



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.01.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S. S. SUNDAR**

and

THE HONOURABLE **MR. JUSTICE C. SARAVANAN**

C.M.A. (MD) Nos. 1196 and 1197 of 2016

Dr. Vanathi

... Appellant in both cases

vs.

Dr. A. Anandakumar

... Respondent in both cases

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 19 of Family Court Act, against the order dated 10.07.2015 in H.M.O.P.Nos.23 and 24 of 2015 on the file of the Family Court, Dindigul.

For Appellant : Mr. P. Ganapathi Subramanian
(in both cases)

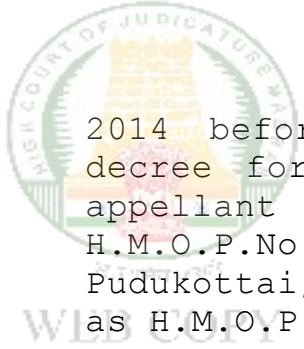
For Respondent : Mr. R. Suriya Narayanan
(in both cases)

COMMON JUDGMENT

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

These two appeals have been preferred by the appellant/wife, aggrieved by the judgment and decree granted in favour of the respondent/husband in H.M.O.P.No.23 of 2015 dissolving the marriage between the appellant and the respondent and the judgment and decree in H.M.O.P.No.24 of 2015 dismissing the petition filed by the appellant under Section 9 of Hindu Marriage Act, 1955, seeking restitution of conjugal rights.

2. The appellant and the respondent are husband and wife and their marriage was solemnized on 20.01.2002. It is admitted that the appellant gave birth to a male child on 07.05.2003 out of the wedlock. It is admitted that earlier, the respondent filed H.M.O.P.No.41 of 2005 for divorce before the Subordinate Court, Periakulam and later, it was transferred to Subordinate Court, Theni and numbered as H.M.O.P.No.16 of 2008. Similarly, the appellant also filed H.M.O.P.No.51 of 2008 before the Subordinate Court, Pudukottai, for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. It is also admitted that H.M.O.P.No.16 of 2008 filed by the husband earlier was dismissed as not pressed. Similarly, H.M.O.P.No.51 of 2008 was not prosecuted. However, subsequently, the respondent / husband filed H.M.O.P.No.150 of 2012 before the Subordinate Court, Theni for granting a decree for divorce on the ground of cruelty. The said petition was transferred to Family Court, Dindigul and numbered as H.M.O.P.No.23 of 2015. The appellant also filed H.M.O.P.No.118 of



2014 before the Subordinate Court, Pudukottai for granting a decree for restitution of conjugal rights. It appears that the appellant filed a petition for transfer and ultimately, H.M.O.P.No.118 of 2014 on the file of the Subordinate Court, Pudukottai, was transferred to Family Court, Dindigul and numbered as H.M.O.P.No.24 of 2015.

3.The Family Court, Dindigul, took up both the matters together and after joint trial, disposed of both the proceedings in H.M.O.P.Nos.23 and 24 of 2015 by common order. The Family Court, Dindigul, granted a decree in favour of the respondent / husband dissolving the marriage between the appellant and the respondent, dated 20.01.2002. The Family Court, Dindigul dismissed H.M.O.P.No.24 of 2015 filed by the appellant for restitution of conjugal rights. Aggrieved by the judgment and decree in H.M.O.P.No.23 of 2015 granting divorce, the appellant has preferred an appeal in C.M.A.(MD)No.1196 of 2016 and aggrieved by the judgment and decree in H.M.O.P.No.24 of 2015 dismissing the petition filed by the appellant for restitution of conjugal rights, the appellant has preferred an appeal in C.M.A.(MD)No.1197 of 2016.

4.The respondent filed the petition for divorce/dissolving the marriage between the appellant and the respondent solemnized on 20.01.2002 on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955. The specific allegations made in the petition filed by the respondent against the appellant are as follows:

a)The appellant / wife after marriage, was living with the respondent/husband without inclination to lead a happy marriage life and that the appellant was living with hatred and never minded the respondent as her husband.

b)Immediately after marriage, the respondent / husband presented a diamond ring to the appellant and the appellant / wife with an intention to ignore the respondent's love and to humiliate him, did not wear the ring.

c)Even from the first month of wedding, the appellant was picking up quarrel with the respondent and used to throw the "Thali" chain and say in expressive words that she does not like the respondent and the appellant never used to do any domestic work, as a dutiful wife.

d)After the marriage, the respondent was living with the appellant in Chidambaram, where, he was doing his post graduation. Within three months of marriage, the appellant, after picking up unnecessary quarrel with the respondent, left the matrimonial home and went to her parents' house at Pudukottai without an intimation to the respondent. Thereafter, at the request of the respondent and his parents, she returned to matrimonial home, after three months.



e) On 07.05.2003, the appellant gave birth to a male child and at that time, the respondent and his mother were with the appellant. Since the appellant's mother was working in a College, the respondent and his mother brought her to Bodinayakkanur, where the respondent's mother was living.

f) After completing the post graduate course, the respondent was living with the appellant at Bodiyanakkanur. The appellant did not change and was picking up unnecessary quarrel by saying that she did not want to live with the respondent/husband. During this time, the appellant/wife used to threaten to commit suicide by consuming poison after writing a note that she was forced to commit suicide by dowry harassment. She also threatened the husband that she would jump from the terrace or hang herself. When this was informed to the appellant's parents, they came along with their men and took the appellant with them during the last month of 2003.

g) Even thereafter, the respondent with a fond hope that the appellant can be mended for a happy married life, went to the appellant's parents house and requested her to come with him. However, the appellant and her people insisted the respondent to set up a separate residence for the appellant. The respondent agreed even for that and set up an independent house at Bodiyanakkanur and brought her. However, the appellant did not change and never had an inclination to discharge her matrimonial obligations.

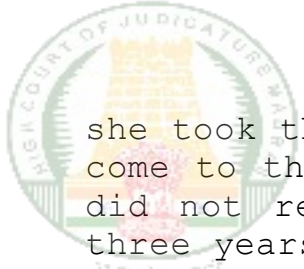
h) The appellant never used to cook or to serve food to the respondent and she was always fighting for trivial reason and used to pick up quarrel by raising her voice, so as to draw attention of neighbors. The respondent was put to mental agony, because of the conduct of the appellant by torturing him for small causes.

i) Within three months after joining the respondent to share the independent house at Bodinayakkanur, the appellant once again on her volition left the matrimonial house and went to her parents' house at Pudukottai in June'2004 without prior intimation or consent of respondent. Despite, repeated requests and attempts made by the respondent, the appellant refused to come back to the matrimonial house.

j) It was in the said circumstances, the respondent/husband filed a petition for divorce before the Subordinate Court, Periakulam. During the pendency of the said proceedings, the respondent requested the appellant to return to the matrimonial house with a firm hope to get a new life, at least on account of the male child.

k) Though the respondent was successful through mediators to bring the appellant back to the matrimonial house in April'2006, the appellant refused to cohabit with the respondent or perform her matrimonial obligation, as a dutiful wife to the respondent.

l) Thereafter, with an intention to separate from the respondent/husband, the appellant chose to get posting as a Doctor in Pudukottai District. Under the guise of settling at Pudukottai,



she took their child with her. Despite the respondent asked her to come to the matrimonial house along with the child, the appellant did not respond and she was living in Pudukottai for more than three years without any conduct.

m) Thereafter, the appellant joined in Madurai Medical College to do her Post Graduation. It is only at that time, the appellant left the child at Bodinayakkanur and used to visit Bodinayakkanur, only to see the child.

n) Thereafter, the appellant was transferred to Bodinayakkanur at the efforts of respondent / husband thinking that the appellant may change and it is at that time, the petition for divorce filed by him was dismissed as not pressed. However, the appellant/wife, despite returning the matrimonial house at Bodinayakkanur, had no inclination or interest to maintain the matrimonial tie with the respondent/husband.

o) It is at that time, the appellant deliberately brought her mother and cooked food only for them. As a result, the respondent was living in a separate room without any other connection whatsoever with the appellant at Bodinayakkanur. The appellant is indulged in talking to his batchmate one Dr. Lokesh and thereby causing mental cruelty.

p) Thereafter, during April'2012, the appellant left Bodinayakkanur along with their son to Pudukottai. At that time, their son was studying in a reputed school in Theni. Without even getting transfer certificate, the appellant took the minor child along with her.

q) Though the respondent knew that the appellant is doing some specialization course in Kilpauk Medical College, Chennai, whereabouts of the appellant is not known to the respondent, as she has no connection whatsoever with the respondent. Though their only son is living in Pudukottai, the parents of the appellant are not allowing the respondent to see his son.

r) The appellant started to make serious allegations against the respondent, as if he is having illicit relationship with one Nandhini, who is working in the Petrol Bulk of the respondent. Between 2002 and 2012, the appellant was living with the respondent only for about 18 months and that there was no relationship between them as husband and wife when they were sharing the matrimonial home on few occasions. The marriage has been irretrievably broken down by the appellant and hence the respondent is entitled to get dissolution of marriage on the ground cruelty.

5. The respondent filed elaborate counter denying each and every allegations made by the respondent against the appellant in the petition. The appellant made serious allegation against the respondent by stating that the respondent was having illicit relationship with one Nandhini, who was the employee of the respondent and used to take her to various places. It is further stated that the respondent has gone to the extent of introducing



the said Nandhini to all his friends and relatives as his wife. The appellant/wife in the counter alleged that the respondent had an affair with one lady Doctor, by name, Kalaivani, even before the marriage. The respondent further gone to the extent of making serious allegation that the respondent had raped a nurse, who was working in the respondent hospital and that as a result, the respondent could not engage a female nurse in his nursing home. Despite all these allegations, the appellant would state that she is prepared to re-unite and share the matrimonial house with the respondent, as she hope that the respondent would change himself.

6.Almost, the same allegations were made in the petition filed by the appellant for restitution of conjugal rights. The allegations made against each other are almost identical in both the proceedings. Since the parties and issues are identical in both the proceedings, the Family Court conducted a joint trial and evidence was recorded in H.M.O.P.No.23 of 2015. The respondent examined himself as PW-1 and one Jayachandran, as PW-2. The appellant examined herself as RW-1 and examined one Ramasamy as RW-2. Since the marriage between the appellant and the respondent is not in dispute, the document marked by the respondent has no significance. The appellant marked Exs-R1 to R4. Ex-R1 is the copy of bank passbook of the appellant and Ex-R2 is the receipt issued by Hotel Sakthi Tower, Bodinayakkanur. Ex-R3 is the complaint receipt issued by All Women Police Station, Bodiyanakkanur receiving the complaint from the appellant.

7.The Family Court, after considering the oral and documentary evidence, came to the conclusion that the contention of the husband that the appellant never used to stay with the husband for more than three months and thereby failed to discharge her duty as a Hindu wife to the husband can be accepted. Though there was no physical harassment, the law relating to mental cruelty was discussed at length by the Family Court and held that the cumulative effect of incidents of frequent acts of leaving the matrimonial home would certainly cause mental agony and that such conduct is sufficient to grant a decree for divorce in favour of the husband on the ground of cruelty.

8.The learned Counsel for the appellant submitted that the appellant could not live with the respondent only due to the ill treatment and mental cruelty caused to the appellant by the mother of the respondent. The learned Counsel further submitted that the allegations levelled in the petition would not amount to cruelty, so as to justify the grant of divorce/ dissolution of marriage. It is contended that the respondent/husband forced the appellant/wife to leave the matrimonial home by his conduct and that therefore, the conclusion of the Family Court that she left the matrimonial house on several occasions without any justifiable cause and that her repeated acts of leaving matrimonial house, will create mental



cruelty to the husband, is unsustainable.

9. The learned Counsel for the appellant further submitted that some of the allegations found in the petition for divorce was not there in the petition filed by the husband in H.M.O.P.No.41 of 2005 filed before the Subordinate Court, Periakulam and that therefore, the allegations now levelled against the wife were cooked up for the purpose of the case. It was also contended by the learned Counsel for the appellant that the appellant was doing Post Graduate degree in Madurai Medical College and Kilpauk Medical College at Chennai and that she completed her specialization course with the consent and knowledge of the husband and that therefore, the separation of wife, when she was attending classes in Medical Colleges at Madurai and Chennai cannot be faulted. The learned Counsel for the appellant also submitted that the appellant gave a sum of Rs.10,00,000/- to the respondent for purchasing a car and that therefore, the findings of Family Court that the appellant was not interested in living with the husband is unsustainable.

10. This Court carefully considered the pleadings and evidence. The petition for divorce was filed under Section 13(i)(ia) of Hindu Marriage Act, 1955 and hence, the husband, who filed the petition for divorce, has to prove that the appellant/wife treated him with cruelty. In a case of this, the Court is bound to enquire the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it would be harmful or injurious to the petitioner to live with the respondent or at least the petitioner should prove a reasonable apprehension of such danger. In other words, to prove cruelty, the respondent/husband should establish the conduct of the appellant/wife to be harmful or injurious to him to live with the appellant. It has been repeatedly held by the Courts that the Court should come to a conclusion on the analysis of circumstances and cumulative effect of the conduct of the other spouse and that the findings should be based on acceptable reason.

11. The issue whether there is mental cruelty is a question of fact and there may be variety of problems between spouses and the question has to be, therefore, decided, having regard to the various facts and circumstances pleaded and established. In the present case, both the appellant and the respondent are Doctors, who have also completed their post graduation. It is admitted that the respondent's mother is also a Doctor, whereas, the appellant's mother is working as a Professor in a College. The respondent/husband after completing his post graduation, immediately, after marriage, had settled at Bodinayakanur in 2003 itself. In the petition filed by the husband for divorce, it is stated that on several occasions, the appellant/wife left the matrimonial home on her own without sufficient cause and without



intimation to the respondent/husband. This is seriously disputed by the appellant.

12.It is the case of the appellant that she was forced to leave the matrimonial house either because of the conduct of the mother-in-law or other reasons. However, she failed to plead and prove her contention that on every occasions, she was forced to leave the matrimonial home for a justifiable cause. The fact that the appellant/wife prepared to work in different places than Bodinayakkanur, is admitted and evident in this case. Though the present divorce petition was filed nearly 10 years after the marriage, it is admitted that the appellant and respondent were living together only for about few months. The appellant herself admitted in the evidence that her husband, namely, the respondent used to come and request for reunion on several occasions. On every occasion, she was brought to the matrimonial house only through mediation or by persistent request by the husband.

13.The appellant/wife admitted during the cross examination that on every occasions, she left the matrimonial house on account of her misunderstanding with the husband. However, in the grounds of appeal and in the petition for restitution of conjugal rights, it is stated that the appellant was forced to leave the matrimonial house because of the conduct of her mother-in-law. This discrepancy is not explained by the learned Counsel for the appellant. At least on four or five occasions, the appellant had left the matrimonial home, on her own and she was brought back to the matrimonial home because of the sincere efforts of the husband with a fond hope of saving the marriage.

14.It is admitted by the appellant that she entrusted the custody of her child to her mother in Pudukottai and she has no explanation why she did not hand over custody of the child to her husband when she was away in connection with her studies. When the child was studying at Theni, which is near the native place of the husband, where, he is living, there is no reason stated by the wife to take the boy to Pudukottai and put him in a new school. Even when the wife was doing her Post Graduation in a different place, the fact that the child was never allowed to be in the custody of the husband, would only show the attitude of appellant towards her husband.

15.Though it is admitted that the wife used to leave the matrimonial home on several occasions, due to misunderstanding, it was only the husband, who called her back and convinced her to share the matrimonial house with the husband. However, recurrence of leaving matrimonial house without knowledge or consent of the husband along with the child, is a serious conduct, that would speak volume about the conduct of the appellant/wife. It is the specific case of the husband that the appellant/wife picked up

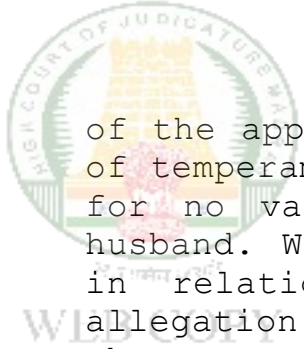


quarrel and leave the matrimonial house without justifiable cause. This Court is of the view that the respondent/husband has established at least the fact that the appellant on every occasions left the matrimonial house without knowledge or consent of the husband / respondent. This Court is also convinced that the wife had an intention to be away from the matrimonial house after 2010. The appellant/wife did her post graduation without the consent of the husband, thereby, the appellant/wife cautiously prevented the husband from keeping himself away.

16.The fact that the wife did not live together even after setting up an independent house for the couple at Bodinayakkanur would clearly indicate the non cooperating attitude of the appellant. The cruelty can be inferred from the whole facts and the matrimonial relationship between the parties, particularly, the conduct and attitude of the wife in this case. In this case, it is the regular affair of the appellant/wife to leave the matrimonial home either after picking up quarrel with the husband or for other reasons. Over a period of 10 years, the husband and wife were living together for a short period of about 16 months.

17.The wife also has made serious allegations against the husband saying that he has some illegal affair with another lady, who is also an employee of the husband. However, the appellant/wife did not choose to prove such serious allegations or examine anyone in this regard. Further allegation is more serious. The appellant accused her husband for committing rape of one nurse, who was working in the hospital of the respondent. However, no material or independent evidence is adduced. Unfortunately, on the side of respondent, this is not cited as a reason for divorce. The appellant has made serious allegation of this nature and also said in the counter that she is prepared to live with her husband, as she wishes her husband to change. When she is in the habit of leaving the matrimonial home for trivial reasons or for reasons which was not properly disclosed, this Court does not believe that she is prepared to adjust with her husband.

18.In this case, there is no physical cruelty. Frequent instances of appellant leaving matrimonial home and her repulsive attitude towards the husband from the date of marriage would certainly cause mental agonies to the respondent. The serious allegations of committing adultery and rape are not substantiated. These unsubstantiated allegation in the counter can be treated as one made in public and the derogatory statements are not proved. From the proved conduct, this Court is of the view that the respondent/husband is entitled to get divorce on the ground of cruelty. The conduct complained against the appellant is substantiated and this Court is also of the view that the respondent/husband was suffering because of the repulsive attitude



of the appellant/wife. This is not a case of mere incompatibility of temperament or mere neglect. The wife leaving the husband often for no valid reason will definitely cause great pain to the husband. When this is repeated, it is not a normal wear and tear in relationship, but, an act of cruelty. With the serious allegation she has made against the husband, the appellant has not shown any indication to join the husband for a happy married life.

19.The trial Court itself has discussed the entire evidence on record. The findings of the trial Court about the conduct of appellant/wife do not warrant any interference. The appellant in this case appears to be a peculiar character and made her husband always feel that his marriage life is nothing worth for him but miserable. Though the appellant/wife says that she is ready to cohabit with her husband, she was never willing and it is made for the purpose of this litigation. The specific case of the husband that the appellant/wife did not perform her matrimonial obligations is more probable. On all earlier occasions, it was the husband, who made all efforts to bring the appellant/wife to the matrimonial home with a hope of sharing the matrimonial house with the appellant for a meaning full life. Finding that the relationship has torn beyond repair, the husband has filed that petition for divorce.

20.The appellant and the respondent are professionals mostly engaged. They hardly find time to patch up and bring normalcy. This Court is not able to see any *bona fides* in the appellant's statement that she is prepared to live with her husband. Considering the over all background, conduct and attitude of appellant, admitted facts and attending circumstances of this case, this Court has no compelling reason to interfere with the findings of the lower Court for dissolving the marriage between the appellant and respondent. In view of the findings of the lower Court, warranting relief of dissolution of marriage, the prayer of wife for restitution of conjugal rights cannot be granted as a consequence. Hence, these two appeals are dismissed and the common judgment and decree in H.M.O.P.Nos.23 and 24 of 2015, dated 10.07.2015 passed by the Family Court, Dindigul are confirmed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

The Judge, Family Court, Dindigul.

WEB COPY +2 cc to Mr.R.Suryanarayanan , Advocate SR.No.40468

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C.M.A. (MD) Nos.1196 and 1197 of 2016
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