

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2020

CORAM

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.Nos.5 of 2011 and 14 of 2014
and M.P.No.1 of 2014

P.Marimuthu ... Appellant (In both the appeals)

vs

R. Sumathy ... Respondent (In both the appeals)

Prayer in C.M.S.A.No.5 of 2011: Civil Miscellaneous Second Appeal filed under Section 28(1) of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 20.10.2010 in CMA. No.15 of 2004 on the file of the Principal District Court, Namakkal, confirming the fair and decreetal order dated 13.01.2004 in HMOP. No.69 of 2002 on the file of the Subordinate Court, Namakkal.

Prayer in C.M.S.A.No. 14 of 2014: Civil Miscellaneous Second Appeal filed under Section 28(1) of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 23.10.2013 in CMA. No.2 of 2012 on the file of the Principal District Court, Namakkal, passed against the fair and decreetal order dated 24.08.2011 in HMOP. No.18 of 2008 on the file of the Subordinate Court, Thiruchengode.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.M.S.Palanisamy

COMMON JUDGMENT

C.M.S.A.No.5 of 2011 has been filed by the appellant/husband against the judgment and decree dated 20.10.2010 in CMA. No.15 of 2004 on the file of the Principal District Court, Namakkal, confirming the fair and decreetal order dated 13.01.2004 in HMOP. No.69 of 2002 on the file of the Subordinate Court, Namakkal.

2. C.M.S.A.No. 14 of 2014 has been filed by the appellant/husband against the judgment and decree dated

23.10.2013 in CMA. No.2 of 2012 on the file of the Principal District Court, Namakkal, passed against the fair and decreetal order dated 24.08.2011 in HMOP. No.18 of 2008 on the file of the Subordinate Court, Tiruchengode.

3. The marriage between the parties was solemnized on 28.02.1996 at Kongu Vellalar Thirumana Mandapam, Tiruchengode as per Hindu rights and customs. At the time of marriage, the husband gave 13 ½ sovereigns of gold jewels to the wife and also he spent half of the marriage expenses i.e. Rs.1,00,000/-. After the marriage, the spouses were living together at the appellant's house. In the lawful wedlock, a female child was born on 02.01.1997. After the marriage, the wife lived only for six months and often she come to her parents house. After marriage, the father-in-law of the appellant demanded him to give a security of the appellant's property to get a loan for Rs.20,00,000/- to purchase a Bore well Rigs for doing business from the Bank. After getting loan from the Bank by utilizing security given by the appellant, the wife's attitude completely changed. Due to misunderstanding, the wife left the matrimonial home on 30.08.1996 and she never come back. Thereafter, the wife was conceived. The wife's family did not invite her husband for Valaikappu function and also they did not inform the birth of the child. When the husband went to hospital to see his child, the wife's family has not shown his child. After made several panchayats, the wife has never come to the matrimonial home to lead a matrimonial life with her husband.

4. Having no other option, the husband has filed a divorce petition before the learned Subordinate Judge, Namakkal in HMOP No.69 of 2002 on the ground of desertion and cruelty. Before the Trial Court, on the side of the husband, as many as three witnesses were examined, namely, P.W.1 to P.W.3 and 13 documents, namely, Exs.P-1 to P-13 were marked and on the side of the wife, two witnesses were examined and no documents was marked.

5. As a counter blast, the wife has filed a petition for restitution of conjugal rights in HMOP. No.18 of 2011 before the learned Subordinate Judge, Tiruchengode. Before the Trial Court, on the side of the wife, she was examined herself as P.W.1 and 4 documents, namely, Exs.P-1 to P-4 were marked and on the side of the husband, no one was examined and two documents were marked.

6. The Trial Court, after taking into consideration of the oral and documentary evidences let in by both the parties, the divorce petition in HMOP No.69 of 2002 filed by the husband is dismissed and the petition in HMOP. No.18 of 2011 for restitution of conjugal rights filed by the wife is allowed.

7. As against the order in HMOP No.69 of 2002, dated 13.01.2004, on the file of the learned Subordinate Court, Namakkal and HMOP No.18 of 2011, dated 24.08.2011, on the file of the learned Subordinate Judge, Tiruchengode, the appellant/husband has filed an appeal in CMA. No15 of 2004 and CMA. No.2 of 2012 before the Principal District Court, Namakkal. After an elaborate enquiry, the learned Principal District Judge has dismissed both the appeals filed by the husband. Aggrieved over the concurrent findings of the lower Appellate Court, the husband has filed the above Civil Miscellaneous Second Appeals before this Court. For the sake of convenience, the parties are referred as per their relationship.

8. The learned counsel for the appellant has raised following substantial questions of law for consideration:-

'1. Whether the appellant is entitled to dissolution of marriage on the ground of desertion and cruelty?

2. Whether the appellant is entitled to the alternative relief of judicial separation on the ground of desertion coupled with cruelty?

3. To what other reliefs the appellant is entitled?"

9. The learned counsel for the appellant/husband would submit that during the cross examination, the wife has stated that the couple were living together till the birth of the child. It is totally false that the wife was lived with her husband only for six months from the date of marriage. Even during the said period also, she lived 10 days with her parents house and another 10 days with the husband. In the matrimonial home, the wife did not respect her husband and the family members of the husband. The wife's father was in financially poor. For which, the wife and her family members were demanded the appellant to give his property as security to get a loan from the Bank. The appellant has also given his property as a security to obtain a loan of Rs.20 Lakhs. After getting a loan, the wife and her family had totally changed their attitude and the wife left the matrimonial home without any valid reason and without informing her husband. When he questioned the same, she abused him in filthy language.

10. The learned counsel for the appellant contended that the husband had requested the wife several times to return the matrimonial home. But she was not accepted the same. Thereafter, the husband had made several panchayats to reunite with his wife. But, it ended in failure. Further the wife and her parents did not respect the advice of the panchayatars and used filthy

language against the husband in the panchayat itself. The wife has deserted her husband at his young age and spoiled his future. The wife and her family members did not inform about valaikappu function and also birth of the child. On hearing that a female child was born to him, the husband went to the hospital, where the child was born, the parents of the wife insulted him and they did not permit him to see the child for the past seven years. The wife has alleged that the husband and his sister have treated the wife cruelly. The husband stated that the same is totally wrong. Because the sister of the husband is residing at Salem and she is working. The wife and her family members had insulted the husband as many times and the wife had deserted him. The learned trial court failed to appreciate that the allegations leveled by the husband were sufficient to prove the ground of cruelty against the wife.

11. The learned counsel further argued that the wife in her cross-examination had duly accepted that a quarrel had taken place with her husband. In support of his arguments, the learned counsel for the husband placed reliance on the judgment of the Hon'ble Apex Court in the case of Durga Prasanna Tripathy Vs. Arundhati Tripathy (2005)7 SCC 353. The learned counsel also submitted that the repeated insistence of the wife to live in a separate accommodation also caused grave mental cruelty to the husband, as he was forced to live separately from his old parents. Hence, the learned counsel prays to allow these appeals.

12. The learned counsel appearing for the wife, on the other hand, argued in support of the judgment and decree passed by the learned trial court by submitting that the husband failed to prove any allegation which could cause cruelty to him. After marriage, when the wife was in the matrimonial home, the husband had harassed his wife under the instigation of his sister and mother. At the time of marriage, the father of the wife had spent about 7 lakhs for the marriage expenses and he also provided sreethana articles to his daughter. Under the instigation of the sister of the husband, the husband has filed a divorce case in HMOP No.69 of 2002 without any reason. To that effect, the wife has also filed a counter by stating that she is willing and interested to live with her husband. During the trial, in spite of several advice given by the court below, the husband had refused to live with his wife. But the wife was interested to live with him. The said divorce case filed by the husband was dismissed on merits. The husband and his family members were sent the wife from the matrimonial house and they had not visited the wife thereafter. After the birth of the child also, the husband had never come to see the mother and child and he has not maintained his wife and his child, in spite of having sufficient means. Therefore, the learned trial court

has rightly held that the husband has failed to prove the allegations of cruelty leveled by him against the wife. The learned counsel would further submit that the wife is always ready and willing to join with the husband and he prays to dismiss these appeals.

13. Heard the learned counsel appearing for the husband as well as the learned counsel appearing for the wife.

14. It is admitted that the marriage between the parties was solemnized on 28.02.1996 and a female child, namely, Raveena, was born to them out of the lawful wedlock. It is seen that due to some misunderstanding, the basic problem arose between the parties. According to the appellant/husband, the wife often quarreled with the husband and his family members for petty issues. The wife left the matrimonial home without any valid reason. After the delivery of the child, also the wife did not inform the same to her husband and his family. Therefore, the appellant/husband sent a legal notice to his wife/respondent to rejoin with her. But she never came back. Hence he filed a divorce case.

15. Per contra, the learned counsel for the wife submitted that she had taken all efforts to live with her husband that had failed due to the instigation of the husband's sister and mother. The appellant and his family members have sent out the wife from the matrimonial home and he has not taken any steps for re-union with his wife. It is the specific case of the wife that she is willing and ready to live with the husband, but the husband has not taken any steps to join with her husband.

16. The point that arises for consideration is whether the Courts below were right in dismissing the cases or not? The grievance of the husband seeking divorce against the wife is that she left the matrimonial home without any valid reason and deserted him and she is not cooperating with him on each and every trivial issues and has caused mental agony, which constitutes mental cruelty to the husband.

17. The cruelty suffered by the husband for seeking divorce from the wife, as could be seen from the petition averments, is that the wife is not willing to return and join with the husband in the matrimonial home. From the narration of averments set out in the petition filed by the husband, it is seen that the wife left the matrimonial home without any reason and the wife is not willing to live with the husband anymore.

18. It is settled that mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-today life in all families would not be enough for granting divorce on the ground of cruelty and desertion. Only sustained unjustified and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty.

19. Very fairly, in view of concurrent finding of facts, by all the courts below, the ground of cruelty is not pressed. This Court finds that the finding of the Trial Court as well as observation in the impugned Judgment that the husband has not been able to prove that the wife had deserted him and that the husband had made any possible attempts to get her back, cannot be believed in the absence of any valid evidence. This Court finds that the citation referred to by the husband is not in any way helpful to him. This Court finds that no case for desertion is made out by the husband.

20. In the light of the above position, this Court is of the clear view that the husband has not proved cruelty as required by Section 28(1) of the Hindu marriage Act and hence this Court does not find any illegality, infirmity or any kind of perversity in the findings arrived at by the learned trial court and, therefore, the same does not call for any interference by this Court.

21. In the result, there is no merit in the present appeals and the same are hereby dismissed, the substantial question of law raised by the appellant are answered accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Namakkal.
2. The Subordinate Judge, Namakkal.
3. The Subordinate Judge, Thiruchengode.

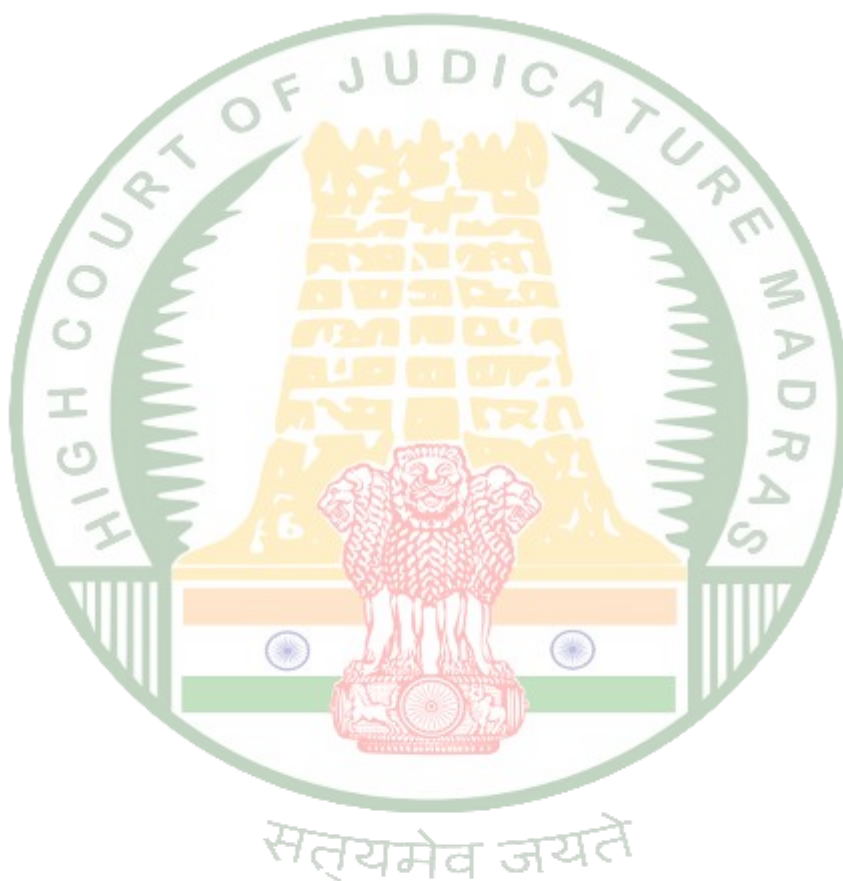
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The Section Officer
VR Section
High Court, Madras

C.M.S.A.Nos.5 of 2011 and 14 of 2014
and M.P.No.1 of 2014

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