



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.7 of 2014

P.Murugan

..Petitioner/Husband

Vs..

S.Deepa

..Respondent/Wife

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1955 r/w Section 100 of the Code of Civil Procedure, against the fair and final order dated 03.06.2011 made in C.M.A.No.21 of 2010 on the file of the Principal District Court, Namakkal confirming the fair and final order dated 06.02.2009 made in H.M.O.P.No.243 of 2004 on the file of the Sub Court, Namakkal.

For Petitioner : Ms.Zeenath Begum

For Respondent : Mr.B.Thilaknarayanan
for Mr.T.M.Hariharan

ORDER

The appellant/husband, who is aggrieved by the fair and decretal order dated 03.06.2011 made in C.M.A.No.21/2010 on the file of Principal District Court, Namakkal confirming the fair and decretal order dated 06.02.2009 made in H.M.O.P.No.243/2004 on the file of the Sub-Court Namakkal has filed the present appeal by raising various grounds.

2.The appellant had submitted that the Lower Appellate Court ought to have allowed the appeal on the sole ground that the respondent/wife on her own volition deserted the appellant without any justifiable cause and the said act of the wife, who has not returned to the matrimonial house after the birth of child has not been considered. The lower Court ought to have seen that the child was born on 05.02.2001 from that day, the respondent/wife without any reasonable cause living with her parents and had no interest to continue the relationship and the respondent without any valid reasons, had left the house, also stated that the husband had prevented her from coming to the matrimonial house was not considered. No cruelty has been alleged against the appellant and the respondent has not given any reason for her desertion from the husband and the respondent had not allowed the husband to see his minor son, which amounted to mental cruelty. As they are living



3.The case of the appellant is that he got married to the respondent on 08.03.2000 at Arulmigu Kabilarmalai Murugan Koil, paramathi Velur, Annooramman Thirmana Mandapam, as per Hindu Rites and Customs. The child was born on 05.02.2001 and named as Kavinkumar. The appellant further submits that the wife was not interested in the marriage and she has no respect for the mother of the appellant and not willing to live with him. Infact, she has tendency to live only along with her parents. The respondent/wife used pickup quarrel with the appellant and his mother for silly reasons. Initially the respondent/wife did not want to bear the pregnancy and wanted to abort the same, only on the compulsion of the husband, she had continued pregnancy and on 03.11.2000, the parents of the respondent had conducted Valaikaapu function and took her to their house and on the same day she was sent back to the petitioner's house. After two or three days, she was taken back to her parents house and while going, she has taken away all her belongings namely Jewels, dresses and other articles stating that she will not return to the matrimonial house after the birth of the child. When the husband went to her house for seeing her, she did not allow him to visit her anymore and she had stated that if the appellant visits, she would kill herself.

5. The brother-in-law of the appellant went to the respondent's house and convened panchayat and panchayatdhar has requested the respondent to bring the child back to the appellant's house after a long gap on 24.10.2001. The wife after coming to the house along with the child, soon after the relatives, who accompanied her left the house, within two hours, she also tried to leave the matrimonial house along with the child. When the husband questioned the same, she threatened that if the husband restrains her, she would commit suicide by pouring kerosene and kill herself by blaming the appellant and his family and left the house and did not return to the matrimonial house. She has willfully deserted the husband for 3 years and all steps taken by the husband for re-union went in vain and the appellant's affection for his son which has no value and he was not allowed to touch his own son. The husband is ready to take over the custody of the



child, the appellant who is young and energetic was also deprived of matrimonial life and he prayed that marriage was irretrievably broken and cannot be united again. The conduct of the respondent/wife caused mental agony and since she left the matrimonial house without assigning any valid reasons, he prayed for granting divorce.

6.A counter affidavit has been filed by the wife wherein she has denied all the allegations. She denied allegations that she wanted to terminate pregnancy and she denies that on the Valaikapu function she went along with her mother and immediately she came back for taking up jewels and dresses. The respondent was always willing to live with her husband. The respondent's mother is also interested in the respondent living with her husband. She has also stated that no mother will be willing to break down marriage of her own daughter and the allegation to kill herself, if she is not allowed to visit her parents house are only fictitious and false allegations.

7.The child was born in Suguna Balasubramania Hospital, Erode and the wife has informed the appellant/husband about delivery. Neither the appellant/husband nor his mother visited the hospital to see the child. The respondent was in the hospital for 4 days prior to delivery and they have informed that they have to conduct cesarean operation and for that the Hospital Authorities need the signature of the husband and the same was also intimated to the appellant by respondent's younger brother and her uncle well in advance. Neither of the appellants relatives nor the appellant came to the hospital before the delivery and they came to the hospital only after 2 days of the birth of the child. They have not brought any gift to the child and they were permitted to see the child only on the advice of the relatives, are only false allegations and are framed only for bringing the said case under cruelty.

8.As per 15 families custom, the child stayed with his mother in the parents house till the child completed 7 months and only after naming ceremony was performed, on the same day, the appellant/husband and his relatives took the respondent and the child to their house in Periachahoundan valasu. Immediately, they took back the respondent with her child to their parents home in Pachagoundan Valasu, stating that the consultant astrologer had advised that the appellant and the son has to remain separated till the child attains 18 months as the time was not auspicious. Only on the false excuses, the appellant sent back the respondent to her parent's house and the appellant falsely alleged that the respondent had gone away from the matrimonial home on her own. The other contentions, viz., that if the respondent is not allowed to go back to her parents house, she will commit suicide with self immolation only to threaten her husband and family is denied. The respondent has not deserted the appellant and it was the appellant, who took the respondent to her mother's home and asked her to stay away from him for one year, as per



Astrologer's advice. The mother of the respondent is a widowed lady and there was no elder male member except respondent's Aunt's husband and they are living farther from their place. The husband never attempted to visit the son from the said date and the separation is not due to her act and was painful act of the husband, who has deprived the matrimonial life of the said respondent.

9.The Court below after considering the pleadings of the parties, has come to a conclusion that the appellant has not proved any cruelty caused by the respondent/wife and the marriage has not been irretrievably broken and they have dismissed the same.

10.On perusal of the said orders and the materials placed on record, it is evident that there was no big dispute between the parties for separation and on perusal of the petition filed by the husband, there are no specific averments to show that the wife was acting on her own, as per her wishes against the husband's wish and the act of the husband was also proved by the wife in her evidence. From the averments it is seen that the husband for one reason or the other sent away his wife. In his petition he falsely alleged that the wife wanted to go on abortion after pregnancy. Any women, who becomes pregnant will be happy to expect a child than to commit abortion.

11.The denial of the said allegations of the wife has not been proved contra by the husband by producing any evidence. It is also seen that after they got married in the month of March, a child was born in the month of February next year, and after 7th month Valaikapu function, the wife was taken to her parent's home and that immediately after 2 months of marriage, the wife got pregnancy and there could not have been much difference of opinion between the parties. Any wife for that matter will fully be happy about the pregnancy and there is no such averment in the petition to show that the wife had any disliking towards the husband and also it is the case of the husband that the wife was always threatening to commit suicide has not been proved with any materials or any evidence to substantiate the same. The appellant allegations that, for silly reasons, the wife was picking up quarrel with his mother, was also not proved by examining the said mother.

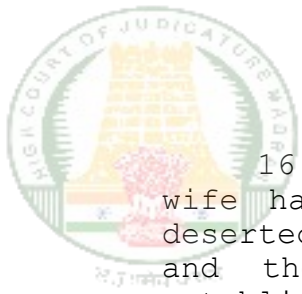
12.The case of the appellant that the time of the birth of the child was not informed to the husband was denied by the wife and from his own admission it is clear that only after 2 days, he has gone to the hospital to see the child and at the time when he visited the respondent, she was closing her eyes and resting on the bed and IV Fluid was given to the wife and the allegation that he was denied to see his child is wrong and also as per the customs, the child will be brought back to the matrimonial house only after 7 months, was also accepted.



13. That being the case, there is no desertion on the part of the wife and it is the appellant's own admission that after the naming ceremony, where the husband participated in the same and while returning home many persons, who are relatives have come back to the matrimonial house. Immediately, after two hours, the appellant has submitted that after the relatives have left, the wife demanded that she should be dropped back at her house and instead of he preventing her, she wantonly and willfully has left the house has not been proved with any evidence. The mother-in-law has not been examined and there is no evidence to show that if the wife has left the house on her own. If the wife herself left the matrimonial house on her own, she would have called the panchatdhars, who have come to her house that day to leave her and no panchayatdhar was examined in such a manner that wife has behaved in cruelty with the husband/appellant.

14. It could be seen from the evidence of the parties that the wife herself has admitted in her deposition that the husband and his mother immediately after she entered into the house, has informed her that as per the Astrologer's advise, the appellant and the son should not be together for 18 months from the date of the birth of the child, as the time was not auspicious. If the wife has gone immediately after 2 hours, what steps, he has taken to bring the wife back has not been stated by him. The appellant's attitude of not taking any steps to bring the wife back to home or taken any steps to visit the child would show that he has no interest in continuing the matrimonial house. Contrarily, the husband has no interest to visit the child, as such, he did not file any petition for visitation rights or given any complaint to the Police Authorities for visiting the child or he did not called the Panchayatdhars, who have done the mediation earlier and no such evidence has been produced before this Court and also in his petition. At one point of time, his well wishers including the brother-in-law of the appellant went to wife's house and convened panchayat. After brother-in-law has done the mediation earlier, he could have brought the said brother-in-law, as one of the witnesses to prove that he has taken his help for mediating with his wife. Other than wife, no other witness has been produced before this Court for letting in evidence regarding his claim of cruelty and dessertion.

15. The case of the respondent/wife shows that she has no father and only mother who has to support her. All the mothers will have only an intention to get their daughters married and so that they can take care of their daughters but the appellant's contention that the wife was always having an intention to live with the mother without any purpose and till date, she has been living with her mother, no material has been produced to show that from the date of the birth of the child, he has taken any interest, as a parent, by paying some money to the child and wife and nothing has been produced before this Court to show the same.



16. In the absence of all such materials to prove that the wife had committed cruelty on the mind of the husband and deserted the husband, so that they cannot live together again and the marriage has been irretrievably broken is not established and this Court is not inclined to interfere with the order passed in C.M.A.No.21 of 2010 dated 03.06.2011 on the file of the Principal District Court, Namakkal. In view of the above said reasons, the present Civil Miscellaneous Second Appeal filed by the appellant/husband is dismissed. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrm

To

1. Principal District Court, Namakkal
2. Sub Court, Namakkal.

+ 1 cc to Mr.T.M. Hariharan, Advocate SR.NO..95472

C.M.A.No.7 of 2014
and
M.P.No.1 of 2013

SVI (CO)
EU 6.7.2020