

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.6 of 2017

Periyasamy ... Appellant/Petitioner
Vs.
Thilagavathi ... Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28(1) of the Hindu Marriage Act r/w Section 100 of CPC., against the fair order and decreetal order dated 15.11.2016 made in C.M.A.No.13 of 2013 on the file of the learned Third Additional District Court, Dharapuram, Tirupur District confirming the fair and decreetal order dated 30.11.2012 made in H.M.O.P.No.53 of 2009 on the file of the learned Sub Court, Dharapuram.

For Appellant : Mr.N.Manokaran
For Respondent : Mrs.AL.Gandhimathi

J U D G M E N T

The present Civil Miscellaneous Second Appeal has been filed against the fair and decreetal order dated 15.11.2016 made in C.M.A.No.13 of 2013 on the file of the Third Additional District Court, Dharapuram, Tirupur District confirming the fair and decreetal order dated 30.11.2012 made in H.M.O.P.No.53 of 2009 on the file of the learned Sub Court, Dharapuram.

2.The Substantial Questions of Law which arises for consideration in this Appeal are as follows:-

- i) Whether the Courts, below have committed an error in refusing to dissolve the marriage under Section 13(1A) (ii) of the Hindu Marriage Act 1955, particularly when there was no restitution of conjugal rights for more than 1 year after the passing of a decree of Restitution of Conjugal rights granted in H.M.O.P.No.30 of 2006(Ex.A2)?
- ii) Have not the Courts below, erred in refusing to grant a decree of divorce especially when the matrimonial relationship between the parties has reached the stage beyond chance for repair in view of the matrimonial incompatibility?
- iii) Whether the Courts below are right in dismissing the petition for Divorce even though the matrimonial

relationship between the parties has irretrievably broken down?

3.The case of the appellant herein is that he married the respondent on 14.02.2001 at Sri Muthu Palaniappa Valliammai Kalyanamandapam, Pazhaiya Kottai Road and after marriage both of them were residing at Uthamapalayam and the appellant was doing agricultural activities at Uthamapalayam. The respondent without any reason informed, the appellant that she does not like the agricultural activities and she wants to get away from that place and live somewhere else. The respondent was always quarreling with the appellant herein and she had also become pregnant. Even during the pregnancy also, she was quarreling with the appellant and on 22.11.2001 a girl baby namely Keerthana was born. After delivery of child, the respondent did not return back to her matrimonial house instead she had stated that she did not like the village and also she had requested the appellant to shift his residence elsewhere.

4.That apart the respondent wife did not allow the parents of the appellant to touch the child and always tried to find fault stating that they are not having any habits of hygiene. When the father of the appellant was bed-ridden for Disc Prolapse Problem, the respondent had tortured the appellant mentally asking him to go to Erode - Solar area, to look after the tea shop, which was run by her father. But the appellant refused the same as he wanted to stay with his father, who was not well. However, the respondent threatened him that she would commit suicide. After taking his father for treatment, the appellant, on 14.06.2004, purchased a house, which was 1 k.m., away from his residence and asked the respondent to live in the newly purchased house. Despite the same, the respondent had taken her daughter Keerthana and was living at her parental house and inspite of repeated request, the respondent did not come back to the matrimonial house, which she left 5 years back.

5.On 04.04.2006, the appellant sent notice through his Advocate for restitution of Conjugal rights. On 13.04.2006, the respondent sent her reply and on 10.05.2006, the appellant had given reply to the reply notice sent by the respondent. Since the respondent did not come back, the appellant had filed H.M.O.P.No.30 of 2006 for restitution of conjugal rights. After a prolonged period of 2 years, H.M.O.P.No.30 of 2006 came to be allowed on 06.06.2008. Thereafter, the appellant requested the respondent to come and live with him, however, she did not return to the matrimonial home. Hence, the appellant has filed H.M.O.P.No.53 of 2009 seeking dissolution of marriage dated 14.02.2001 solemnized between them.

6.The respondent filed counter stating that 50 sovereigns was given to her at the time of marriage, apart

from Rs.1,00,000/- cash as dowry to the appellant. She denied the allegations in the petition and stated that when the relatives of the respondent had invited them for dinner, the mother of the appellant had not permitted the appellant to attend the dinner stating that the respondent's family is very poor. It is further stated that after birth of the child, the parents of the respondent looked after the child and the respondent very well and after giving some jewels to the child, they sent the respondent and the child to the appellant's house. Nearly for two months, the respondent lived in the matrimonial home peacefully. Thereafter, they started troubling the respondent by saying that due to the birth of the girl child, the health of the appellant's father was affected. It is also stated by respondent that the child was allowed to play in the field where brinjal plants were planted and some pesticides were applied. The appellant and his parents also insisted the respondent to go home and bring some more money. When the respondent refused to do so, the appellant and his parents scolded and sent her away from the matrimonial home. It is further stated that she was staying in her parents house for quite some time due to these factors. After the orders of the Court, when the respondent wanted to live with the husband, the appellant and his parents did not allow her to enter into the house. Hence, she had filed a complaint before the Police and the same was not considered. The respondent also stated in the counter under the fond hope that one day the appellant will take back the respondent and her child, she has not chosen to file any maintenance case of partition suit.

7.Before the trial Court, the appellant was examined as P.W.1 and one Doraisamy was examined as P.W.2. Exs.P1 to P5 were marked. On the side of the respondent, the respondent was examined as R.W.1 and one Palanisamy and Ponnusamy were examined as R.W.2 and R.W.3. Exs.R1 to R5 were marked.

8.After considering the oral and documentary evidence, the trial Court came to the conclusion that there was no intention for the appellant to take back the respondent as wife and run a family. The plea of the appellant that only the respondent had no intention to live with the appellant was not accepted. Further after the H.M.O.P.No.30 of 2006 for restitution of conjugal rights was allowed, the appellant had not taken any serious steps or efforts to live with the wife.

9.It is also seen from the evidence that on 14.02.2007 when the respondent, her child and one Pappathi and Subramani went to the home of the appellant, they refused to allow them inside the house. In fact, they even refused to open the door. But, the parents of the appellant told them that only if they bring 15 sovereigns of gold jewels, they will allow them to enter into the house.

Advocate and issued notice which was marked as Ex.R6 and the returned cover was marked as Ex.R7. From a perusal of the same it is seen that the respondent had pleaded for restitution and has already taken steps to live with her husband on 04.07.2008 also the respondent had given a petition before the All Women Police Station requested the Police to give Police Protection to the respondent enabling her and her child to live peacefully with the appellant. However, the appellant / husband had not taken any steps to take back the respondent. On 05.07.2008 the Police conducted an enquiry but the appellant had not accepted the respondent back as per the order passed by the said Court in the restitution of conjugal rights petition to lead a normal life.

11. Since there were no materials to show that the wife (respondent) had deserted the husband (appellant) the trial Court dismissed the said petition. The lower Appellate Court had also dismissed the appeal given a finding that the appeal filed by the husband is not proper and in the absence of any evidence let in by the husband to show that he had taken steps to live with the wife, the Trial Court was right in rejecting the HMOP filed by the husband. Assailing the same, the husband has filed this present Civil Miscellaneous Second Appeal.

12. The contention of the husband is that inspite of allowing of petition for restitution of conjugal rights in H.M.O.P.No.30 of 2006, on 06.06.2008 the respondent / wife adamantly refused to come and live with appellant. Further no materials were produced to prove that the appellant / husband had taken steps to take back the respondent to the matrimonial home. The further contention of that respondent is that the birth of the girl child due to which the wife did not want to live with the husband, avoiding the company of the husband were not proved by the husband by letting in any evidence. A genuine valid reason was not found while passing such order, as the trial Court has erroneously come to the conclusion as the respondent had not filed suit for partition or for maintenance which would go to show that she had an intention of living together has to be set aside.

13. It is also further seen that the wife has not troubled the husband by filing a maintenance petition. The contention of the appellant that the duty of a Hindu Wife is to come and live with the husband wherever he resides. The respondent is willing to live with her husband and only the husband has not taken any initiative to bring the wife back to the matrimonial house. It is also seen from the records that the respondent, her parents and some third parties had made attempts and gone to the appellant's house but they were not allowed inside the house and directed them to bring more jewellery.

husband. However, the appellant / husband refused to take back the respondent inspite of an order passed in favour of him for restitution of conjugal rights. The respondent / wife filed complaint before the All Women Police Station seeking for their intervention for re-union of the parties. This would show that the respondent / wife has taken sufficient steps for re-union and therefore, this Court finds that the contention of the appellant is false.

15.The submission of the husband that they are living separately for more than 10 years and their marriage has broken down irretrievably beyond salvage and therefore no purpose will be served by expecting the parties to live together is not accepted as it is the husband who has evaded to bring them back home inspite of the efforts taken by the wife for reunion.

16.The matrimonial disputes have to be decided by the Courts in a practical manner keeping in mind the ground realities like whether the marriage can be saved, by the husband and wife who can live together happily, maintain a proper atmosphere at home. In the case on hand, there is a specific direction by the Court below for restitution of conjugal rights, which petition was filed by the husband. After obtaining such an order for restitution of conjugal rights the respondent / wife in fact resided in the house of the appellant for certain period and thereafter, there was pressure from the parents of the appellant for some jewels and it was only thereafter, the respondent left the matrimonial house.

17.That apart it is an admitted case that the respondent / wife has till date not claimed any maintenance from the appellant / husband nor filed any suit for partition of the properties. This really shows that she is always willing to join the appellant / husband and to continue her matrimonial life.

18.According to the Hindu Marriage Rites, marriage is a sacred union of two persons. One say not is tide under duties and obligations of marriage or to be married out for the rest of the life, whatever may be the circumstances, whether it is separation or disagreement between the parties etc. The husband is always bound to take up the responsibility of maintaining the wife even though the relationship is estranged.

19.The obligation of the husband is on a higher pedestal. In the case on hand, the respondent was driven away from the matrimonial house demanding jewels. On one occasion, when she along with her relatives and the new born child came to the matrimonial house even the doors were not opened and she was sent back along with the relatives. So it does not lie in the mouth of the appellant to claim that the respondent has left the matrimonial house.

20.For the foregoing reasons, the appeal is dismissed. Considering the fact that there is a girl child aged 18 years born to them, who will have to be taken care of and married. Considering her age factor, surely she will be requiring her father's presence for giving her in marriage. It is an admitted case that till date the appellant has not given a single penny to the appellant or his daughter for their maintenance. Considering the said fact, this Court hereby grants liberty to the respondent / wife to move appropriate application before the appropriate Court below seeking maintenance. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rna

To

1.The III Additional District Judge,
Dharapuram, Tirupur District.

2.The Sub Judge,
Dharapuram.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 99655

+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No. 100344

C.M.S.A.No.6 of 2017

TM(CO)

GN(16/10/2020)

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