

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2663 of 2019

O.V.Sivakumar Appellant/Petitioner

Vs.

Gomathi ... Respondent/Respondent

PRAYER : Appeal filed under Section 19 of the Family Courts Act against the fair and decreetal order dated 29.11.2018 made in H.M.O.P.No.212 of 2018 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.D.Rameshkumar

For Respondent : No Appearance

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

Challenging the order passed by the Family Court, Dharmapuri in H.M.O.P.No.212 of 2018, dated 29.11.2018, the present appeal has been filed.

2. Heard the learned counsel appearing for the appellant. Despite notice sent, the respondent refused to receive the notice. Treating this as appropriate service, the name is printed in the cause list. However, she has not chosen to appear.

3. The appellant is the husband of the respondent. The marriage between the appellant and the respondent was solemnised on 31.08.2003. Out of the wedlock, a male child was born on 23.07.2005. The appellant was working in Mumbai. On the earlier

occasion, the appellant filed a petition in H.M.O.P.No.8 of 2007 which was allowed to be dismissed for default. Therefore, under those circumstances, a petition has been filed both for cruelty and desertion since according to the appellant, the respondent was not ready and willing to re-join him.

4. In the counter affidavit filed, the respondent has alleged that the appellant was mentally de-ranged. However, this factum was deliberately suppressed. The affidavit further states that the appellant's parents ill-treated her.

5. The Family Court dismissed the petition, inter alia, holding that the allegations made by the appellant against the respondent that she had physical contact with her superior would be sufficient enough to show that she was living away from him. Incidentally, the Family Court rejected the contention of the respondent that the appellant was mentally de-ranged. A finding has been given that the appellant was finding fault with her and had no inclination to live together.

6. The learned counsel appearing for the appellant submitted that the respondent joined the Indian Army in the year 2002 and was working as a Major. She voluntarily retired from the service in the year 2008. She was working in the Indian Army prior to the marriage. Having found that the allegations against the appellant with respect to mental capacity was not proved, the decree for divorce ought to have been granted.

7. We have gone through the evidence adduced, pleadings and the judgment of the Family Court.

8. The Family Court, in our considered view, was not right in declining to grant the decree for divorce. When the allegation of mental retardness of the appellant was not proved, the same alone would constitute a ground for cruelty. Admittedly, the appellant was working and, therefore, the allegations made would not have been proved.

9. However, the question with respect to conduct of the respondent such as shaking hands with superiors were proved only during the cross-examination. These allegations by themselves, would not be a factor to decline decree for divorce. In any case, these questions will not justify the action of the respondent in staying away from the appellant.

10. Furthermore, the parties are living separately from the year 2005 onwards. Now, nearly more than 15 years have elapsed. Perhaps, that is the reason why the respondent is not inclined to come before us and contest the matter. If the appellant was suffering from mental disorder, which factum was suppressed, the

respondent would not have resigned voluntarily from the Indian Army in the year 2008. Furthermore, it appears that the father of the appellant also died even much prior to filing of the petition for divorce. We also do not find any material to hold that the parents of the appellant exerted cruelty on the respondent.

11. In such view of the matter, we set aside the order passed by the Family Court, Dharmapuri in H.M.O.P.No.212 of 2018 and consequently, the appellant is granted decree for divorce.

12. The Civil Miscellaneous Appeal stands allowed. No Costs. Consequently, connected C.M.P.No.20953 of 2019 is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

ssm
To

1.The Family Court,
Dharmapuri.

+2 ccs to Mr.D.Ramesh kumar Advocate sr16069

C.M.A.No.2663 of 2019

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