petitions have been filed in the years 2007 and 2008 and now we are in the year 2019. Even according to the respondent, the parties are living separately from the year 2006 onwards though it is the case of the appellant that this has happened in the year 2000. Though

she has alleged dowry demand, she has stated in her evidence that no such demand has been made. This is contrary to the statement made by her in the reply notice. She has also stated in her evidence that she got transferred and joined in the transferred place with the permission of the appellant. Though she is entitled to pursue her avocation, the aforesaid fact will show that the parties are living separately. She has also not made any attempt to rejoin the appellant. She is not an illiterate person but a teacher. There is evidence on record to show that the respondent left the matrimonial home in the year 2000. We also find that there is no useful purpose that would be served by allowing the parties to have restitution without actual reunion. Perhaps, that is the reason the respondent is not willing to come before this Court. The matter also stood adjourned even on the last occasion expecting the appearance of the respondent. However, even today, she has not turned up. Even the Family Court has recorded the fact that the parties are living separately for some years.

8. Under those circumstances, we are constrained to allow these appeals as we also feel that eschewing of evidence of R.W.2 by the Family Court is not correct. Accordingly, these appeals stand allowed. No costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Principal Family Judge,  
Coimbatore.

2. The Section Officer,  
VR Section, High Court,  
Madras-104

+1cc to Mr.S.Veeraraghavan, Advocate, S.R.No.24375

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PM(CO)  
CS/11/07/2019