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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **25.01.2019**

CORAM:

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MR. JUSTICE **C.SARAVANAN**

C.M.A. (MD) Nos.1094 and 1150 of 2017

C.M.A. (MD) No.1094 of 2017

R.Saravanakumar : Appellant/Respondent

Vs.

P.Ponvani @ Vani : Respondent/Petitioner

PRAYER: The Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, praying to set aside the common order dated 30.10.2014 made in H.M.O.P.No.175 of 2010 on the file of Family Court, Madurai and allow this appeal.

C.M.A. (MD) No.1150 of 2017

R.Saravanakumar : Appellant/Petitioner

Vs.

P.Ponvani @ Vani : Respondent/Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, praying to set aside the common order dated 30.10.2014 made in H.M.O.P.No.391 of 2006 on the file of Family Court, Madurai and allow this appeal.

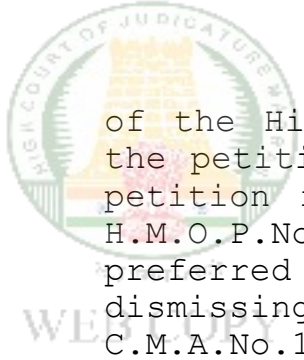
For Appellant : Mr.V.Pandiyan
in both appeals

For Respondent : Mr.P.Athimoola Pandian
in both appeals

JUDGMENT

(Judgment of this Court was delivered by **S.S.SUNDAR, J.**)

These two Civil Miscellaneous Appeals have been preferred by the husband. The appellant filed a petition in H.M.O.P.No.391 of 2006 on the file of the Family Court, Madurai, against the respondent for dissolution of marriage on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. The respondent wife filed a petition in H.M.O.P.No.175 of 2010 before the Family Court, Madurai, for restitution of conjugal rights under Section 9



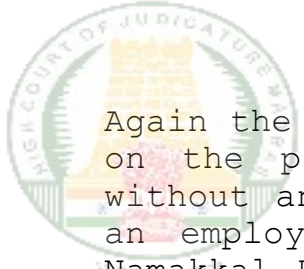
of the Hindu Marriage Act. The Family Court, Madurai, dismissed the petition for divorce in H.M.O.P.No.391 of 2006 and allowed the petition filed by the wife for restitution of conjugal rights in H.M.O.P.No.175 of 2010. Aggrieved by the same, the appellant has preferred C.M.A.(MD) No.1150 of 2017 as against the order dismissing the petition for divorce in H.M.O.P.No.391 of 2006. C.M.A.No.1094 of 2017 is also preferred by the husband as against the decree for restitution of conjugal rights in the petition filed by the respondent in H.M.O.P.No.175 of 2010. The Family Court, Madurai, disposed of both the petitions in H.M.O.P.No.391 of 2006 and H.M.O.P.No.175 of 2010 by a common order.

2.Since issues in both appeals are interlinked, both the appeals are taken up together and disposed of by this common order.

3.The marriage of appellant and the respondent took place on 12.09.2002 and it is not in dispute that the marriage was solemnised as per the Hindu custom. Within one year of the marriage, the respondent begot a female child. Though dispute arose between the respondent and wife some time earlier, it is not in dispute that they were living together till 25.02.2006.

4.In the petition filed by the appellant for divorce, the appellant has made the following allegations.

4.1.On the ill-advise of the respondent's brothers, the respondent failed to discharge the matrimonial obligations to the appellant and ill-treated and insulted the appellant. The respondent prevented the appellant to take care of his aged parents and used to humiliate them and thereby caused mental agony to the appellant. The appellant used to meditate after his office hours and after spending sufficient time for family related affairs. However, the respondent is criticising the appellant's inclination for meditation and prevented him from doing meditation by creating problems. The respondent prevented the appellant from maintaining his parents by threatening that she would commit suicide. The respondent used to ill-treat the appellant's parents and prevent the appellant from spending for their medical expenses. The respondent never cared for the appellant and she used to sleep till 8 O' clock in the morning. Since the respondent was affected by hernia, she did not show any interest in performing her matrimonial obligations and thereby compelling the appellant to maintain himself and attend his personal affairs like, washing, cooking, taking water and taking care of the female child. When the appellant advised the respondent to seek employment, with a good intention, the respondent projected as if the appellant was compelling her to earn money through employment and used to talk to others about the personal matters and thereby created a bad name to the appellant's family. Within three months from the date of marriage, the respondent who was then living with the appellant along with his parents left the matrimonial home and returned to the matrimonial home only after the baby was born on 10.02.2004.



Again the respondent left the matrimonial home to her parents house on the pretext of seeking employment from her parents house without an intimation to the appellant. The respondent also took an employment in September, 2005 in a college at Paramathy in Namakkal District, ignoring the request of the husband to come to the matrimonial home with a promise to get a job for the respondent. Though the appellant requested the wife to return to the matrimonial home, the respondent went to her parents house in Rajapalayam. Though the respondent returned to the matrimonial home on 17.11.2005 after mediation, once again left the matrimonial home on 25.02.2006 after leaving the child with the appellant. Thereafter, the appellant approached the respondent on various occasions to bring her back to the matrimonial home. But the respondent refused to live with the appellant and told him that she would agree to live with the appellant only if he resigns his job and live with her in her parents house. Since the respondent has treated the appellant with cruelty and deserted the husband after causing mental cruelty on several occasions, the appellant is entitled to get a decree for dissolution of marriage on the ground of cruelty.

5.The respondent wife filed a detailed counter denying all the allegations. It is the case of respondent wife that she was treated as a servant-maid in the house of the appellant and that in view of the advice of the Doctor that she should take bed-rest during pregnancy, she came to her parents house few months after the pregnancy and that she never left the matrimonial home on her with an intention to separate from the appellant. It is the case of the respondent that it is the appellant who failed to discharge his matrimonial obligations towards the respondent and that there was no privacy between the appellant and the respondent. The respondent further stated that there was no separate room in the house while the appellant and the respondent were living after the marriage and that therefore, the grievance of the respondent was that she could not share her feelings with the appellant who never took care of the respondent. The respondent has also narrated some of the instances by which she was treated with cruelty by the appellant's mother. The respondent narrated one instance about the quarrel picked up by the appellants mother with the respondent for making an issue when the appellant to give a sum of Rs.600/- towards expenses. It is the case of the respondent that during pregnancy it was the appellant who took her to her parents home at Rajapalayam. It is also stated that the Valaikappu ceremony was celebrated in the house of the appellant and that therefore, the respondent submitted that the allegations in the petition are not true. The respondent begot a female child on 29.06.2003. It is the case of the respondent that due to her health condition, she was compelled to stay at her parents house and returned to the matrimonial home as per the customary practice. The grievance of the respondent was that the appellant failed to provide nutritious food to the respondent and her child and that the family members of the appellant ill-treated the respondent for not bringing the



sreedhana articles given by the parents of the respondent. It was also stated by the respondent in the counter that at the instigation of the family members, the appellant used to beat the respondent and scold her in filthy language. It is stated that the respondent's sister-in-law was residing in the upstairs of the appellant's house was also harassing her and that therefore, she availed an opportunity to get an employment as a teacher on *ad hoc* basis. It was the respondent's case that the appellant picked up a quarrel with the respondent when she refused to give all her jewels to set up a separate house on *othi* and that she was beaten by the appellant at the instigation of his family members. The respondent also narrated an incident of physical violence and stated that she sustained a grievous injury on her hand. It is the case of the respondent that she was driven out from the matrimonial home by the appellant's father and did not allow her to take the child with her. It is also stated by the respondent that she was not allowed to see her child. It is her grievance that on several occasions she wanted to see her child and that on all such occasions, she was insulted by the family members of the appellant using filthy language. It is also stated by the respondent that the appellant went to the extent of snatching *thaali* chain and separated the child from the respondent by preventing her from seeing the child. Though the respondent admit that she lodged a complaint before the Rajapalayam Police Station, it is stated by her that the petition for divorce is only to escape from the complaint. She specifically denied the allegation that the appellant had met the respondent on several occasions in person to take her back to the matrimonial home.

6. With same set of allegations, she has made in the counter in H.M.O.P.No.391 of 2006, the respondent also filed a petition under Section 9 of the Hindu Marriage Act in H.M.O.P.No.175 of 2010 with a prayer for a restitution of conjugal rights. The Family Court, Madurai, conducted a joint trial and the evidence was recorded in H.M.O.P.No.391 of 2006. On behalf of the appellant, he examined himself as P.W.1 and three others as P.W.2 to P.W.4. The appellant examined his father as P.W.2. One Pichaiammal who is the neighbour of the appellant was examined as P.W.3. P.W.4 is the erstwhile landlady of the appellant who permitted the appellant and respondent to reside in her house by getting a sum of Rs.1,50,000/- as deposit from the appellant and the respondent. The appellant produced Ex.P1 to P8. The respondent/wife examined herself as R.W.1 and her mother as R.W.2. She produced two documents. The documentary evidence produced by both parties are only related to the admitted facts and therefore, they are not very much relevant to resolve the issue whether the appellant is entitled to get a decree for divorce on the ground of cruelty. The trial Court after elaborately considering the oral and documentary evidence adduced by the parties as well as other witnesses came to the conclusion that the appellant has failed to prove that he was treated with cruelty by the respondent to get divorce on the ground of cruelty.



7. The learned Counsel appearing for the appellant submitted that the Family Court, Madurai, committed a serious error by omitting to consider the vital evidence of P.W.3 and P.W.4 who are independent witnesses. P.W.3 was a neighbour when the parties were living together. Since P.W.3 has deposed about the continuous infight between the parties when they were living together and about the shameful incidents that happened in the street, the learned Counsel for the appellant submitted that the evidence of P.W.3 and P.W.4 who was the owner of the leasehold house would prove the case of the appellant that the respondent was always picking up quarrel with the appellant and thereby causing him mental agony. It is further stated that the lower Court failed to consider the circumstantial and oral evidence to prove that the respondent had no inclination to live with the appellant along with the daughter and that her case is false and untenable. The learned Counsel appearing for the appellant further submitted that the respondent deserted the appellant and thereby caused cruelty by staying away from the appellant frequently from 2002 and permanently from 2006. Since the appellant suffered mental cruelty on account of the respondent who left the matrimonial home from 2006, the learned Counsel appearing for the appellant submitted that the appellant is entitled to a decree for divorce on the ground of cruelty and that the petition filed by the respondent for restitution of conjugal rights ought to have been dismissed.

8. Sum and substance, the submission of the learned Counsel appearing for the appellant is to the effect that the wife who refused to co-habitat with the husband and depriving the appellant all the comforts of the matrimonial life is not entitled to a decree for restitution of conjugal rights and that the instances narrated by the appellant which is corroborated by the other witnesses have not been considered by the lower Court.

9. This Court carefully considered the oral evidence of P.W.1 to P.W.4. P.W.2, the father of appellant has of course in his examination corroborated the evidence of P.W.1, the appellant. It is to be seen that P.W.2 is an interested witness and therefore, he has also exaggerated the version of P.W.1 in his cross examination. Close scrutiny of the evidence of P.W.2 would show that his evidence though disclose few allegations against the respondent, those allegations are not stated in the petition. From the cross examination of P.W.2, it would also indicate that the allegation of cruelty is mutual and that the appellant is not prepared to take the respondent with him. P.W.3 and P.W.4 are the neighbour and erstwhile landlady of the appellant. It is true that P.W.3 has spoken about the quarrel between the appellant and respondent. However, the quarrel that was mentioned by P.W.3 and P.W.4 are after February, 2006 and that those instances of quarrel was only when the respondent came to the appellant's house to see her child. P.W.3, during her cross examination says as follows:



“எதிர்மனுதாரர் குழந்தையை பார்க்கத் தான் வருவார் என்றால் சரி. சண்டை போடத்தான் வருவாரா என்றால் குழந்தையை பார்க்கும் போதுதான் சண்டை வரும்.”

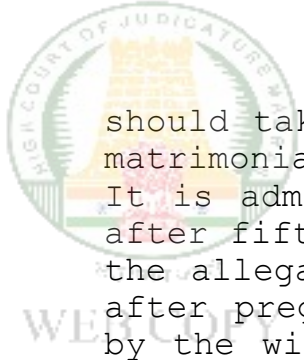
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10. Similarly, P.W.4 also speaks about the quarrel between the appellant and respondent when they were living together and about the manner in which the respondent was scolding the appellant. P.W.4 also during cross examination has deposed to the effect that the respondent used to quarrel only by demanding the custody of the child. The evidence of P.W.3 and P.W.4 would disclose that the quarrel in public happened only when the respondent came to see the child. When they were living together in the matrimonial home, there were some problems according to P.W.3 and P.W.4. They did not separate on account of any serious issues when they were living together in the matrimonial home.

11. The evidence of R.W.1 namely the respondent is also relevant. From the sequence of events narrated by the respondent in the counter as well as in her deposition, the case of the respondent appears to be more reliable than the husband.

12. The allegations made by the husband appellant against the respondent are not serious in nature. It is to be seen that in a case of this nature the proof of allegation is important as divorce can be granted only on the ground of proved conduct. It is true that cruelty can be inferred from the proved facts and matrimonial relationship between the parties and interaction in their daily life disclosed by the evidence. However, cruelty has to be established by evidence. In the present case, there is no physical cruelty. This Court is unable to find any proved conduct of the respondent or her behaviour to cause mental cruelty to the husband. When this Court consider the overall effect of the minor incidents and instances that had been brought out in evidence, there is no scope for granting a decree for divorce in this case on the ground of mental cruelty. Though the appellant has come forward with a specific plea that the respondent treated him with cruelty, the incidents narrated by him in the petition and spoken to by P.W.2 to P.W.4 except the normal wear and tear no specific incident causing mental cruelty is established. This Court has a reasonable doubt as to the veracity of the statement of the husband against the wife regarding mental cruelty.

13. It is admitted in this case that the husband and wife were living together in the matrimonial home along with the parents of appellant for some time. The case of the respondent was that she was ill-treated by her mother-in-law. It is also stated by the respondent that she was beaten by the husband on few occasions. The appellant himself admit in his petition that she was suffering from hernia. The grievance of the appellant was that the respondent left the matrimonial home after pregnancy. It is the case of the respondent that she was advised by a Doctor that she



should take rest during pregnancy and that therefore, she left the matrimonial home and went to her parents house during pregnancy. It is admitted by parties that Valaikappu function was celebrated after fifth month of pregnancy in the matrimonial home. Therefore, the allegation that the wife left the matrimonial home immediately after pregnancy cannot be believed. The criminal complaint given by the wife and the stand taken by the respondent in the counter and the petition filed by her for restitution of conjugal rights would show that the respondent has come up with a specific case that it was the appellant who ill-treated her and compelled her to leave the matrimonial home on few occasions and that she never left the matrimonial home on her own volition. It is not in dispute that the respondent made several attempts to see her child and that on all occasions when she came to see her child, there were quarrels. From this, the legitimate inference that can be drawn is that the respondent wanted her child with her and she could get only after the petition for divorce was filed. The contention of the husband that the respondent refused to come and live with the appellant after she left the matrimonial home is not supported by any independent evidence. The father of the appellant did not corroborate the evidence of P.W.1 that the respondent refused to live with him after February, 2006. Taking into consideration the overall trifling acts and the cumulative effect of the attitude and behaviour of wife as alleged in this case, this Court is unable to sustain the plea of cruelty so as to grant divorce. In other words, from the evidence available in this case, the contention of the appellant that he was treated with cruelty so as to get divorce cannot be accepted. A decree of divorce cannot be granted on the basis of unsubstantiated allegations. It should be remembered that the evidence of neighbours has also to be tested on the basis of objective parameters and the Court cannot decide the issue regarding cruelty by assumption. In this case, the evidence of R.W.1 and R.W.2 would show that it was the husband who forced the respondent to leave the matrimonial home. In these circumstances, this Court has no compelling reason or ground to interfere with the findings of the Family Court.

14.As a result, both the appeals are devoid of any merits and hence, dismissed. No costs.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

SRM



To
The Judge,
The Family Court,
Madurai.

COPY TO

The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+2CC TO MR.V.PANDIYAN, Advocate Sr. No.42970 & 42971
+1CC TO MR.P.ATHIMOOLAPANDIAN, Advocate Sr. No. 42854

C.M.A. (MD) Nos.1094 and 1150 of 2017
25.01.2019

DKS (CO)
TR (17.07.2019) 8P 7C