



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED DATE : 28.03.2019
PRONOUNCED DATE : 30.04.2019

WEB COPY

CORAM:

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

C.M.A. (MD) .Nos.977 and 982 of 2016
and
C.M.P. (MD) No.8775 of 2016

Selvakumar @ Saravanan ... Appellant in both C.M.As.

Vs.

Rachel daisyrani ... Respondent in both C.M.As.

PRAYER IN C.M.A. (MD) No.977 of 2016: This appeal has been filed under Section 19(1) of Family Courts Act, 1984, to call for the records pertaining to the order dated 03.06.2016 made in I.D.O.P.No.8 of 2014 on the file of the Family Court, Srivilliputhur, Virudhunagar District and set aside the same consequently enhance the maintenance amount on the fact and circumstances of this case.

PRAYER IN C.M.A. (MD) No.982 of 2016: This appeal has been filed under Section 19(1) of Family Courts Act, 1984, to call for the records pertaining to the order dated 03.06.2016 made in I.D.O.P.No.3 of 2016 on the file of the Family Court, Srivilliputhur, Virudhunagar District and set aside the same.

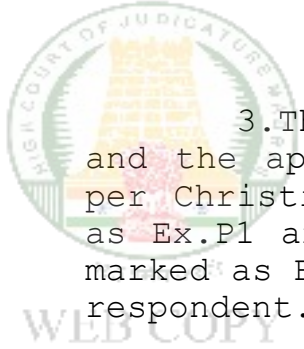
For Appellant (in both C.M.As.) : Mr.D.Selvam
For Mr.P.Thambi Durai
For Respondent (in both C.M.As.) : Mr.G.Thalai mutharasu

COMMON JUDGMENT

(Judgment of the Court was delivered by **R. THARANI, J**)

These appeals have been preferred against the judgment and decree passed in I.D.O.P.Nos.8 of 2014 and 3 of 2016 dated 03.06.2016 on the file of the Family Court, Srivilliputhur, Virudhunagar District.

2.I.D.O.P.No.8 of 2014 was filed by the appellant herein for a prayer of divorce. I.D.O.P.No.3 of 2016 was filed by the respondent herein for a prayer of restitution of conjugal rights.



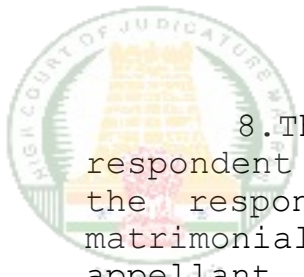
3.The appellant is the husband and the respondent is the wife and the appellant and the respondent got married on 07.08.2006 as per Christian Rites and Customs. The marriage invitation is marked as Ex.P1 and the photograph of the appellant and the respondent is marked as Ex.P2 and the fact of the marriage was not disputed by the respondent.

4.The appellant and the respondent lived together till 10.01.2010 at Kumapatti Village and they do not have any issues. Subsequently there is misunderstanding between the parties. The appellant filed a petition in I.D.O.P.No.8 of 2014 for a prayer of divorce and subsequently in the year 2016, the respondent filed a petition in I.D.O.P.No.3 of 2016 seeking for a prayer of restitution of conjugal rights. The trial Court has passed a common Judgment in both the cases by dismissing the prayer of the appellant and allowed the prayer of the respondent. Against that Judgment and decree, the appellant has come forward with these appeals.

5.The fact of marriage was admitted by both the sides. The fact that the couple lived together till 2010 is also admitted. The contention of the appellant is that the respondent used to insult the appellant as impotent and due to that cruelty, the appellant tried to commit suicide and was admitted in the hospital on 03.01.2013. It is stated that the respondent filed a complaint before the All Women Police Station against the appellant and the appellant sent a legal notice to the respondent and the notice was not served upon the respondent. It is stated that the respondent deserted the appellant and is residing in her parent's house for the past 10 years and there is no chance for re-union.

6.On the side of the respondent, it is stated that when the appellant and the respondent were living together in the joint family, the mother of the appellant used to torture the respondent. The appellant used to treat the respondent as a slave and that the entire salary was handed over to the appellant. When the appellant got promotion and transferred to some other places in the year 2011, the mother of the appellant with a motive to conduct second marriage for the appellant driven the respondent out of the house and all the efforts taken by the respondent to live together with the appellant ended in failure and the respondent is always ready and willing to live with the appellant and restitution of conjugal rights is to be granted to the respondent.

7.A perusal of the records reveals that the appellant claims divorce on the ground that the respondent is having illicit intimacy with some businessman from Sivakasi. No document or evidence is produced by the appellant to prove this aspect and even the name of the businessman was also not stated in the petition. Another ground was raised by the appellant is that the marriage was not solemnized. There is no oral or documentary evidence to substantiate this ground.



8.The next point raised by the appellant is that the respondent deserted the appellant for the past 10 years. The case of the respondent is that the respondent was driven out of the matrimonial house by the mother of the appellant. On the side of the appellant, it is stated that the appellant has taken all efforts to compromise with the respondent through Panchayatars and the respondent failed to adhere to the words of the Panchayatars and that even in the legal notice sent by the appellant, it was mentioned that there was a Panchayat and the respondent insulted the appellant in front of the Panchayatars and that this matter was not denied by the respondent.

9.The next ground raised by the appellant is cruelty and it is stated that due to the cruelty of the respondent, the appellant tried to commit suicide and he was admitted in the hospital on 03.01.2013. The respondent in her evidence has admitted that the appellant tried to commit suicide and was admitted in the hospital. The respondent has admitted that she has lodged a complaint against the appellant before the All Women Police Station and she has also given a complaint before the Humans Right Commission and before the Social Welfare Officer. The trial Court has considered all these complaints as filed in good faith and has decided that it is the duty of the appellant to disprove the allegations mentioned in those complaints.

10.On the side of the appellant, it is stated that admittedly the appellant and the respondent are living separately for the past 10 years and there is no chance for re-union and the respondent is not having any motive to live with her husband and only to drag on the proceedings, the respondent has filed I.D.O.P.No.3 of 2016 as the counter attack against the appellant who filed I.D.O.P.No.8 of 2013.

11.On the side of the appellant, it is stated that the act of the respondent amounts to cruelty and it will not be proper to bring them together. In support of his contention, the Judgment passed by this Court in the case of **Narendra v. K.Meena** reported in (2016) 7 **MLJ 726 (SC)** is cited.

12.The learned counsel appearing for the appellant relied on the Judgment passed by the **J.Muthu Krishnan v. G.Radhika** reported in **2018 (3) T.N.C.J. 801 (Mad.) (MD)**, which reads as follows:

"In these circumstances, this Court is fortified in its view to grant a decree of divorce on the ground of irretrievable break down of marriage."

13.The learned counsel appearing for the appellant relied on the Judgment passed by the **P.Nirmala v. K.Muruguselvam** reported in **2012 (2) T.N.C.J. 277 (Mad.)**, which reads as follows:



a separate family life of their own accord to their own choice. There is also no possibility for them to live in unison. The marriage has broken down between the parties beyond repair, as opined by this Court. Further, the marriage between the parties cannot be safe and kept intact because of the fact that there appears to be a love lost between the parties. Therefore, a Court of law has to take a purposeful, meaningful and pragmatic approach in dealing with the matrimonial disputes based on factual ground scenario prevailing in a given case which float on the surface."

14. The respondent has deposed that she is 8 years elder than the appellant. In the legal notice, it is stated that the respondent refused to undergo treatment. It is seen that the respondent is 8 years elder than the appellant and there is no issues out of the wedlock between the appellant and the respondent. It is seen that the appellant tried to commit suicide and was admitted in the hospital. It is seen that the respondent has filed so many complaints against the appellant. It is admitted on both sides that the appellant and the respondent are living separately for the past 10 years. In the above circumstances, it is clear that their marriage is irretrievably broken and there is no chance for their re-union in future.

15. In the view of the above, the Civil Miscellaneous Appeals are allowed by reversing the Judgment and Decree passed by the Family Court. A decree of divorce is granted as prayed for by the appellant and the prayer of restitution of conjugal rights prayed by the respondent is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Family Court Judge,
Srivilliputhur, Virudhunagar District
2. The Section Officer,
V.R. Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr. P. THAMBIDURAI, Advocate (SR-64087[F] dated 30/04/2019)
+1 CC to Mr. G. THALAIMUTHARASU, Advocate (SR-64090 dated 30/04/2019)

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