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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2739 of 2009

and

M.P.Nos.1 & 2 of 2009

J.Shyamala

...Appellant/Respondent

Vs.

R.Raghunathan

...Respondent/Petitioners

PRAYER : Civil Miscellaneous Appeal is filed under Section 28 of Hindu Marriages Act, against the fair and decreetal order passed in H.M.O.P. No.42 of 2003 dated 20.01.2009 passed by the learned Additional District and Sessions Judge cum Fast Track Court-I, Poonamallee.

For Appellant : Mr.D.Govinda Reddy

For Respondent : M/s.Uma Vidyapathi

J U D G M E N T

The appellant herein is the respondent in H.M.O.P. No.42 of 2003 on the file of the learned Additional District and Sessions Judge cum Fast Track Court-I, Poonamallee filed by the respondent herein for dissolution of marriage solemnized on 08.06.1987.

2. The appellant also contested the petition H.M.O.P.No.42 of 2003.

3. After full trial, the trial Court allowed the H.M.O.P.No.42 of 2003 and granted divorce in favour of the petitioner / husband. Aggrieved by the said order, the appellant / wife has preferred this appeal.

4. The questions of law that arises for consideration are follows:

"(i) Whether the trial court erred in holding that the petitioner / husband is entitled to divorce on the ground of cruelty and desertion caused by the appellant herein ?

(ii) Whether the trial judge erroneously concluded that the appellant voluntarily left her matrimonial home, without considering the fact that her husband shifted the residence with ulterior motive?



(iii) Whether the trial Court mis-conceive that the appellant claiming right of residence over the property and arrived the wrong findings.

(iv) Whether the lower Court failed to consider that the appellant contributed major portion of the sale contribution out of her savings and only the sale deed has to be executed by the original allottee after getting sale deed from housing board.

5. The facts reveal that the appellant and the respondent loved each other and got married on 08.06.1997 and their marriage was not accepted by their parents. So they started marital life at Kumarappa Street, Nungambakkam, Chennai-600 034 and later shifted their residence to No.21, Rama Naicken Street, Nungambakkam, Chennai-600 034. Thereafter, shifted to No. H/12, Tamil Nagar, Ramapuram, Chennai-89, in the year 1991.

6. Since 1995, the appellant's relatives one Usha Kumari and her brother Sathish caused interference between the appellant and the respondent, So there was misunderstanding arose between them. In order to avoid interference of her parents and relatives, the respondent herein shifted the house to No.7, Bharadhidasan Street, MGR Nagar, Chennai-600 079. The appellant has not co-operated with him and the respondent shifted all house hold articles to MGR Nagar house, but the appellant / wife refused to live him and thereafter she lodged a complaint against her husband. Thereafter, on 07.11.2019, directed the parties to appear before mediation for peaceful life. But the appellant refused to participate for mediation. So the respondent / petitioner filed a petition in O.P.No.228 of 2019, before the Family Court, Chennai. Immediately, the appellant gave a complaint for dowry demand.

7. The learned counsel for the respondent submitted that the appellant refused to live with her husband. The family members of the appellant also caused much interference and tortured the respondent. The respondent is aged about 85 years, and he is not able to live in the house since the conduct of the wife, caused cruelty, besides, she voluntarily left from the matrimonial home with intention to cause desertion.

8. The learned counsel for the appellant submitted that no issue, as well as the contention of the wife is that her husband alone left from the matrimonial home voluntarily and he has addicted to alcohol and has often beaten the appellant and has refused to see her relatives. It is false to say that her family members caused interference to their family residing at plot No.H/12, Tamil Nagar, Ramapuram, Chennai-89, which was allotted by Housing Board to whom the appellant entered into agreement and the appellant alone paid the major portion of the sale consideration. In order to grab the property, the



respondent/petitioner left the matrimonial home by removing all the household articles and went to MGR nagar. In fact, the appellant / wife out of her income only had purchased the plot No.H/12, Tamil Nagar, Ramapuram, Chennai-89, neither her husband nor his family members had purchased the property. But Trial Judge failed to appreciate this fact and erroneously granted divorce. Hence, the appellant prayed to allow the appeal.

9. On hearing both sides, considering the oral and documentary evidence, the trial Judge concluded that the conduct of the wife caused cruelty to the husband, and she left from the matrimonial home with an intention to cause desertion. Accordingly, petition was allowed and divorce was granted. Now the learned counsel for the respondent argued that her husband alone left from the matrimonial home in order to grab the property entirely for which the appellant not amenable, so he filed the petition for divorce with false allegations.

10. As per the contention of the appellant / wife, she paid the major portion of the sale consideration of the house at No.H/12, Tamil Nagar, Ramapuram, Chennai-89 and she is also shifted her house to MGR nagar and requested her husband to live at Ramapuram, for which, he gave the complaint to the police. It is admitted fact that the husband and wife agreed to purchase the house, entered into agreement to the said owner, namely Sundarajalu. The trial Judge concluded that both of them are having right to live in the house property. But husband seeking, divorce on the ground of cruelty and desertion and she has also denied these allegations and he filed H.M.O.P.No.42 of 2003. Since the husband has denied to handover the jewels of the appellant, she gave complaint to the police. She proved that she has not given any false complaint against him. But the husband filed O.P.No.288 / 1999 for Restitution of Conjugal rights and the matter was posted for settlement. The appellant refused to live with him and on the other hand the appellant stated that the respondent was having illegal relationship with another woman. This fact was not proved by the wife and the same was rightly observed by Trial Judge that she caused mental cruelty to her husband.

11. The appellant refused to live at MGR nagar and live with her husband only at Ramapuram, she is not interested to live with her husband from the year 1999 onwards. Nearly 10 years, they were living separately and no steps for reunion. Therefore, the appellant is not interested to live with her husband at Ramapuram house and she has not established that her husband is having illegal relationship with another woman, thus the conduct of the wife caused mental agony to him. She also left from matrimonial home and also not interested to live with her husband.



12. Considering all the facts the trial Court rightly allowed the divorce, which does not warrant any interference by this Court. The order passed by the learned Additional District and Sessions Judge cum Fast Track Court-I, Poonamallee in H.M.O.P. No.42 of 2003, dated 20.01.2009 is confirmed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently connected Civil Miscellaneous petitions are closed. No Costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge
(Fast Track Court-I) Poonamallee

+1 CC to M/s. Uma Vidyapathi, Advocate sr 21699
+2 CC to Mr.D.Govinda Reddy, Advocate sr 20927.

C.M.A.No.2739 of 2009
and
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GPL(CO)
SP(19/11/2021)