

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 293 of 2018
& C.M.P.No.3102 of 2018

N.Kanakaraj ... Appellant/Petitioner

Vs.

K.Vatchala ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the order dated 27.10.2017 passed in O.P.No.4298 of 2011 on the file of V Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr.M.Boopathy

For respondent : Mr.V.Bhiman

JUDGMENT

(Judgment of the Court was made by M.M.Sundresh,J.)

This appeal is preferred against the order of the V Additional Principal Judge, Family Court, Chennai, dismissing the petition for divorce on the ground of cruelty. The Court below dismissed the petition after holding that there is no material to substantiate the allegation made. Challenging the same, the present civil miscellaneous appeal has been filed.

2. Before the V Additional Principal Judge, Family Court, Chennai, the appellant examined himself as P.W.1 while marking Exs.P1 to P3. On the side of the respondent, R.W.1 was examined and no document was marked on his side. Ex.P1 is the xerox copy of the petition in O.P.No.4298 of 2011, which was dismissed on 27.10.2017. Ex.P2 is the Joint photo of the petitioner and the respondent, whereas Ex.P3 is the xerox copy of the family card.

3. The learned counsel appearing for the appellant would submit that on a conjoint evidence of P.W.1 and R.W.1, it is

clear that the appellant has been driven out of the house on 28.11.2013. The Family Court was wrong in saying that even after filing of the original petition in the year 2011, he was residing with his wife. The respondent taking advantage of the fact that the property was purchased by the appellant in her name and having received the compensation amount agreed, due to the death of her son, has driven the appellant out.

4. The learned counsel appearing for the respondent is ready and willing to live with the appellant as stated in the counter affidavit. The allegation made by the appellant was denied. The Family Court rightly found that there is no basis for the allegation made while dismissing the original petition.

5. We do not find any material whatsoever to substantiate the allegation made by the appellant. It appears that the appellant has filed O.P.No.4298 of 2011 for divorce in the year 2011. Thereafter, he was living with the respondent for two years. This was due to the advice made by the Family Court. While it is the case of the appellant, he was driven away, it is the case of the respondent that he went on his own as he do not want to live with her. The fact remains, the appellant has not been living atleast from 2013. From the above, we cannot hold that the respondent was exhorting cruelty on the appellant. If there is any property dispute between the appellant and the respondent, the same cannot be a factor for imputing cruelty on the part of the respondent. In such view of the matter, the above civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To:

The V Additional Principal Judge,
Family Court,
Chennai.

+1cc to Mr.M.Boopathy, Advocate Sr.102744
+1cc to Mr.V.Bhiman, Advocate Sr.102316

C.M.A.No.293 of 2018

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srg 04/03/2020