



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM

WEB COPY

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

C.M.S.A.(MD)No.33 of 2019

A.G.Alagu Sundaram :Appellant/Appellant/Petitioner

vs.

K.Booma Devi :Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of Code of Civil Procedure, to set aside the fair order and decreetal order, dated 12.03.2019 in H.M.C.M.A.No.2 of 2016 on the file of the IV Additional District Court, Madurai, confirming the order and decreetal order dated 30.10.2015 in H.M.O.P.No.388 of 2013 on the file of the III Additional Subordinate Court, Madurai.

For Appellant :Mr.T.K.Gopalan

JUDGMENT

As against the concurrent findings of IV Additional District Judge, Madurai, in H.M.C.M.A.No.2 of 2016 and III Additional Subordinate Judge, Madurai, in H.M.O.P.No.388 of 2013, the above appeal has been filed.

2.The brief facts that are necessary for the disposal of this appeal are as follows:

2.1.The marriage between the appellant and the respondent took place on 03.11.2010. The fact that the appellant and the respondent were living together till 2012 and that the respondent forced to leave the matrimonial home only in 2012 is not in dispute. Thereafter, the appellant filed a petition for divorce on the ground of desertion and mental cruelty, as against the respondent/wife. In the petition, the appellant has pleaded some incidents and stated that the wife has always treated him with cruelty. The specific case of the appellant is that the respondent was pressurizing him to come out of his parents for residing in a separate house.

2.2.The following are the incidents of cruelty according to the appellant.



a)The respondent aborted the first child without the knowledge of the appellant.

b)The respondent compelled the appellant for arranging a separate resident in Chennai for the respondent.

c)The respondent and her family members always treated the appellant with cruelty by neglecting him and by insulting him.

d)The respondent did not inform, when she delivered a male baby.

e)The respondent compelled the appellant to get all the properties towards his share and to settle with the respondent at Chennai, despite the appellant reminded the respondent that the appellant is the only son for his parents and there is no necessity to seek partition against the wishes of his father.

f)The respondent failed to return the matrimonial home, after the birth of the child, despite several efforts have been taken by the appellant to take her to the matrimonial home. In all such incidents where the appellant went to the place of wife, the respondent ill-treated the husband along with her parents.

g)On 07.04.2013, the respondent along with her father and brother came to the appellant's house under the guise of negotiation and scolded the appellant with obscene words apart from assaulting him with deadly weapons. Hence, the appellant is always under threat.

3.The lower Court, after framing necessary issues and considering all the evidence on materials produced before the Court, found that the appellant did not prove the allegations, he has made against the respondent. The trial Court has held that the petition for divorce on the ground of desertion is not maintainable and that the appellant failed to prove the fact that the wife had deserted the husband and living away from the matrimonial home for a period of 2 years. Accordingly, the trial Court dismissed the petition filed by the appellant. Aggrieved by the same, the appellant/husband preferred an appeal before the IV Additional District Court, Madurai, in H.M.C.M.A.No.2 of 2016.

4.The lower appellate Court also concurred with findings of the trial Court and held that the appellant has not let in evidence or material to prove his case against the respondent. In the petition, the husband did not refer to any complaint lodged by the wife, as an instance of cruelty. Hence, the Courts below found that the cruelty is not proved. It is further held that there is truth in the complaint lodged by the respondent against the husband and that therefore, the appellant cannot be granted a decree for divorce on the ground of mental cruelty. Accordingly, the lower appellate Court also dismissed the appeal. As against the concurrent findings of the Courts below, the above appeal has been filed.



5. In the memorandum of grounds, the following substantial questions of law have been raised:

"a) Whether the findings of the Courts below that lodging the false criminal complaint against the Appellant / Petitioner / Husband with the sole intention of putting him, in prison would not amount to cruelty is illegal and perverse or not?

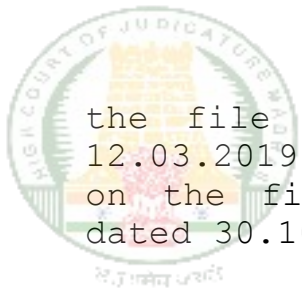
b) The findings of the Lower Courts inspite the fact that the respondent/wife went to her sister's house at Chennai completely deserting the appellant/petitioner/husband denying consortium would not amount to cause mental agony to the appellant/petitioner/husband is illegal or perverse?

c) Omission of the lower Court to consider that the respondent/wife came with a false case of adultery against the appellant/petitioner/husband would not amount to cruelty is illegal or perverse?"

6. As pointed out earlier, the husband/appellant has not made any allegations against the wife referring to any of the complaints made by the respondent as against the husband. In the course of evidence, some documents were filed to show that a third party has filed a criminal complaint against the husband, suspecting that the appellant had eloped with his daughter. It is in connection with the complaint, an enquiry has been conducted and it was closed later by getting a statement from the girl that she had gone to her friend's house without informing her parents. On another occasion also, similar complaint was lodged and the complaint was closed after enquiry. The truth of the complaint was never gone into. From the gamut of facts relating to the complaint and statements, the allegation that the appellant was having an affair with another girl was justified by Courts below.

7. The fact that the appellant was accused of having an affair with the girl was taken note of by the lower appellate Court. Having regard to the fact that the appellant has not produced any independent evidence or material or independent witness to substantiate any of his allegations against the respondent, the Courts below have no reason to hold that the respondent has treated the appellant with cruelty. It was further observed by the Courts below that the wife's case about the illegal affair is probable.

8. Having regard to the specific findings of the Courts below on facts, this Court has no reason to interfere with the order of Courts below. The findings of the Courts below are well founded and supported by reasons. Hence, this appeal is dismissed as devoid of merits and the order passed in H.M.C.M.A.No.2 of 2016 on



the file of the IV Additional District Court, Madurai, dated 12.03.2019, confirming the order passed in H.M.O.P.No.388 of 2013 on the file of the III Additional Subordinate Court, Madurai, dated 30.10.2015, is confirmed. No costs.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The IV Additional District Judge, Madurai.

2.The III Additional Subordinate Judge, Madurai.

CMR

C.M.S.A.(MD)No.33 of 2019
30.07.2019

__KM/(05.09.2019) 4P 3C