

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 30.08.2019

Order Delivered : on 27.11.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.27 of 2017

P.O.Varadarajan .. Appellant/Petitioner

Vs

C.Punitha .. Respondent/Respondent

Prayer : Civil Miscellaneous Second Appeal is filed under Order 43 Rule 1 of the Civil Procedure Code against the judgment and decree dated 18.08.2017 made in C.M.A.No.2 of 2017 on the file of III Additional District and Sessions Judge, Gobichettipalayam, reversing the judgment and decree dated 06.01.2017 made in HMOP.No.21 of 2014 on the file of the Subordinate Judge, Sathyamangalam.

For Appellant : Mr.R.T.Duraisamy

For Respondent : Mr.C.R.Prasanan

JUDGMENT

The appellant is the husband and the respondent is the wife. The appellant/husband has filed this appeal challenging the judgment and decree dated 18.08.2017 made in C.M.A.No.2 of 2017 on the file of III Additional District and Sessions Judge, Gobichettipalayam, reversing the judgment and decree dated 16.01.2017 made in H.M.O.P.No.21 of 2014 on the file of the Subordinate Judge, Sathyamangalam.

2. At the time of admission, this Court, while ordering notice to the respondent on 27.11.2017, has framed the following substantial questions of law:-

"1) Whether the Lower Appellate Court, after having found that the respondent insisted the appellant for separate family

set up is correct in allowing the appeal ignoring the mental cruelty of the appellant?

2) Whether the Lower Appellate Court is correct in allowing the appeal, ignoring the fact that the respondent did not file a petition under Section 9 of the Act for restitution of conjugal rights?

3) Whether the Lower Appellate Court is correct in allowing the appeal ignoring the incident that in the last week of December 2010 the respondent threatened the appellant if he failed to set up a separate residence in the month of January, 2011, she would commit suicide and put the petitioner and his family members behind the bar and deserted the matrimonial home voluntarily and live separately?

4) Whether the Lower Appellate Court is correct in dismissing the petition under Section 13(1-a) and Section 13(1-b) without considering the evidence and documents?"

3. Learned counsel appearing for the appellant/husband submitted that the finding of the learned first Appellate Court that the dispute was between the respondent/wife, mother-in-law and sister-in-law itself shows the negative attitude of the respondent/wife towards the family members of the appellant/husband. Moreover, the learned first appellate Court has failed to take note of the series of threats given by the respondent/wife stating that if the appellant/husband fails to set up a separate family from matrimonial home, she would poison the aged mother and his deserted sister and thereafter she would also commit suicide by leaving a letter to the effect that the appellant/husband is the responsible for her suicide. Such an abnormal negative attitude of the respondent/wife would clearly show that she was so unreasonable and arrogant towards her mother-in-law and sister-in-law. Moreover, another plea of the respondent/wife was that after giving birth to a girl child, only for the interest of the child, she left the matrimonial home and therefore, she was justified in living separately by driving out the tenants residing in a house belonging to the appellant/husband. The said act of the respondent/wife also shows her highhanded approach and therefore, it is a clear case of voluntary desertion from the matrimonial home. When these evidences were placed before the learned trial Court, the learned trial Court, taking note of the unruly behaviour of the respondent/wife in demanding a separate home so as to drive-out

the aged mother and deserted sister, has held that it is a clear case of desertion and mental cruelty, hence, a fit case for grant of decree of divorce.

4. Continuing further, it is argued that the respondent/wife, in an effort to threaten the appellant/husband, his aged mother and his deserted sister, lodged a complaint in Crime No.156/14; secondly filed a maintenance case in M.C.No.21/14 claiming monthly maintenance under the Protection of Women from Domestic Violence Act, 2005, thirdly a civil suit in O.S.No.177/16 was filed for partition and fourthly one more suit in O.S.No.177 of 2015 was filed for maintenance. But, she has failed to file a petition for restitution of conjugal rights under Section 9 of Hindu Marriage Act (in short "the Act"). If she had really been aggrieved by the act of her husband, she should have approached the Court for reunion by filing a petition under Section 9 of the Act for restitution of conjugal rights, but, no such petition was filed by her. This has been rightly appreciated by the learned trial Court while granting decree of divorce. On appeal filed by the respondent/wife, learned first appellate Court, without taking note of mental agony and cruelty faced by the appellant/husband in view of filing of the various cases as stated supra by the respondent/wife and also threatening given by her to commit suicide, wrongly reversed the judgment and decree passed by the learned first appellate Court.

5. Concluding his arguments, learned counsel for the appellant/husband would submit that the appellant/husband was able to establish before the trial Court that the respondent/wife alone left the matrimonial home and started living in another house belonging to the appellant/husband, which is also right opposite to her parental house. However, since she had filed four cases as stated supra against the appellant and his family members and that she has also given an unwarranted threat that she would kill his family members by poisoning the food, besides committing herself suicide, the learned trial Court, fully satisfying with the case of the husband that his wife has filed several civil and criminal cases causing mental cruelty and agony, has rightly granted the decree of divorce. However, without taking note of the fact that the marriage between the appellant and respondent has irretrievably broken down, as they were separated in the year 2010, the learned first appellate Court has wrongly reversed the decree of divorce granted by the learned trial Court, for, now, there is no use in keeping the marital tie alive in view of 9 long years separation. On this score, he prayed for dissolving the marriage solemnized between the appellant/husband and the respondent/wife.

6. Learned counsel appearing for the respondent/wife submitted that when there is a finding recorded by the learned trial Court that the appellant's deserted sister and his aged mother are responsible for causing mental cruelty to the respondent/wife, which has compelled to desert her from his family, however, although she left the matrimonial home with her girl child, she has not gone to her parental house and she has chosen to live only in the house belonging to the appellant/husband, which is just opposite to her parental house, the allegation made by the husband that she only deserted the matrimonial home was finally found unsubstantiated by the learned first appellate Court. Again, the second allegation of the husband that the respondent/wife has not chosen to file application under Section 9 of the Act seeking restitution of conjugal rights, is also unjustified and bereft of any merit, since she has been willing to live with her husband and she has filed an affidavit to that extent showing her willingness to live with her husband. Therefore, on this count, he prayed for dismissal of the appeal filed by the appellant/husband.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. The appellant/husband's father died in the 1974 when he was studying only 4th standard, leaving behind his mother and two sisters. Thereafter, out of the pension amount, the appellant's mother alone brought them with great difficulties giving education. Subsequently, the appellant was appointed as Junior Assistant on compassionate ground and after getting promotion, now he is working as Deputy Block Development Officer, Bhavanisagar Union Office. Although he has performed the marriage of his two sisters, one of his sisters, namely, Sumathi, was deserted by her husband and therefore, now she is living with the appellant. On 10.07.2009, the appellant/husband has married the respondent/wife and thereafter, the respondent/wife has insisted him for separate residence, but, the appellant/husband had expressed his inability stating that he has to maintain his aged mother and also his deserted sister. At one stage, the respondent/wife had even threatened her husband stating that if he refuses to send his mother and deserted sister out of the home, she would kill them by poisoning the food and thereafter, she would commit suicide by writing a letter stating that the appellant/husband is the responsible for her suicide. Normally, in such circumstances, no husband would tolerate such an attitude of the wife and no son would like to be separated from his old parents and other family members, who are also depended upon his only income and

therefore, the persistent effort of the respondent/wife to compel the appellant/husband to be separated from the family would be a nightmare experience for anyone. Hence, in my considered view, the trial Court was right in granting decree of divorce on the ground of cruelty. Accordingly, the first substantial question of law is answered against the respondent/wife.

9. It is also to be noted that the respondent/wife had also filed four cases against the appellant and his family members; (a) criminal case against the appellant and his aged mother and his deserted sister in Crime No.156/14; (b) maintenance case in M.C.No.21 of 2014 under the Protection of Women from Domestic Violence Act, 2005; (c) a suit in O.S.No.177 of 2016 seeking for partition of appellant's property; and (d) one another suit in O.S.No.177 of 2015 seeking for maintenance. Although she had filed several cases as stated supra, she had not filed any petition for restitution of conjugal rights under Section 9 of the Act. If she had really aggrieved by the act of desertion of the appellant/husband, she should have approached the Court seeking relief under Section 9 of the Act, but, she has deliberately failed to do so. The appellant/husband has also raised this issue as one of the grounds in the present appeal and this Court has also framed this issue as one of the substantial questions of law. Although it is submitted that she has filed a petition under Section 9 of the Act after the judgment and decree passed by the learned trial Court, she has not produced any such document to the said effect. Even if she has filed such petition, I am of the opinion that she would have filed such petition only to fill up the lacuna so as to give a reply to the stand taken by the appellant/husband. Therefore, the intention of the respondent/wife would clearly show that she is not interested to live with her husband, but, on the contrary, she is interested only to take away the property belonging to him by filing a civil suit for partition. Moreover, when the appellant/husband is the only person to give asylum to his deserted sister and aged mother, the refusal to live with them by the respondent/wife shows that she is unreasonable and the entire fault squarely lies with her. Accordingly, the second substantial question of law is answered against the respondent/wife.

10. It is also seen that after filing of a criminal complaint in Crime No.156/14 against the appellant/husband, aged mother and deserted sister, they had approached this Court by filing CrI.O.P.21625 of 2014 seeking anticipatory bail and this Court, vide order dated 14.08.2014, held that in the event of they being released on anticipatory bail, they would not tamper

with the evidence and hamper the investigation process. Moreover, the direction given by the Court that they shall be released on bail in the event of their arrest also shows that the respondent/wife is mercilessly haunting the appellant/husband and his family members for no good reason.

11. Thus, as highlighted above, filing of a civil suit in O.S.No.177 of 2016 through her minor daughter seeking partition and a criminal case in Crime No.156 of 2014 against her husband, his aged mother and his deserted sister and thereupon compelling them to file CrI.O.P.No.21625 of 2014 seeking anticipatory bail and giving of a threat to commit suicide, would certainly cause mental cruelty and agony to the appellant/husband. Hence, such a conduct and behaviour of the respondent/wife shows that she is not fit for matrimonial life. Therefore, as rightly decided by the learned trial Court, the marriage deserves to be dissolved by a decree of divorce on the ground of cruelty as adumbrated in Section 13(1)(1a) of the Act, which states that any marriage can be dissolved on a petition being presented by either husband or wife on the ground that the other party has after solemnization of the marriage treated him/her with cruelty.

12. Further, it is also not in dispute that the appellant/husband and the respondent/wife are living separately for about 9 long years and it is also true that a good part of the lives of both the parties has been consumed in this litigation. Hence, in view of long separation, reunion is impossible and therefore, for the reasons stated above, I have no hesitation to allow the appeal. Accordingly, the Civil Miscellaneous Second appeal is allowed by answering the third and fourth substantial questions of law against the respondent/wife. Consequently, the judgment and decree passed by the learned first appellate Court are set aside and the judgment and decree passed by the learned trial Court are restored. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.III Additional District and Sessions Judge, Gobichettipalayam.

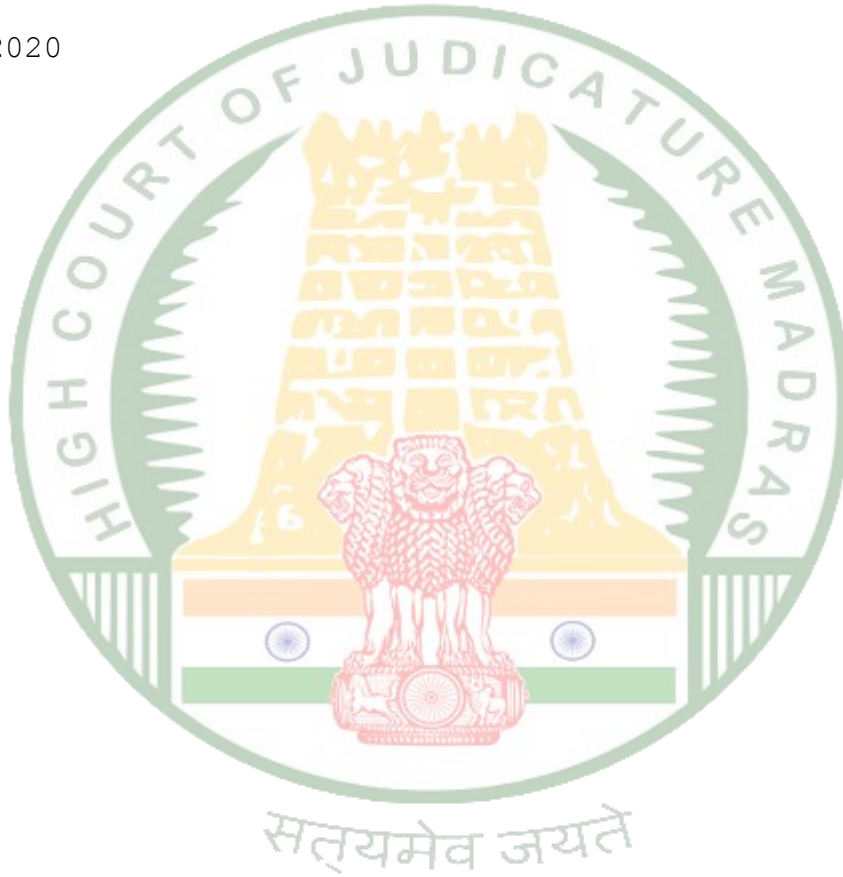
2.Subordinate Judge, Sathyamangalam.

+1cc to Mr.R.T.Duraisamy, Advocate sr.98757

+2cc Mr.C.R.Prasanan, Advocate sr.99226 & 98831

C.M.S.A.No.27 of 2017

gp(co)
nr 02/01/2020



WEB COPY