

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

CMSA.No.31 of 2004
and
CMP.No.12766 of 2004

Chitra .. Appellant /Respondent

vs.

R.Sankaran ... Respondent/Petitioner

Civil Miscellaneous Second Appeal filed against the order and decreetal order dated 21.4.2004 made in CMA.No.88 of 2003 on the file of the District Court of the Nilgiris at Ootacamund, confirming the order and decreetal order dated 24.03.2003 made in HMOP.No.38 of 2000 on the file of the Subordinate Court, Nilgiris at Ootacamund.

For Appellant : Mr.Srinath Sridevan
For Respondent : Ms.S.Mahalakshmi
for M/s.R.Gouri

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed against the order and decreetal order dated 21.4.2004 made in CMA.No.88 of 2003 on the file of the District Court of the Nilgiris at Ootacamund, confirming the order and decreetal order dated 24.03.2003 made in HMOP.No.38 of 2000 on the file of the Subordinate Court, Nilgiris at Ootacamund.

2. When the matter came up for admission before this Court on 03.08.2004, this Court while admitting the Civil Miscellaneous Second Appeal, framed the following substantial questions of law besides granting interim stay:

1. When the wife is forced to leave the husband's house on account of his cruelty, whether the same would amount to desertion?

2. Whether the courts below can grant a decree for divorce without considering whether the departure of the wife was forced by the husband's conduct?

3. Whether the custom regarding taking back the wife as

prevalent in the Baduga community will not govern the parties?

4. Whether the courts below could grant a divorce without considering the suppression of material facts by the husband? And

5. Whether the District Court has framed any real points for consideration and whether the failure to do so would not vitiate the judgment?

3. Mr.Srinath Sridevan, learned Counsel appearing for the appellant wife argued that the marriage between the parties took place on 18.09.1988 as per the Hindu Rites and Customs prevailing among the Baduga Community and they were also blessed with a female child, namely, Ashwini, on 13.11.1989. Now she got married and settled at Bangalore along with her husband and working in a Private School as a teacher. From the date of the marriage i.e. on 18.09.1988, the appellant and the respondent lived together till the year 1994. The respondent husband only ill-treated the appellant in the month of June 1994 and chased away her from the matrimonial home. Therefore, she was forced to leave the matrimonial home by staying with her parents at her parental home at Kinnakorai Post, Kundah Taluk. Although many negotiations took place for reunion, the same also unfortunately could not be materialised. Continuing his argument, the learned Counsel for the appellant further pleaded that though the appellant on her side adduced sufficient evidence that she was willing to go with the respondent husband and only on the problems created by the respondent's side, she was not able to go and live peacefully with him, the respondent was adamant in getting divorce from the appellant. Therefore, he has purposefully filed a petition seeking restitution for conjugal rights only to create a cause of action that he was willing to go for reunion. On the other hand, in his mind, there was no such idea. But the Original Petition No.61/1994 filed for restitution of conjugal right was dismissed wrongly on the premise that the respondent was willing for reunion whereas the appellant was not showing any positive response.

4. Learned Counsel for the appellant further argued that when there was sufficient evidence produced before the trial court and also before the I Appellate Court to substantiate the allegation made by the appellant that the respondent has treated her with cruelty after the solemnization of the marriage, the learned trial court without any sufficient justification wrongly accepted the case of the respondent husband and granted divorce for the simple reason that there was no sufficient cause for her to leave the matrimonial home and subsequently, she has not taken any steps for reunion, although he was willing for reunion and taking all efforts through panchayat. Moreover when the respondent husband was taking all efforts to contract the second marriage, a notice was also issued from the appellant side objecting the second marriage that clearly shows that the

appellant was willing and ready for reunion with the respondent husband. It is not for her sake atleast for the sake of her daughter. But the trial court going in a wrong track that both the husband and wife are living separately for more than 8 years and the litigations between them were pending in the Judicial Magistrate Court as well as in the High Court that would irritate the matrimonial bondage between the parties, wrongly came to the conclusion that both the parties are leading their life separately. Hence, there was no chance for reunion. On this premise, the divorce was granted. The lower appellate court also, on appeal by the appellant-wife, accepting the same finding given by the trial court that both the parties are leading their life separately for more than 8 long years that litigations were pending in different courts and therefore, there was no chance for reunion between the parties, confirmed the findings and conclusions reached by the trial court, as a result, the poor appellant wife had to come to this Court.

5. Learned Counsel for the appellant also submitted that when the daughter of the appellant and the respondent was going to school, no care was shown by the respondent husband either to pay the tuition fee or to meet out even the daily expenditure or any maintenance amount to meet out the school and other expenses. Simply, he has taken out an application for the custody of the child that was rejected on the ground that the daughter has to stay with her mother as a safer arrangement. Fortunately, taking advantage of the said order, the respondent was living without making any attempt for reunion. These aspects have been completely overlooked by both the courts below. Therefore, the concurrent findings of the courts below are liable to be set aside. Further, referring to Section 25 of the Hindu Marriage Act, the learned Counsel for the appellant submitted that even if the court grants divorce excepting in the case of unchastity and adultery, the wife or husband with no independent income or sufficient means to lead his/her life and maintain the children is entitled for the payment of one time alimony even to meet out the litigation expenses, if the court is satisfied. After seeing the counter affidavit filed by the respondent today which also replied against the appellant that the appellant is having sufficient means to take care of her because her father one Mr.Arjunan, who was a retired Headmaster, was one of the huge green leaf suppliers to the Kinnakorai Industrial Co-operative Tea Factory Limited, Kinnakorai which is under the control of the State Government of Tamil Nadu, Indcoserve, Coonoor and also taking note of the stand taken by the respondent in Paragraph 15 of the counter that the appellant's father owns around 10 acres of tea estate (Munneeswara Temple Estate, Jakkamara Estate, Nethilamara Estate, Barial Ground Estate, Eathilimara Estate, Valaimara Thottam) around Hiriyaasagai Village, Kinnakorai Post, Nilgiris,

the learned Counsel for the appellant safely stated that he is not pressing the Sections 24 and 25 of the Hindu Marriage Act in the present Civil Miscellaneous Second Appeal.

6. Learned Counsel appearing for the respondent husband also extensively reading the order passed by the learned Judicial Magistrate, Nilgiris at Ootacamund, dated 09.06.2003 in M.C.No.14/1998 stated that the learned Judicial Magistrate also after going through the proceedings wherein an order was passed, directing the appellant to show the daughter to the respondent offering the visitation right, finding that she was not respecting the court order and that the appellant also had admitted before the court that she was employed and getting Rs.30/- daily and her father was also a person with sufficient means to take care of her life, as a result, refused even the payment of monthly maintenance. In the said order, the learned Judicial Magistrate has specifically mentioned that the appellant was neither willing for reunion nor willing to abide by the order directing her to show her child to her husband, the respondent herein and that there were sufficient means for her livelihood, rejected the same. Therefore, the judgment and decree was passed by the trial court granting divorce on the important premise that they were separated for more than 8 years that the appellant had left the matrimonial home without any sufficient cause that even after the restitution of conjugal rights under Section 9 of the Hindu Marriage Act was filed, she was not willing to accept the offer for reunion. Since the finding given by the trial court having been confirmed by the I appellate court, no interference is called for by this Court, she pleaded.

7. I also find merits on the said submissions of the learned Counsel for the respondent-husband. The reason being that firstly, when the marriage between the petitioner and the respondent took place on 18.09.1988, they were living together and out of the said wedlock, they were blessed with a female child. After 1994, the appellant said to have left the matrimonial home. But when the husband filed application for restitution of conjugal rights, she has not come forward to accept the reunion, therefore, it was dismissed. Secondly, when she filed a counter affidavit before the trial court opposing the divorce, she took a plea that she was chased away from the matrimonial home. But there was no any substantial evidence produced before the trial court to arrive at a conclusion that she was forced to leave the matrimonial home, therefore, she was living separately in her parental home at Kinnakorai Post, Kundah Taluk. A finding has been given that despite the negotiation by the panchayat for reunion, the same was not materialised that clearly shows that something was wrong with the appellant because when the respondent also took out an

application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, no plausible reason was given for accepting the reunion by the appellant. Therefore, the learned Trial Court has rightly reached the conclusion that when they were living separately for about 8 long years and there was no any justification or good reason placed before the trial court for leaving the matrimonial home, it was a case for divorce. Accordingly, the divorce was granted. Hence, the questions of law 1, 2 and 3 are answered. Thirdly, despite the fact that they were living separately in spite of the negotiation process initiated through Panchayat for reunion and that even the M.C.No.14/1998 on the file of the learned Judicial Magistrate, Ootacamund filed for monthly maintenance was rejected on the ground that the appellant and her family has got a sufficient means to take care of the appellant, this Court is of the view that for the reason that the appellant is hailing from an affluent family, she was not willing to accept even the offer of reunion from her husband. Fourthly, when the learned Counsel for the appellant argued under Section 25 of the Hindu Marriage Act that the appellant must be given some permanent alimony, the counter affidavit filed before this Court also threw sufficient light on the source and means of the appellant to take care of herself. Fifthly, the daughter of the both the appellant and the respondent got married, she is settled with her husband in Bangalore, her husband is working in a I.T. Company in Bangalore and the appellant's daughter is also working as a teacher in a private school in Bangalore. Sixthly, the counter affidavit filed by the respondent also shows that the respondent is nearing retirement from his service which is not pension payable one besides he has also mentioned that the appellant's father owns four houses and she is also receiving the rental income from those houses apart from 10 acres of tea estate which was objected by the learned Counsel for the appellant that the appellant's two brothers have partitioned the said property and there was no property left out. Therefore, in fine, considering the fact that the appellant refused to accept the offer of reunion when application was filed under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights from the husband side that she has left the matrimonial home without any justification whatsoever, that they have been living separately for quite a long time and that the order passed by the Judicial Magistrate, Ootacamund, in M.C.No.14/1998 also clearly shows that she was not entitled to get even monthly maintenance for the reasons mentioned therein, I do not find any merit in this appeal. Accordingly, four and five questions of law raised are also dismissed.

8. In the result, the Civil Miscellaneous Second Appeal fails and the same is accordingly dismissed, thereby answering the substantial questions of law raised as against the

appellant. If the appellant is so aggrieved, it is for her to work out the remedy as per law. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Tsi

To

- 1.The District Judge of the Nilgiris at Ootacamund.
2. The Subordinate Judge,
Nilgiris at Ootacamund.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No. 30539

CMSA.No.31 of 2004

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