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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2019

Delivered on : 13.06.2019

CORAM:

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

and

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

C.M.A. (MD) No.815 of 2017

K.Murugan : Appellant/Petitioner

Vs.

M.Saraswathy : Respondent/Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 19 of the Family Court's Act, 1984, praying to set aside the judgment and decree made in H.M.O.P.No.39 of 2014 on the file of the Family Court, Dindigul, dated 27.03.2017 and to allow this Civil Miscellaneous Appeal.

For Appellant : Mr.N.Anantha Padmanaban
for M/s.APN Law Associates

For Respondent : Mr.P.Athimoolapandian

JUDGMENT

S.S.SUNDAR, J.

The appellant has filed a petition in H.M.O.P.No.39 of 2014 before the Family Court, Dindigul, praying for a decree for dissolution of the marriage between the appellant and the respondent on the ground of cruelty.

2.Originally, a petition was filed before the Family Court at Bilaspur, Chhattisgarh, and later it was transferred to the Principal Sub Court, Dindigul and subsequently, it was transferred to the Family Court at Dindigul. The Family Court dismissed the petition filed by the appellant/husband and the appellant has preferred the above appeal as against the judgment of the Family Court, Dindigul, in H.M.O.P.No.39 of 2014.

3.The marriage between the appellant and the respondent took place on 28.01.2002 at Dindigul as per Hindu Rites and customs. It is admitted that out of the wedlock, the respondent gave birth to two children. The elder is the daughter by name Abhinaya Priya and she was born on 03.12.2003 and the younger is a son by name M.S.Balakumar, who was born on 20.04.2008. When the petition was filed before the Family Court at Bilaspur, the respondent was living with the appellant and it is the case of the



respondent that she was earlier forced to leave the matrimonial home along with her children and later called back by the appellant only for the purpose of creating jurisdiction at Bilaspur.

4. The petitioner, in the petition filed by him for divorce, has raised the following grounds:

- (1) The respondent treated the appellant with mental cruelty and spread defamatory statement against the appellant causing humiliation to the appellant in his professional life.
- (2) The respondent treated the appellant with mental cruelty by her erratic behaviour and abnormalities with sudden outbursts without any reason.
- (3) The respondent was pressurising the appellant to give away their children to the respondent's sister and her parents and by this the respondent caused mental cruelty.
- (4) The respondent treated the appellant with cruelty by threatening the appellant every now and then to commit suicide along with the children.
- (5) The respondent/wife treated the appellant with mental cruelty by behaving abnormally in front of the public as well as in front of neighbours.
- (6) The respondent used to make the appellant stand outside the house and forced him to bow before the respondent to let him come inside.
- (7) The respondent failed to give conjugal bliss, harmony and solace to the appellant but treated the appellant with mental cruelty.
- (8) The respondent did not allow the appellant to take the children out wherever he wish to take them and never allowed the children to visit the relatives and his parents.

5. The respondent filed a counter affidavit refuting all the allegations made against her. It is the case of the respondent that the appellant used to beat the respondent and children insisting mutual consent for divorce for the purpose of contracting second marriage. It is also stated by the respondent/wife that the respondent was forced to leave the matrimonial home on several occasions to protect her life and was called back fearing that he might face criminal prosecution. Each and every allegation made in the petition was specifically denied by the wife and the contention of the husband that she wanted to give away the children to her sister and mother in adoption was specifically denied. The respondent/wife also made serious allegations against the husband for causing mental cruelty by demanding dowry and by seeking mutual consent for divorce. It is also the case of the respondent that the appellant threatened the respondent and children if she does not agree for divorce by mutual consent. It is further stated that she came to her parents' house on 23.09.2009 in order to protect their life.



It is further stated that the appellant issued a notice on 16.11.2009 through his Advocate calling upon her to give her consent for divorce. However, the appellant in his petition has stated that the notice dated 16.11.2009 issued through his Advocate was for restitution of conjugal rights. Pointing out the conduct of the appellant, the respondent pleaded that she has no one to take care of her and her children and that she never did anything to spoil the relationship between them as she knew that it is essential for a happy marriage life. During the trial, the appellant examined himself as P.W.1. He also examined one Elumalai as P.W.2. On behalf of the appellant, Ex.P1 to Ex.P13 were marked. On the side of respondent, she examined herself as R.W.1 and marked only the reply notice sent by her as Ex.R1.

6.The trial Court elaborately discussed the entire evidence and considered the case of the respective parties. The family Court found that each and every allegation made by the husband in the petition are false and devoid of any merit. With regard to the allegation that the respondent treated the appellant with cruelty and tried to spoil the reputation of the appellant in his professional life and about the abnormal behaviour of respondent, the family Court found that the allegations are not proved. The appellant examined P.W.2 who came to Bilaspur ten years after the marriage between the appellant and the respondent. From the admitted facts, it can be seen that the respondent left Bilaspur on 03.09.2009. From the documents produced by P.W.1, it is proved that P.W.2 joined the company in Bilaspur only on 03.11.2009. From this, it is evident that P.W.2 came to Bilaspur two months after the respondent left the matrimonial home on 03.09.2009. Though the respondent returned to Bilaspur on 08.06.2010 and left once again on 11.09.2010, P.W.2 has deposed as if he knew well about the conduct of the respondent right from the beginning of the marriage. From the evidence, it is admitted that the respondent was brought back to Bilaspur on 08.09.2010. It is admitted that the appellant issued a notice calling upon the respondent to give her consent for divorce. It is also admitted that the respondent/wife filed a criminal complaint against the appellant. It is in this background, the appellant later called the respondent back to Bilaspur. It is stated that respondent came back to Bilaspur on 08.06.2010. P.W.2 stated in his evidence that the respondent created a scene in Bilaspur quarters by threatening to immolate herself and her children by opening the gas cylinder. However, in the petition the appellant admitted that the respondent promised that she would not do anything as she had done in the past before she came to Bilaspur. It is also stated that the appellant brought the respondent back to Bilaspur as the respondent confessed the mistake before coming to Bilaspur. It is stated in the petition that the respondent came back to Bilaspur on 08.06.2010 and that on 21.06.2010 the appellant got admission for his daughter in Loyola School at Bilaspur. Though it is stated that the respondent picked up a

quarrel thereafter there was no whisper about any incident on 08.06.2010. It is admitted that on 08.06.2010, the husband took the wife and children to Bilaspur from Dindigul. However, P.W.2 deposed that on 08.06.2010 the respondent created a scene in Bilaspur quarters by threatening to immolate herself and her child by opening gas cylinder. From this, the fact that P.W.2 was lying before the Court is evident. Therefore, the evidence of P.W.2 who has stated before the Court that he was living 50 meters away from the appellant's house and that he could hear the sound from the appellant's house whenever the respondent was picking up quarrel with the appellant is not believed by the lower Court. The Family Court discarded the evidence of P.W.2 and came to the conclusion that he is an interested witness and untrustworthy because he has been hired to speak for the appellant. The material facts and circumstances pointed out by the Family Court would clearly show that the appellant is guilty of treating the respondent with cruelty and that the respondent a helpless lady was tolerating everything as she had no other option to bring her children up. One of the allegations against the respondent is that the respondent was pressurising the appellant to give away their children in adoption to her issueless sister. It is also the case of the appellant that the main purpose of marrying the appellant was to get a child to be given in adoption to her sister though the appellant wanted to postpone child birth. However, it is admitted that the marriage between the appellant and respondent took place on 28.01.2002 and the first daughter was born in December, 2003. The appellant was 34 years old when he married the respondent and the child was born to him when he was 36. First of all, his contention that he wanted to postpone his child birth is not a normal conduct of a husband who has crossed 35 years. Secondly, the respondent has two sisters. The elder sister is married and blessed with children. It is only the younger sister of respondent who is issueless. The younger sister of respondent married after the respondent and therefore, the contention of the husband in the petition that the respondent compelled the appellant to have a child so that the child can be given away to her sister is again unbelievable. The petition for divorce has been prepared ignoring the chronology of events. It is evident that the appellant has come forward with a false case and ill-motive. The contention of the respondent that she was treated with cruelty by the appellant appears to be more probable. It is also probable that the mental cruelty caused to the respondent has compelled her to file a petition for protection under the Domestic Violence Act in December, 2009. The husband has not raised any ground that the petition filed by the wife against him has caused mental cruelty. In such circumstances, this Court is also of the view that the husband has not only harassed and treated the wife with cruelty but also filed a petition for divorce on the ground of mental cruelty. This Court has no reason to interfere with the findings of the Family Court which are based on proper appreciation of evidence



and taking note of all material circumstances culled out from the evidence. Hence, this Appeal is dismissed with cost of Rs.5,000/-.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

TO
THE JUDGE, FAMILY COURT, DINDIGUL.

+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-68649[F] dated 14/06/2019)

SRM

JUDGMENT MADE
IN C.M.A. (MD) No.815 of 2017
13.06.2019

KM/(16.07.2019) 5P 3C