

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.44 of 2012 and
C.M.P.No.14740 of 2019

S.N.Ravi

... Appellant/Petitioner

Vs.

Geethalakshmi

... Respondent/Respondent

Civil Miscellaneous Second Appeal is filed under Section 100 of Civil Procedure Code r/w Section 28 of the Hindu Marriage Act against the order and decreetal order passed by Additional District Munsif Court, Gobichettypalayam, Erode District dated 13.02.2012 in C.M.A.No.46 of 2011 confirming the order and decreetal order passed in H.M.O.P.No.66 of 2010 on the file of Sub Court, Sathyamangalam dated 04.02.2011.

For Appellant : Mr.M.Narayanasamy

For Respondent : Mr.S.Mukunth for
M/s Sarvabhauvman Associates

J U D G M E N T

This appeal is filed by the appellant / husband against the respondent / wife, who is aggrieved by the orders of the court below, i.e., Sub Court, Sathyamangalam in H.M.O.P.No.66 of 2010 dated 04.02.2011, which was confirmed by the Additional District Munsif Court, Gobichettypalayam, Erode District dated 13.02.2012 in C.M.A No.46 of 2011 by raising various grounds.

2. The case of the appellant is that he had married the respondent on 24.01.2007 before Sathyamangalam Bannari Thirukoil, as per Hindu Rites and Customs and due to the said wed lock, a son, namely Kameeswaran was born. At the time of marriage, the appellant was educated only up to VIII Standard and the respondent, viz., his wife was a qualified person and studied M.A., M.Phil and B.lit. Also, from the third day of marriage, the respondent separated the appellant stating that the appellant is illiterate and she is a qualified person. The appellant complained that he was not treated properly in the respondent's house, at the time of bangle wear ceremony, during

the pregnancy of the respondent, and on account of which, the relatives of the respondent had threatened the appellant.

3. It is also the case of the appellant that he wanted to name his son the deity of family, but the respondent / wife, on her own, had proceeded to name her son as 'Kameswaran'. The respondent / wife used to scold him using filthy language and often threaten him that she would commit suicide. Hence, on 04.02.2010, a police complaint was lodged. The appellant and the respondent were residing in the same house, however, separately, in the ground and first floor. The appellant was residing in the ground floor along with his mother. When they were living together, the respondent used to fight with him by pulling his shirt collar and his hair and the same had caused mental agony to the appellant and for nearly one year, there was no physical relationship between them.

4. According to the appellant, unable to bear the torture of the respondent, the appellant on 15.02.2010 had caused a notice through lawyer. Though a panchayat was held before the Inspector of Police, All Women Police Station, Sathyamangalam Police Station and Assistant Inspector of Police, Sathyamangalam Police Station, there was no chance for reunion, hence the appellant prayed for granting of divorce on the ground of desertion.

5. The respondent/wife had filed a counter denying all the allegations except the marriage and birth of a male child. The wife had stated in her counter that the appellant / husband's mother had always treated her in a cruel manner, which has caused mental worries and it is only the appellant and his mother, who had inflicted torture and the wife did not torture him at any point of time. All the allegations regarding the incident happened during valaikappu were denied and the respondent never threatened to commit suicide and it is only the appellant / husband and his mother, who often used unparliamentary words and wife had only adjusted with the family members and had resided with the appellant / husband. At the time when police enquired, the appellant had not appeared before the said police Station, but the appellant had sent legal notice dated 15.02.2010. Only after the appellant had filed a case for divorce, he started to live with his mother in the ground floor. The denial of physical relationship by the appellant has been denied by the respondent / wife stating that they both were living together and only after the child's birth, she was living in her parent's house that too after obtaining permission from the appellant and taking care of their child. It is only the appellant / husband, who had stated that both the husband and son belong to the same astrological sign, hence the time was not good. Only on that ground that the time was not

good for both of them, the appellant had made them to live separately and it is not the respondent / wife, who wanted to live in her parents house.

6. The respondent / wife further stated in the counter affidavit that the appellant's mother used to complain about the sreedhanas, which was given to the respondent during marriage and often blame her parents for the same. The respondent/wife is working in a school and the appellant is paying Rs.400/- per month for the maintenance and the respondent has stated that she is ready and willing to live a happy matrimonial life with the appellant by burying the past, hence she prays that the grounds for divorce has not been made by the appellant, therefore, she seeks to dismiss the petition filed by the appellant.

7. Before the court below Exs.P.1 to P.6 were marked by the appellant / husband and he had also examined four witnesses. No documents were marked on the side of the respondent and three witnesses were examined. The court below after considering the pleadings of husband and wife and other materials, had dismissed the petition filed by the appellant / husband seeking divorce. In consequence, the lower appellate court also has dismissed the appeal filed by the husband and aggrieved by the same, the appellant is before this Court by way of present Civil Miscellaneous Second Appeal.

8. Mr.M.Narayanasamy, learned counsel for the appellant submitted that the court below had not considered various issues raised by the appellant. When the appellant has produced proper explanation for ill-treatment and torture, the court below has erroneously come to the conclusion that the appellant had not specifically mentioned the names of the persons, as who had tortured him and if at all any harassment is committed, the appellant had not taken any steps for initiation of criminal proceedings.

9. The learned counsel for the appellant contended that when the appellant himself has admitted that he has not taken any steps for filing FIR, the court below has come to the conclusion that the husband has not proved the case of any threat caused to him by the respondent. On 25.02.2010, a petition is filed by the appellant before the court below, viz., Subordinate Court, Sathyamangalam for divorce, but, on 04.02.2010, itself, i.e, before filing the petition for divorce, the appellant/husband has given a complaint petition before the police stating that from that date onwards, the respondent / wife is treating him without any respect and threatening that she is going to commit suicide. However, the court below had come to the wrong conclusion that the appellant / husband has not stated anywhere that both of them are living separately and in the absence of

any such evidence, the court below had wrongly passed the order.

10. The learned counsel for the appellant contends that the court below had failed to see that the appellant has proved his case of cruelty with sufficient oral evidence rendered by P.Ws.1 and 2, who are persons evidenced to prove the cruelty committed by the respondent. The said evidences were brushed aside by the courts below on the ground that the witnesses were tenants of the appellant. The courts below erred in coming to the conclusion that there is no independent witnesses available to prove the cruelty meted out to the appellant in the hands of the respondent in his matrimonial life. Further, the courts below had failed to see that the respondent in her evidence has admitted the fact that she had deserted from the appellant.

11. Apart from the above, the learned counsel for the appellant represented that the courts below had failed to see the earlier disputes resulting in lodging of police complaint, Ex.P.2 by the appellant against the respondent, wherein the acts of cruelty committed by the respondent has been narrated. The act of cruelty pleaded by the appellant has been corroborated by sufficient evidence, inspite of the same, the courts below proceeded to state that there is no independent evidence in a matrimonial dispute, which is unsustainable in law. Moreover, the factum of dispute right from the 3rd day of the marriage is admitted by the respondent in her own evidence and further admits to the fact that her parents and relatives were annoyed over the appellant and his family, which would go to prove the case of the appellant that their matrimonial life was not going smooth.

12. The appellant has raised the following substantial questions of law for consideration and pleaded to set aside the orders passed by the courts below and grant divorce:

'a. Whether the finding of the courts below in favour of the wife is based on no evidence and by overlooking the actual state of affairs and on presumptions and surmise and perverse in nature?

b. Whether the courts below are correct in law in not appreciating the evidence of P.W.3 and P.W.4 on the ground that they are tenants under the appellant/husband?

c. Whether the courts below is correct in their approach in seeking independent witnesses to prove the dispute arose between the husband and wife in a matrimonial house.'

13. Heard the learned counsel on either side and perused the documents placed on record.

14. The averment of the appellant that he had named his son as Kameshwar only based on their family deity Kamatshi, but the respondent refused to call their son in that name is denied by the respondent stating that since the appellant did not keep any name to their son, based on numerology and based on his horoscope, she has selected and added the said name. In view of the same, the court below has opined that the said averment cannot be a valid reason for granting a divorce.

15. As the appellant / husband's mother has only stated that the respondent / wife behaved indifferently, but never stated she had tortured the appellant / husband. That being the case, when there is no materials available, the court below has come to a conclusion that no cruelty has been caused by the respondent / wife and dismissed the same. The lower appellate court also came to the conclusion that the appellant / husband has not proved that there is any threat to his life and few incidents cannot form opinion against the respondent / wife and also cited the decision of Hon'ble Supreme Court reported in AIR 2002 S.C.576 wherein it is held that the 'cruelty' as an act which involves could of such a nature as to have caused damage to life limb or health or give rise to reasonable apprehension of such danger.' In the absence of any evidence to show that the appellant / husband has taken steps to inform the wife's parents and tried to correct her, the contention that the respondent / wife's act has caused mental agony to the appellant / husband has not been properly proved by the appellant/husband.

16. With regard to the next issue, viz., physical relationship, whenever there is physical relationship, the respondent / wife used to scold the appellant in a hurting manner, hence the wife has only caused mental agony, the said contention by the appellant did not prove that the respondent/wife failed to co-operate for physical relationship.

17. Insofar as the dispute of amount, which was invested by the husband, there was no material to prove the same. The respondent / wife has also admitted that the appellant / husband is paying Rs.400/- to her towards maintenance per month for milk, grocery and hence the appellant / husband is maintaining the respondent / wife and he is staying with his mother in the same house. As both the parties are living together in the same house, the court below had come to the conclusion that the respondent / wife has not deserted the husband.

18. The evidences of P.W.3 and P.W.4, who are tenants in the appellant / husband's house has not been accepted and totally rejected by the court below. The respondent / wife's contention that she was sent to her mother's house stating that the appellant and his son belongs to same astrology sign and as

per the astrologer's advice, they have been directed to live separately, was not denied by the husband, hence the court below has accepted the same and based on the averment and evidences had come to the conclusion that wife has not caused mental agony to the husband. When that being the case and only trivial issues arose between the husband and wife, the courts below were of the opinion that since the wife and husband are living in a same house, there being a chance of re-union and for the sake of the son atleast both of them can live a happy life. Therefore, the courts below refused to grant divorce.

19. On 09.07.2019, the appellant herein had filed a petition, viz., CMP No.14740 of 2019 to receive the following documents:

- (i) FIR No. 215 of 2017,
- (ii) Wound Certificate showing injuries to the appellant
- (iii) Wound certificate showing injuries to the appellant's mother.
- (iv) Order dated 06.03.2019 passed in CrI.O.P.No.19529 of 2018 rendered by this Court.

20. In the said petition, the appellant has contended that the respondent /wife along with 13 named persons had entered into their house and attacked him and his 96 years old mother with deadly weapons and they sustained fracture. The appellant sustained shoulder fracture and multiple injuries, whereas, his mother had sustained grievous injuries on the spinal cord and they were treated as inpatients from 08.09.2016 to 16.09.2016 in Coimbatore Government Medical College Hospital. Also the appellant had contended in the affidavit that he lodged FIR No.215 of 2017 and wound certificates have been issued by the Doctors to the appellant and his mother. As the police did not register the case under the political influence of the respondent and her family members, after the legal battle the same was registered on 28.05.2017 and the police had not pursued the matter further. Hence the appellant filed CrI.O.P.No.19529 of 2018 before this Court and on 06.03.2019, this Court, directed the police to file the charge sheet against the respondent / wife and other 13 respondents. That apart, the appellant represented that the wound certificates and order passed by this Court are important documents for effective and proper adjudication of the present appeal, as the assault made by the respondent happened during pendency of the appeal, the appellant prays to accept the said documents.

21. In contrary, a detailed counter affidavit was filed on the respondent / wife's side to the above said petition stating that both the courts below had dismissed the prayer of the appellant / husband and only to fill up the lacuna, the appellant has filed this petition to mark additional documents

under Order 41 Rule 27 of Civil Procedure Code, as if she along with her parents and relatives assaulted the appellant and his mother. The respondent denied all the averments of the appellant as false and submitted that it is the appellant, who has thrown her out of the matrimonial house and appropriated her belongings to themselves and when she questioned the same, they had driven her out and lodged a false complaint as if she had threatened them. She also further submitted that she neither assaulted the appellant and his mother nor she entered into the premises of the appellant along with others to assault him. After the initiation of divorce proceedings, she was living in the same house on the first floor and now she was driven out of the said house and denied the factum that she had assaulted him. A Frivolous complaint has been filed by the appellant and the wound certificates and FIR are not necessary for adjudication of the present case and it is only created for tainting her image, put the blame on her and to get the sympathy of this Court. There is no details / reasons for marking the documents and the same does not satisfy the ingredients of Order 41 Rule 27 of Civil Procedure Code and these are all inadmissible documents and no prejudice will be caused to the appellant, if the documents are not allowed to be marked.

22. The counter of the respondent to the said petition proceeds to state that by marking of the above said documents, at this distance point of time, the appellant herein tries to fill up the loopholes, which will definitely cause prejudice to respondent / wife. The question of veracity of the documents and furtherance of documents are subject to proof and relevancy.

23. On perusing the orders passed by the both the courts below, it is clear that since the appellant and the respondent are living in the same house, there would be chance of reunion and therefore, the court below dismissed the claim of the husband. Further, all the aforementioned issues, viz., non-satisfaction on sreedhana articles and all other incidents on valaikappu etc., are only a frivolous issues, but, that has developed into a big dispute, which has widened the gap between the husband and wife. Even at the time of giving a complaint, the appellant / husband never wanted to seek a divorce, but only prayed before the police that they should intervene in the dispute and try to advice the respondent / wife and he wanted to live with her. But the court below went beyond that and stated that he has not produced any subsequent materials as to what had happened after the said advice, is really surprising this Court. Further, there is no materials to show that why she has taken all her materials from their room to her room.

24. It is seen that when the respondent / wife did not go and live with appellant / husband and the appellant had filed a

petition nearly after 15 days [from the date of giving complaint] seeking divorce, would definitely prove that there was no compromise entered into parties.

25. Regarding the averment of the appellant and his mother that the respondent had shown indifferent attitude, it is an admitted fact that the respondent / wife has studied M.A., M.Phil and B.lit., and the appellant had studied upto 8th standard, this would have definitely caused a small complaints / regrets between the parties and lead to unwanted matrimonial issues, that being the case, the respondent / wife has not produced any evidence / incidents to show that when her mother-in-law has treated her badly. Further, the respondent has not stated anything to her parents, but the courts below have come to the conclusion that if the husband had really undergone any torture, he would have definitely complained to the respondent's parents and in the absence, the courts below proceeded to state that the respondent / wife has not committed any cruelty.

26. The appellant in his petition has submitted that during valaikappu ceremony, there was a dispute and some persons came to his house, threatened him, the same has been simply denied by the wife and the same is not been taken into account by the courts below. Further, when the appellant / husband has stated that the respondent / wife had ill-treated and tortured him and in support of the same, he had given materials as to when the dispute had arisen and it was proved by the husband that he has taken steps to reunion, the court below had put a blame on the appellant / husband and had not appreciated the same.

27. Even assuming that there was no fight between the parties and it is an admitted fact that after filing petition for divorce, the respondent / wife was living in the 1st floor and the appellant / husband and her mother-in-law were living in the ground floor. It is also admitted that the appellant / husband was paying Rs.400/- to the respondent / wife and the same was utilised by her for milk and grocery items, the same would prove that the husband did not have any intention to assault the wife and he had taken care of his son and wife. It is admitted by the parties that they were living separately from the year 2010 onwards and there was no personal talk between the parties, hence the court below has come to the conclusion that the appellant has not proved mental agony, cruelty caused by the wife and in the absence of any evidence produced by the husband, the pleas of the husband were rejected. The issues regarding investing of money is not proved by both the parties and the pleadings canvassed before the Court would show that there was a assault by the respondent / wife and her family members, though this Court is not inclined to accept the same, since they are relating to the subject issue of a criminal case, let the

criminal case take its own course and the same can be decided by the criminal court. However, till date it is not known whether the respondent / wife has taken any steps for reunion when the court below has dismissed the petition filed by the appellant seeking divorce. In the absence of any evidence to show before this Court that the respondent / wife has taken steps for reunion after having decrees in favour of her, would show that both the parties are living separately from the year 2010 to till date. Whether the child born to them was having cordial relationship with the appellant / father is also not known and it is also admitted that the appellant / husband is maintaining the respondent/wife and child. That being the case, in the absence of any evidence to show that the wife was neglected and when she is still living in the 1st floor of the same home, without taking any steps for reunion, she cannot state that she still wants to be his wife and hence, this Court is of the view that the marriage which has taken place between the parties on 24.01.2007 before Sathyamangalam Bannari Thirukoil, as per Hindu Rites and Customs, has been irretrievably broken and there is no chance for reunion. The wife has also not chosen to file any petition for restitution and not proved her case that it is the husband, who had deserted her. As both the parties are not interested in living as a family and merely obtaining a decree is not going to be useful to both of them. The non joining by husband and living separately by wife has put an end to the matrimony. When both the parties have not thought about the future life of a child, it is painful to state that the term of a family has ruined.

In view of the above reasonings, the marriage held between the appellant and the respondent on 24.01.2007 is dissolved and the divorce is hereby granted. In the result, the Civil Miscellaneous Second Appeal is allowed and the substantial questions of law raised by the appellant are answered accordingly. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Munsif Court,
Gobichettipalayam, Erode District

2. The Subordinate Judge,
Sathyamangalam

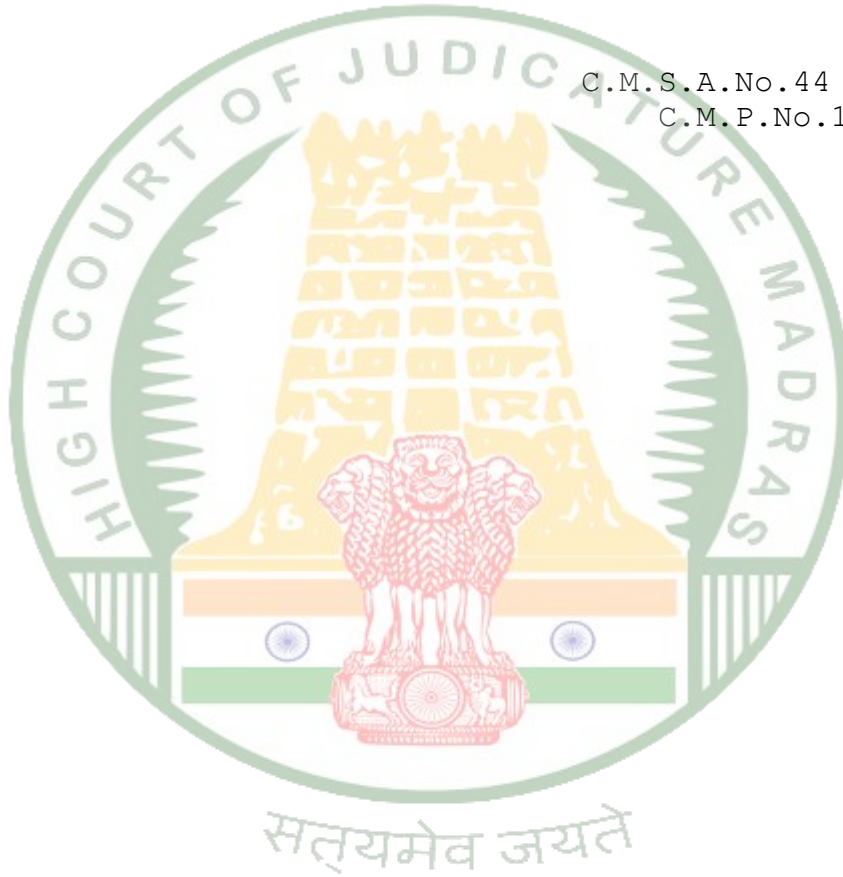
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1 cc to mr.M.Narayanaswamy, Advocate,sr.3357

+1 cc to M/s.Sarvabhauman asso, advocate,sr.3328.

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C.M.P.No.1474 of 2019



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