



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.10.2019

CORAM

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**THE HONOURABLE MS. JUSTICE P.T.ASHA**

C.M.S.A. (MD)No.30 of 2015

A.Somasundaram .. Petitioner  
Vs.  
S.Santhana Mariammal .. Respondent

**Prayer :** Appeal is filed under Order 43 Rule 1 r/w. Section 100 of CPC, to set aside the order passed in H.M.C.M.A.No.16 of 2007 dated 03.12.2010 on the file of the 1<sup>st</sup> Additional District Court, Tirunelveli confirming the judgment and decree passed in H.M.O.P.No.9 of 2000 dated 30.11.2006 on the file of the learned I Additional Sub Court, Tirunelveli.

For Petitioner : Mr.V.Meenakshi Sundaram  
For Mr.D.Nallathambi

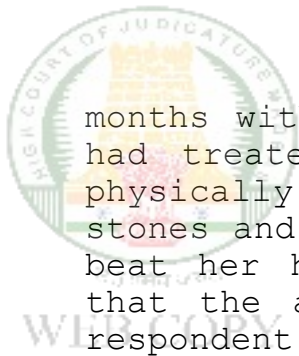
For Respondent : Mr.R.Manimaran

**ORDER**

The husband is the appellant before the Courts below. Pending this appeal attempts were made to bring about a solution by asking the respondent to receive a lumpsum money and to file a petition for divorce by mutual divorce. However this offer has been turned down by the wife. Though she would contend that she is willing to live with her husband, she has failed to take up the offer given by her husband, when he had deposed as P.W.1 before the Court below. Be that as it may, considering the fact that the parties have not entered into any settlement, this Court is proceeding to decide the case on merits.

2.The appellant has filed a petition in H.M.O.P.No.9 of 2000, on the file of learned Sub Judge, Tirunelveli, seeking divorce on the ground of cruelty and mental disorder. The appellant would submit that the respondent is none other than his maternal uncle's daughter. They got married on 30.08.1991 and the respondent and the appellant had lived as husband and wife at the maternal home for three months and thereafter, the petitioner had left for parents home, where she had stayed over-for the next six months.

3.The case of the appellant is that the respondent has thereafter, started living with her husband for six months and six



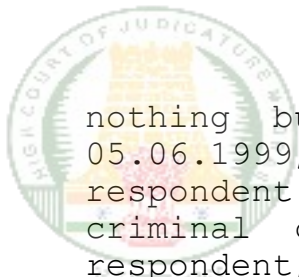
months with her parents. While living at her matrimonial home, she had treated the appellant with great deal of cruelty and would physically assault the appellant and his family members by throwing stones and whatever articles she would lay hands on and she used to beat her husband and others. The physical violence got so severe that the appellant was in fear to continue to co-habit with the respondent wife. On one occasion, the appellant has also suffered physical injury. A complaint in Crime No.218 of 1999 was registered against the respondent and the same was pending before the learned Judicial Magistrate, Srivaikuntam. The appellant has preferred a complaint to the All Women Police Station at Tuticorin on 07.06.1999.

4.The petitioner would submit that the respondent was prone to intermittent attacks of mental disorder which caused great deal of anxiety on the respondent. The appellant on several occasions had attempted to take the respondent for medical treatment. However, the same was turned down by the respondent. Considering the fact that their marital life has come to an end, the appellant had filed H.M.O.P.No.9 of 2004, for divorce.

5.The respondent/wife has filed a counter statement denying the allegations contained in the petition stating that she has been subjected to great deal of physical abuse as she was unable to bear a child. The respondent would submit that the cruelty meted out to her was to such an extent that while she was living in her matrimonial home, a complaint was lodged against her. The respondent would submit that these allegations have been made only with a view to create coercive action for seeking the relief of divorce. The respondent has categorically denied that she has suffered from mental disorder and that she had physically abused by the appellant and his family members. The respondent would submit that she had never deserted the appellant and it was the appellant, who had not come forward to take the respondent back to their matrimonial home, though she has expressed her willingness to re-join with her husband.

6.The learned Additional Sub Judge who heard the original petition was pleased to dismiss the said petition, after perusing the oral and documentary evidence. He had stated that the petitioner had failed to establish the cause of action pleaded by him and therefore, he was not entitled to the relief. It was taken on challenge by the husband in H.M.C.M.A.No.16 of 2007 before the I Additional District Court, Triunelveli. The learned Judge dismissed the appeal. Challenging the concurrent judgment and decree, the husband before this Court as the appellant.

7.Mr.V.Meenakshi Sundaram, learned counsel appearing on behalf of the appellant would contend that the wife has only merely stated that she is willing to live with her husband but has not taken any action in this regard and therefore, the same is



nothing but a lip service. He would further submit that on 05.06.1999, his mother had been physically attacked by the respondent and a complaint was lodged. However admittedly, the criminal case has been ended in acquittal in favour of the respondent, since the petitioner's mother had herself not made any allegation against the respondent, which according to him, was only with an intention, not to tarnish the reputation of the family. He would further submit that the respondent who is very much aware about the condition of his family, had turned around and treated him cruelty. The appellant had a sister, who was terminally ill with cancer. Further, the appellant's mother was considerably aged. The respondent had not discharged any of the duties as a dutiful wife, but on the contrary, had only treated him with cruelty. He would further submit that no useful purpose would be served, if the appeal is dismissed, since the parties have been living apart for over 20 years. He further prayed that the Court would take note of the subsequent events and set aside the judgment and decree of the Courts below.

8.The Counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in the case of **Samar Ghosh v. Jaya Ghosh** reported in **(2007) 3 CTC 464**, wherein, the Hon'ble Supreme Court had tried to capture the various incidents of mental cruelty. The learned Judge have clearly stated that the said examples were only illustrative and not exclusive. He would particularly draw the attention of the Court to 14<sup>th</sup> incident indicated in the said judgment, which would read as follows:

*"(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."*

9.Mr.R.Manimalan, learned counsel appearing on behalf the respondent would submit that it was the respondent, who had been treated with cruelty and she has suffered immense humiliation, which is clearly evident from the fact that a criminal complaint was lodged against her, while she was living in the very same house with the husband and in-laws. He would further submit that the appellant was hell bent to separate from the respondent. Therefore, though he had adduced evidence as P.W.1 to take back the wife, the same was not translated into action. This despite the fact that the respondent had openly expressed her desire to rejoin the appellant.

10.Heard the learned counsel on either side and perused the papers.



11.The appellant had come forward with the petition for divorce on the ground of (a)cruelty and (b)mental illness.

12.As regard the second ground of mental illness, there has been no evidence whatsoever let in to show that the respondent was suffering from mental illness. With reference to the ground of cruelty, both the Courts below had held that the the appellant has not proved the various incidents of cruelty and in fact, the main circumstances, which has been put forward for obtaining divorce, was that the respondent had physically assaulted the appellant's mother, as the result of which, she sustained injuries. A criminal complaint had been filed and a calender case was instituted in the said proceedings. The mother, who was said to be victim, has deposed that she had only suffered injuries on account of slipping and falling on the floor and consequently, the complaint had been dismissed. The plaintiff who had failed to prove the pleadings on which he sought for divorce would contend that the long period of non co-habitation would entail the appellant to get an order of divorce. The judgment cited on the side of the appellant would not come to his aid. In the instant case, the complaint was lodged in the year 1999 and even as early as in the year 2000, the petition for divorce has been filed. Therefore, there is no possibility for the respondent to return back to her matrimonial home, when the husband has effectively blocked her entry to the matrimonial home by filing the petition for divorce. It is the appellant, who has prevented the respondent from returning to her matrimonial home. Though the appellant had pleaded during evidence, he was ready and willing to take back the wife, however, no action whatsoever has been taken by the husband in this regard to re-join with the respondent/wife.

13.In the above circumstances, I do not find any infirmity in the order passed by the Courts below. Consequently, this Civil Miscellaneous Second Appeal stands dismissed.

14.The counsel for the appellant, on instructions, would submit that he is ready to continue with the payment of maintenance and requested the counsel for the respondent to give the necessary bank details of the respondent so that he can straight away credit the maintenance amount to the credit to the respondent's account. The learned counsel for the respondent undertakes to furnish the same to his counterpart. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The I Additional District Judge, Tirunelveli.

2.The I Additional Subordinate Judge, Tirunelveli.

Copy to:

The Section Officer, VR Section, (2 Copies)  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MANIMARAN, Advocate ( SR-93788[F] dated 23/10/2019 )

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-93814[F] dated 23/10/2019 )

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