

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM:

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

C.M.A.No.1294 of 2017

C.N.Chandramurthy

...Appellant

Vs.

P.Ambica

... Respondent

Prayer : Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the judgment and decree dated 08.02.2017 made in H.M.O.P.No.100 of 2016 on the file of the Principal Subordinate Court, Tirupur.

For Appellant : Mr.V.Lakshminarayanan for
Mr.A.Saravanan
Mr.K.Thirunavukkarasu

For Respondent : Mr.L.Chandrakumar for
Mr.N.Chinnaraj

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The appellant is the husband. He filed a petition in H.M.O.P.No.1097 of 2008 before the Family Court, Coimbatore which has been re-numbered and transferred as H.M.O.P.No.100 of 2016 on the file of the Principal Subordinate Court, Tirupur, seeking divorce on the ground of cruelty. On an earlier occasion, the respondent filed a petition, being H.M.O.P.No.507 of 2015, for restitution of conjugal rights, which was dismissed for default on 11.05.2015.

2. It is the case of the appellant that the respondent is having tendency to commit suicide. She attempted twice. She was given treatment in the Hospital because of such tendency to commit suicide. Hence, divorce should be granted.

3. The respondent denied the aforesaid allegations, though the attempt made on the first occasion by taking cow dung powder was admitted. For the second time, it has been stated that she took treatment for toothache.

4. Before the Family Court, the appellant has examined himself and three doctors apart from PW5. He has marked Exs.P1 - P17. The respondent examined four witnesses including herself as RW1 to RW4 apart from marking four documents, inclusive of birth certificate of the son.

5. The Court below declined to grant a decree for divorce on the ground that the evidence of the Doctor cannot be taken to mean that there is a tendency to commit suicide. Though the respondent has attempted to commit suicide on the first occasion, the second attempt has not been proved, since she has deposed that she took tablets for the toothache. Therefore, inasmuch as the appellant has not proved the allegations made, the petition will have to be dismissed.

6. Learned counsel appearing for the appellant submitted that the evidence of PW2 to PW4 was not taken into consideration in the correct perspective. This coupled with the documentary evidence clearly establishes the conduct of the respondent. A child was born in the year 2007. The parties are living separately from the year 2008 onwards. There was a conciliation between the parties pending appeal. It was agreed that the respondent will receive a sum of Rs.5,00,000/- and accordingly, Rs.5,00,000/- was already granted and received by the respondent. It was also agreed that property will have to be given in the name of the respondent and the child. The document was also duly executed. However, she went back from the said agreement. Thus, considering the above, the appeal will have to be allowed.

7. Learned counsel appearing for the respondent submitted that inasmuch as the Family Court considered the materials available on record, no interference is required.

8. Though the agreement entered into between the parties is not in dispute, the circumstances under which the respondent declined to accept the same cannot be put against her. Learned counsel would further submit that under those circumstances no interference is required.

9. On a suggestion by us, learned counsel appearing for the appellant would submit that notwithstanding the decision of this Court on merit, the appellant would deposit a sum of Rs.7,50,000/- in favour of the minor child as against

Rs.5,00,000/- already agreed upon. The said statement is recorded.

10. In our considered view, the Family Court has not considered the materials in the right perspective. When allegation is made, it is for the party which levels it to prove it. In matters like this, we cannot expect cent percent evidence to a specific allegation made. The appellant has examined PW2 to PW5 in support of his contention. Apart from the same, all the medical records have been examined. PW4 has clearly stated that the respondent has refused to undergo further treatment. She was suffering from borderline personality. He has also stated that at times a threat of suicide would become a reality. The Court below has not considered the documentary evidence produced.

11. We are dealing with a case in which even the respondent has accepted that she has attempted suicide on the first occasion. Even assuming there was problem between her in-laws she ought not to have attempted suicide. The Court below has accepted the submission that she took tablets for the toothache. No person would take ten sleeping pills for toothache. It is not her case that these tablets are prescribed by the Doctor. In fact, she has taken the medicines on her own volition. Therefore, it is for her to satisfy the same as against the evidence of PW2 to PW4 who are nothing but Doctors. Thus, the Family Court misdirected itself in giving a finding against the appellant. When the proceedings are summary in nature, the Family Court will have to see the evidence coupled with the conduct of the parties, which we do not wish to do so. In our considered view, a person is not expected to live with another under threat of suicide. Therefore, we are of the view that the respondent having accepted the suicide attempt on the first occasion, the second attempt will have to be seen with much more seriousness, especially in the light of the evidence available. We are concerned with the preponderance of probabilities as against conclusive proof, which is certainly available on record. In such view of the matter, we are inclined to allow this appeal.

12. While allowing the appeal we record the submission made by the learned counsel appearing for the appellant that the sale deed executed in favour of the respondent and son; payment of Rs.5,00,000/- made already and the further payment of Rs.7,50,000/- to be deposited in the name of the minor child shall stand and be complied. The appellant will have to make the said deposit of Rs.7,50,000/- within a period of eight weeks

from the date of receipt of a copy of this order. Consequently, there shall be a decree of divorce as prayed for in the Original Petition. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

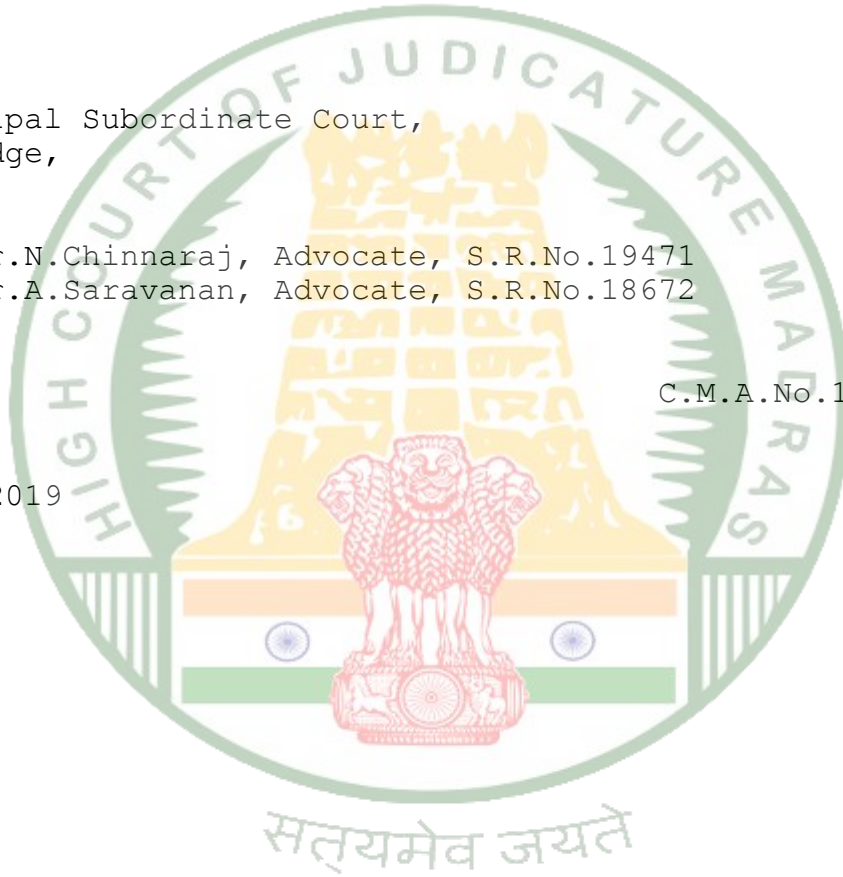
To:

The Principal Subordinate Court,
Family Judge,
Tirupur.

+1cc to Mr.N.Chinnaraj, Advocate, S.R.No.19471
+1cc to Mr.A.Saravanan, Advocate, S.R.No.18672

C.M.A.No.1294 of 2017

PP(CO)
CS/22/04/2019



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