

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.38 of 2003

Srinivasan ...Appellant/Appellant/Petitioner

Vs.

Padma ...Respondent/Respondent/Respondent

Prayer:

The Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act r/w Section 100 of Civil Procedure Code to set aside the Judgment and Decree in C.M.A.No.34 of 2000 on the file of the learned II Additional District Sessions Judge cum Chief Judicial Magistrate, Krishnagiri dated 13.02.2002 in confirming the Judgment and Decree in H.M.O.P.No.495 of 1994 on the file of learned Subordinate Judge, Krishnagiri dated 26.09.2000.

For Appellant : Mrs.V.Srimathi
For Respondent : Mr.V.Nicholas

J U D G M E N T

The appellant, who is the husband of the respondent, has filed the present Civil Miscellaneous Second Appeal, challenging the Judgment and Decree in C.M.A.No.34 of 2000 on the file of the learned II Additional District Sessions Judge cum Chief Judicial Magistrate, Krishnagiri dated 13.02.2002 in confirming the Judgment and Decree in H.M.O.P.No.495 of 1994 on the file of learned Subordinate Judge, Krishnagiri dated 26.09.2000.

2. The brief facts of the appellant / husband are as follows:

The marriage between the appellant and the respondent was solemnised on 26.06.1980, as per Hindu Rites and Customs and there was no dispute in their matrimonial life for a period of two years. The respondent's brother had purchased dress materials worth Rs.20,000/- from the appellant and thereafter, he had not repaid the same. On account of which, there was an enmity between the two families and during March, 1993, without

the permission of the appellant, the respondent's parents had taken her to their house and at that time, the respondent had taken a sum of Rs.10,000/- from the appellant without his knowledge. In spite of several request and panchayats made by the appellant, the respondent had not turned back to the matrimonial home, therefore, the appellant had filed A.S.No.18 of 1983 for restitution of conjugal rights. In response, the respondent had contested the said case stating that the appellant had illegal intimacy with one girl from Andhrapradesh and thereafter, she had accepted that she will live with the appellant, hence, on her acceptance, the said prayer in the suit was allowed on 17.08.1984. In consequence, after eight days, viz., in the last week of August, 1984, the respondent had proceeded to her parents house, stating that the appellant had illegal intimacy with another lady and several requests made by the appellant went in vain. Further, the respondent had developed illegal intimacy with one Ravi and hence for all the above reasons, the appellant had prayed to dissolve the marriage held between him and the respondent.

3. The case of the respondent are as follows:-

The respondent was married to the appellant on 26.06.1980, as per Hindu Rites and Customs and out of the wed lock a male child, viz., Mohankumar was born and they lived happily for a period of two years. The respondent had stated that her brother had not cheated the appellant and no point of time, the appellant was involved in textile business. Further, she denies the statement that she had no illegal intimacy with one Ravi and there was no enmity between their families, as averred by the appellant. The respondent had never taken a sum of Rs.10,000/-, also, there is no panchayat held between the respondent and appellant. The respondent had filed a suit in A.S.No.11 of 1983 seeking a share for her son in the joint family property from the appellant and thereafter only, the appellant had filed a suit in A.S.No.16 of 1983 for restitution of conjugal rights. The said suit was allowed in favour of the appellant on the note written by the respondent and the respondent was directed to live with the appellant, but the appellant had beaten the respondent in the court premises itself and he had not turned up to take her. Thereafter, the respondent and the appellant had not united and due to the illegal intimacy with one girl from Andhrapradesh, the appellant had taken the jewels of the respondent and spent all the money. The appellant had signed a release deed relinquishing his rights and given to his father, thereby the rights of her son in the joint family property got affected. After the suit for restitution of conjugal rights was ordered, it is alleged that the appellant had made attempts to kill the respondent in Sathanur. Therefore, the respondent had prayed to dismiss the appeal filed by the appellant.

4. After considering the evidence, counter evidence, pleadings and counter pleadings, it is seen that the court below had dismissed the prayer of the appellant and further proceeded to state that due to the act of the appellant, the respondent had deserted him and further proceeded to state that though the appellant and the respondent were living separately for the past 15 years [at the time when H.M.O.P. Was filed] the court below had held that due to the act of the appellant, the respondent had separated him and thereby negated the plea of the appellant. Aggrieved against which, the appellant has preferred an appeal before the lower appellate court. The lower appellate court, after taking note of the Judgment of the court below and the averments on either side had confirmed the Judgment of the court below and the said court had also negated the claim of the appellant. As against which, the appellant is before this Court.

5. The learned counsel for the appellant contends that the courts below had failed to appreciate that the marriage between the appellant and the respondent had irretrievably broken down and there is no possibility of reconciliation and allowing the marriage in existence is not in the interest of the parties.

6. The learned counsel for the appellant submits that the courts below had failed to apply the well settled principles laid down by the Hon'ble Supreme Court in Dhastane V. Dhastane and Bagath V Baghat. Further, it is the case of the respondent that she was taken to Sathanur and was threatened by the appellant immediately after the order in O.P.No.16 of 1983 dated 17.08.1984, however to substantiate the same, none were examined.

7. It is the version of the appellant that the courts below had merely accepted the statement of the respondent without testing the statement made by her. The respondent had falsely accused the appellant that he is in association with one Andhra Lady and the incident alleged to have taken place at Sathanur had also not been mentioned in the suit filed in O.S.No.11 of 1983 seeking for partition on behalf of her son.

8. It is represented on behalf of the appellant that the courts below had failed to appreciate that the examination of the respondent would clearly prove her association with one Ravi and her deliberate act of abandoning her matrimonial home.

9. The learned counsel for the appellant in support of his contention has relied upon the judgment of Hon'ble Supreme Court reported in AIR 2001 Madras 1 [V.Sreedevi V. Varadarajan] wherein it is held as follows:

'Once this position is clear, then the wife cannot

now raise a plea that she did not join the company of the husband because he was living with some other lady. In fact, that is not even the issue which has been framed by the trial court and appellant, wife remained silent about the non-framing of such an issue. Be that as it may, here the situation is worse as the decree has been obtained by the husband for cruelty and the said decree remained in force for more than one year without being challenged by the wife regarding any finding in that judgment. Under such circumstances, it cannot be said that the trial Court was wrong in granting the divorce relying upon the provisions under Section 13(1A) of the Hindu Marriage Act, 1955. The appeal has no merits and is dismissed, but in the circumstances without any order as to costs.'

10. The learned counsel for the appellant in order to substantiate his case has also relied on the Judgment of High Court of Allahabad in First Appeal No.448 of 2015 dated 20.09.2019 [Sriprakash Dwivedi V. Ratnesh Khare]. He would also rely upon the Judgment of Hon'ble Division Bench this Court in C.M.A.Nos.1656 and 1657 of 2010 and M.P.Nos.1 and 1 of 2010 [U.Sree V.U.Srinivas] wherein among other things, it is held that 'It would be difficult for parties to bury past and to begin a new relationship of Husband and Wife. For past 15 years both parties had remained separately and during these years, they developed their own life style, remained in isolation and grown in their own thoughts and marriage tie between parties had become emotionally dead and same was beyond repair because of emotionally dead relationship which was a positive act of oppressive mental cruelty. There was no chance for both parties to live together in future. In such a context, decree of divorce was only remedy to be passed so that parties might choose their life of their own way, when there had been no scope for their reunion'. Therefore, on all the above grounds, the appellant pleaded to grant divorce.

11. Heard the learned counsel for the appellant as well as respondent and perused the documents placed on record.

12. On 01.08.2003, this Court while admitting the present appeal had framed the following substantial questions of law for consideration:

'In the absence of any justifiable cause available to the wife for not joining her husband after the decree for restitution of conjugal rights, would anything that is shown to have taken place prior to the decree for restitution of conjugal rights can be taken to mean that the husband is taking advantage of his own wrong which would disable him from getting the relief of divorce'.

13. The Courts below had negatived the claim of the appellant on the following points :

(i) From Ex.P.3 and Ex.P.4 [Copy of Judgment of A.S.No.16 of 1983] it is clear that on the note written by the respondent, the said suit seeking restitution of conjugal rights by the appellant was allowed on 17.08.1984, whereas, the appellant had filed a petition, viz., H.M.O.P.No.495 of 1994 in December, 1994 seeking divorce, which is after a lapse of ten years. If really the appellant intends to live a happy matrimonial life with the respondent, after the restitution of conjugal rights was ordered, he would have atleast written any letters and through panchayatdars, also he would have called the respondent for reunion but the same has not been done. Further, in the petition, the appellant had averred that through two panchayatdars, he had requested the respondent to come and live in the matrimonial home, but he has not chosen to examine them to prove the same, however, two persons viz., Murugan and Kannammal were examined, whereas, their names do not find place in the petition filed by the appellant.

(ii) On the side of respondent, Ex.R.1 [two photographs] was produced before the court below, upon perusing the same, the courts below had come to a conclusion that it is the said woman from Andhrapradesh, and she was found with thali and corroborated with the evidence of the respondent, wherein she had deposed that the appellant had developed illegal intimacy with a woman from Andhrapradesh. But the appellant had denied the same in his evidence that she is only a street dancer, whereas he has not pleaded the same in his petition. The courts below had rendered a finding that though the petition for restitution of conjugal rights was allowed by the court below, when the appellant and the said woman from Andhrapradesh were living as husband and wife, that too by tying thali as second wife the respondent cannot join him back.

(iii) The appellant had beaten the respondent in the court premises after the Restitution of conjugal rights petition was allowed, the same is evident from the evidence of the respondent. Moreover, the appellant had not even stated in his petition that out of the wedlock between him and the respondent, a male baby was born and had suppressed the fact that he had given a release deed regarding his share in the property to his father in his petition. The court below found that the appellant had suppressed the important facts and filed the petition for divorce.

(iv) Also the courts below had accepted the contention of the respondent that the appellant had not gone for doing any job for the past 15 years is to be accepted, because there was no contra evidence produced by the appellant to disprove the same. The respondent had filed suit A.S.No.11 of 1983 seeking partition for her son in the property, which belongs to the

appellant's family, though the appellant was party to the said suit, he was just watching the court proceedings and had not defended the case, which lead to the Judgment being passed and the intention is apparent from his own deposition. When that being the case, from the appellant's evidence it is clear that he had signed in a release deed, relinquished his rights and given his share to his father, creates doubt in the minds of the Court. When the said release deed was signed by the appellant given in his father's favour for whatever reason, the appellant could have defended the case, instead the appellant kept a prolonged silence before the court below, the same proves that the appellant was not having any intention to give a share of his property to his son. The above stated false allegations by the appellant against the respondent that the respondent had developed a illicit intimacy with one Ravi, who was also a deaf person and the said child, viz., Mohankumar, who is also having hearing problem had inflicted cruelty, as if the child was not born to him, would prove that the appellant behaved inhumanly. If he had any doubt, he could have done DNA test to clear his doubt.

14. It is an admitted fact that the appellant and the respondent got married on 26.06.1980, as per Hindu Rites and Customs and they were leading a happy life for a period of two years. On account of some dispute and differences between them, they got separated and in the year 1983, the appellant had filed a suit, viz., A.S.No.16 of 1983 for restitution of conjugal rights. On acceptance of the respondent, on 17.08.1984, the said suit was ordered and only for a period of 20 days, they had resided jointly. Thereafter, till date they were not united.

15. It is pertinent to mention here that normally a 'married man' should take care of his wife and child to be born to him with love and affection. Further, he should stand like a pillar in support of his wife to lean on in the matrimonial life and should face all the obstacles / challenges along with his wife. A married man should also be able to manage his matrimonial life as well as life with his parents, in such a way that both should not get ruined.

16. Firstly, after the marriage solemnised between the appellant and the respondent on 26.06.1980, they had led a happy married life for a period of two years and thereafter, there were disputes mentioned supra arose and immediately, the respondent had filed a suit in the year 1983 seeking a share for her son, this conduct of the respondent itself shows that she is not willing to live with the appellant. Secondly, though the respondent has raised various allegations against the appellant, viz., that he had not taken care of her and their son; the appellant had developed illicit intimacy with one lady from

Andhrapradesh and made false allegations against the respondent as if she is having illicit intimacy with one Ravi and the appellant had not worked anywhere for a period of 15 years, no materials are available before this Court regarding the same. It is further seen that there was a memo of compromise alleged to have been entered between the appellant and his son, viz., Mohankumar before this Court in L.P.A.No.112 of 1998 dated 27.11.2002, the same cannot be just brushed aside. On perusal of the same, it is clear that appellant had allotted 3.17 acres of Punjai Lands in Survey No.437/2 in Varukur village in favour of the son, viz., Mohankumar, who would have definitely attained majority by this time and he would be in a better position now.

17. Thirdly, the appellant and the respondent are living separately for more than two decades, the bitterness in the life had developed to this extent and re-union will not at all be possible at this distant point of time. By this time, the emotional bondage between the appellant and the respondent would have also lost and definitely, the marriage is irretrievably broken. Fourthly, this Court being bound by the Judgment of Hon'ble Division Bench this Court in C.M.A.Nos.1656 and 1657 of 2010 and M.P.Nos.1 and 1 of 2010 [U.Sree V. U.Srinivas] relied on by the appellant (cited supra), which squarely applies to the case on hand and in the light of aforesaid reasons, is inclined to grant divorce, as prayed by the appellant. The substantial questions of law raised by this Court are answered accordingly in favour of the appellant. The wife had not given any valid reasons for not joining the husband, which would definitely be a bearing on the matrimonial life between the parties and at this length of time, there cannot be any justified reasons for ordering otherwise.

In result, the present Civil Miscellaneous Second Appeal is allowed and the marriage solemnised between the appellant and the respondent on 26.06.1980 is hereby dissolved and divorce is granted. The Judgments of the court below are set aside for the reasons assigned in this appeal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The learned II Additional District Sessions Judge
cum Chief Judicial Magistrate, Krishnagiri
2. The learned Subordinate Judge,
Krishnagiri
3. The Section Officer,
VR Section, Madras High Court,
Chennai

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.3358

+1cc to Mr.V.Nicholas, Advocate, S.R.No.4051

C.M.S.A.No.38 of 2003

AD(CO)
KKV/17/07/2020



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