

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.20 of 2014

P.Kumar

... Appellant/Petitioner

Vs.

S.Malarselvi

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 18.12.2013 made in HMOP.C.M.A.No.48 of 2011 on the file of the Second Additional District Court, Erode, reversal of the fair and final order dated 05.01.2011 made in HMOP.No.174 of 2008 on the file of the Principal Sub Court, Erode.

For Appellant : Mr.K.S.Jeyaganesan

For Respondent : Mr.K.Purushothaman

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 18.12.2013 made in HMOP.C.M.A.No.48 of 2011 on the file of the Second Additional District Court, Erode, in reversing the fair and final order dated 05.01.2011 passed in HMOP.No.174 of 2008 on the file of the Principal Sub Court, Erode.

2. The case of the appellant is that the appellant and the respondent are different community and they married on 06.11.2006. Before the marriage, they were employed in Rago computers, and during their employment, they fell in love with each other. Even before the marriage, they had intimacy with each other. As a result of which, the respondent became pregnant before marriage. The parents of the respondent took immediate steps for registration of the marriage and accordingly the marriage was also held on 06.11.2006 in the Sub-Registrar Office at Sivagiri. The appellant and the respondent lived together in a rental house at Surampatty, Erode and a female child was born in the month of January 2007. After the birth of the child, the respondent did not have any interest in the companionship of the appellant, and on many occasions, she without any reason misbehaved with him. The appellant also advised her not to repeat so, but she did not change her activities and also she started to suspect the

appellant and caused mental agony to him. In the first week of April 2007, the respondent left to her parents house at Veerappampalayam, Arachalur Village, informing the appellant that she would return after some days, but later she did not returned to home.

3. The appellant had met the respondent at her father's residence after two months and requested her to join with him, but the respondent refused to come and abused the appellant in filthy words in presence of his friend. Due to the misconduct of the respondent, the appellant became depressed and not able to lead a happy marital life and the appellant's mother was also committed suicide on 17.06.2007 after knowing about the dissatisfaction of his marital life, but the respondent not even enquired about the same. A Panchayat was convened with regard to their marital life, and even before the Panchayatar, the respondent illtreated the appellant and caused mental cruelty to him. Hence, the appellant had filed a petition for divorce in HMOP.No.72 of 2008 before the Principal Subordinate Court, Erode. When the case was posted for appearance of parties, the respondent was not willing to dissolve the marriage. Hence, the petition was dismissed on 26.06.2008. Thereafter, on 05.07.2008, two rowdies came to the appellant's office and threatened him not to proceed the divorce petition. However, the appellant again filed a divorce petition in HMOP.No.174 of 2008 before the Principal Sub Court, Erode.

4. Denying the allegations, the respondent had filed a counter affidavit stating that she did not misbehaved with the appellant and only the appellant had misbehaved with her. The appellant does not have any interest to live with the respondent and therefore he filed a divorce petition against her. The respondent is always ready to live with the appellant and sought for dismissal of the petition filed by the appellant.

5. The Principal Sub Court, Erode, after hearing both side arguments had passed an order on 05.01.2011 by granting the decree of divorce in favour of the appellant by canceling the marriage solemnized on 06.11.2006 between the appellant and the respondent. Aggrieved by the same, the respondent/wife has preferred HMOP.C.M.A.No.48 of 2011 before the Second Additional District Court, Erode, and the same was allowed on 18.12.2013. Hence, the appellant has filed this appeal before this Court on the following substantial questions of law :

- a) Whether the First Appellant Court has committed an error in dismissing the petition for divorce filed on the ground of cruelty by treating them as an ideal husband and ideal wife instead of considering the social status of the parties, their ways of life, relationship, temperament and emotions that they have been conditioned by their social status?

b) Whether the First Appellate Court is right in dismissing the divorce petition particularly when the parties have been living separately for the past 7 years and their marriage has been broken down irretrievably?

c) Whether act complaint of by the appellant would amount to mental cruelty when the feeling deep anguishes, disappointment and frustration has rendered the marriage life as a misery to him?

d) Whether the Judgment of the First Appellate Court is in compliance with the mandatory provisions of Order 41 Rule 31 CPC?

6. Heard the learned counsel for the appellant and the learned counsel for the respondent, and perused the materials available on record.

7. On perusal of the Judgment and Decree dated 18.12.2013 made in HMOP.C.M.A.No.48 of 2011 on the file of the Second Additional District Court, Erode, it is observed that the marriage between the appellant and the respondent was solemnized on 06.11.2006. Since the respondent was pregnant by the appellant before the marriage, the respondent's parents and relatives took efforts and arranged the said marriage. After the marriage, a female child was born in the month of January 2007 and only thereafter, the respondent had left from the matrimonial home. The appellant has stated in his petition that from the date of marriage, the respondent misbehaved with him and caused mental cruelty to him, and in order to prove the same, he has examined 4 witnesses before the Court below including him, but no one has stated about the alleged cruelty by the respondent except the appellant. Further, the appellant has stated in his petition that the respondent had left from the home in the month of April 2007 and after she left, he went to the respondent's parents' house within two months and requested the respondent to join with him but the respondent refused to come and abused him in filthy words in presence of his friend. But, at the time of cross examination before the Court below, the appellant has deposed that they did not have any dispute until September 2007, and therefore, the Lower Appellate Court has come to the conclusion that the statement of the appellant that the respondent scolded him with filthy words in her parental house is false one.

8. The appellant has further stated in his petition that his mother had committed suicide on 17.06.2007 as she was unable to tolerate the dissatisfaction of his marital life. But, it is an admitted fact that since the appellant had made the respondent pregnant before the marriage itself, his parents have not given willingness for his marriage and only the respondent's parents and relatives had arranged his

marriage. It is also an admitted fact that after the marriage, within two months a female child was born to the respondent i.e. in the month of January 2007 and after the birth of the child, the respondent lived with the appellant only for two months and thereafter left to her parental home in the month of April 2007. So the respondent had lived with the appellant only for four months after the marriage and therefore, she would not be the cause for the death of the appellant's mother and only the appellant who married the respondent without the consent of his parents and who made the respondent pregnant before the marriage would be the cause for the death of his mother.

9. Moreover, the appellant has stated in his petition that two rowdies came to his office and threatened him that not to proceed the divorce petition against the respondent and at the time of such threatening took place in his office his co-employees were also available there. But while he was cross examined in this regard before the Court below, none of his colleagues were examined on the side of him to substantiate the alleged threatening. Furthermore, the appellant has stated in his petition that originally he filed a petition for divorce in HMOP.No.72 of 2008 before the Principal Subordinate Court, Erode, and when the case was posted for appearance of parties, the respondent was not willing to dissolve the marriage and therefore it was dismissed on 26.06.2008. Further, he himself has admitted in his deposition that after filing the said divorce petition, the respondent had come to meet him, but he had not met her. So, in view of the observations made by this Court, it is clear that the appellant before the marriage itself made the respondent pregnant, and after the marriage, misbehaved with her and committed cruelty to her and finally sent out her from the matrimonial home. Thereafter, in spite of the respondent had come and tried to live with him, he avoided her and tried to get divorce from her by filing a petition. The Lower Court without considering the same erroneously granted divorce on 05.01.2011 and therefore the Lower Appellant Court has set aside the same. Hence, this Court is not inclined to interfere the same.

10. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the substantial questions of law raised by the appellant are answered in favour of the respondent. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

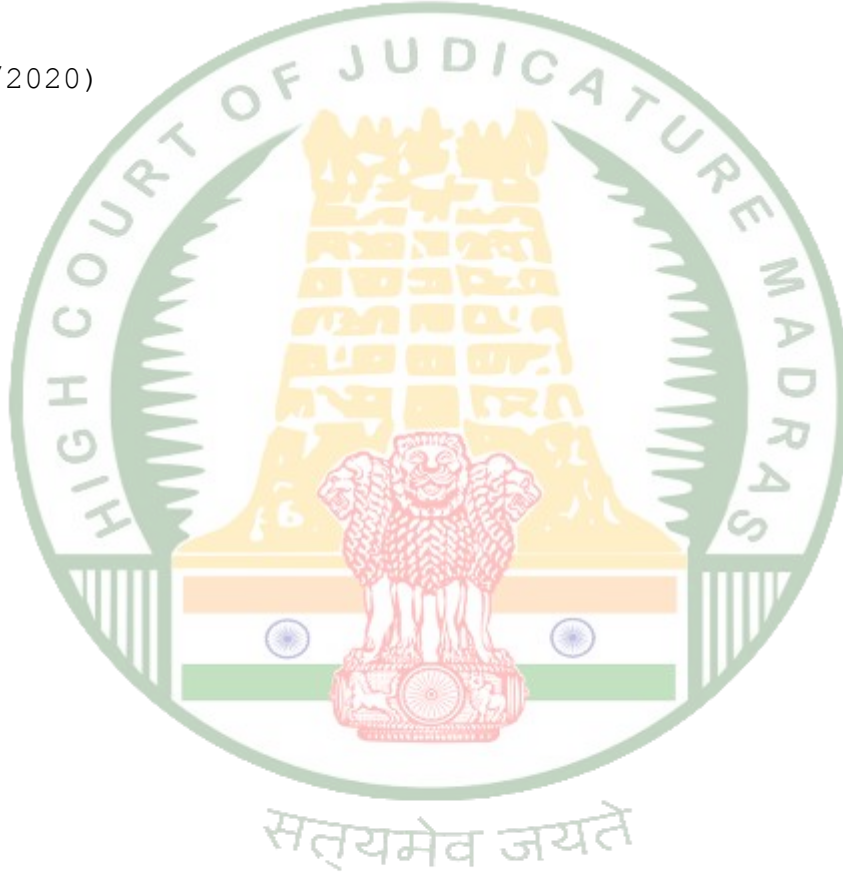
To

1. The Second Additional District Judge, Erode.
2. The Principal Subordinate Judge, Erode.
3. The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.K.S.Jeyaganeshan, Advocate SR.No.8310

C.M.S.A.No.20 of 2014

KK (CO)
GMY (24/08/2020)



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