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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A. Nos.1445 & 1446 of 2015

Parimala Devi ... Appellant in both CMAs /
Petitioner HMOP 311/2007
vs.
P.Paneer Selvan ... Respondent in both CMAs/
Petitioner in HMOP 392/2007

PRAYER: Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act, 1984 to set aside the common order and decree of the learned Family Court Judge at Coimbatore dated 13.06.2014 passed in H.M.O.P. Nos.311 of 2007 and 392 of 2007 and to allow H.M.O.P. No.311 of 2007 with costs and to dismiss H.M.O.P. No.392 of 2007 with cost.

For Appellant : Mr.H.Adaikala Arockiaraj

For Respondent : Mr.K.S.Karthik Raja

COMMON JUDGMENT

(judgment of the court was made
by G.CHANDRASEKHARAN, J.)

These Civil Miscellaneous Appeals have been filed under Section 19 of the Family Court Act, 1894, against the common order dated 13.06.2014 passed in H.M.O.P. Nos.311 of 2007 and 392 of 2007, by which the learned Family Court Judge allowed H.M.O.P. No.392 of 2007 and dismissed H.M.O.P. No.311 of 2007.

2. The respondent as the petitioner, filed H.M.O.P. No.392 of 2007 under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce of marriage solemnised between the respondent and the appellant on 06.06.2002, on the ground of cruelty. The appellant as the petitioner, filed H.M.O.P. No.311 of 2017 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights against the respondent.

3. The case of the respondent as seen from the divorce petition, reply statement, counter and additional counter filed



in the petition for restitution of conjugal rights, in brief, is as follows:

i) The marriage between the appellant and the respondent was solemnised on 06.06.2002 at Coimbatore. They started their marital life in respondent's house. Sometime after marriage, the appellant showed indifferent attitude towards the respondent and his old mother. She used to quarrel without any reason with the respondent and his mother and use unparliamentary words and failed to perform the duties of a dutiful wife. She had beaten respondent's mother and she was blackmailing the respondent that she would commit suicide by hanging or by consuming poison. Her attempts to commit suicide were thwarted by the respondent and relatives. She insisted on the respondent to move out of the matrimonial home and have a separate residence else she would commit suicide. The respondent had rented a house and started a separate living with her on the hope that the marital life thereafter would be happy and peaceful. But the appellant again gave tortures and troubles to the respondent and caused him untold sufferings.

ii) The respondent is a government servant working in District Treasury, Coimbatore. Because of the cruelty committed by the appellant, he could not perform his duties efficiently. In the month of March, 2004, the appellant left the matrimonial home and was living with her parents. The respondent sent a notice dated 22.12.2006 and that was received by the appellant on 27.12.2006. Since the appellant wanted a Tamil translation of the notice, the translated version of the same was sent on 24.01.2007 and that was received by the appellant on 25.01.2007. There was no reply.

iii) The appellant's behaviour was very unusual. She used to cry and scream in the dead of night. One Sivakumar who is a sorcerer used to tie her some thayathu and perform pooja. Appellant is not able to procreate a child. On two occasions, she aborted the foetus without informing the respondent. There is no possibility of continuing the marital life with the appellant and therefore he prayed for divorce.

4. The case of the appellant as seen from the petition filed for restitution of conjugal rights and the counter filed in the divorce petition, in brief, is as follows:

i) The marriage between the appellant and the respondent is admitted. All the other allegations with regard to the alleged acts of cruelty, attempt to commit suicide, the alleged abortion, are all denied. In fact, after receipt of the Tamil translation of legal notice dated 22.12.2006, the appellant had sent a reply on 23.02.2007, that was received by the respondent and it is falsely stated in the divorce petition that the appellant had not replied to the legal notice.

ii) The appellant and the respondent are close relatives. The respondent is the son of appellant's aunt. The respondent's



mother and appellant's father are siblings. They knew each other right from their childhood. The appellant willingly married the respondent. Appellant was provided with 20 sovereigns of gold jewels and other seer items at the time of marriage. She was performing her duties as the wife and daughter-in-law in the matrimonial home. Sometime after the marriage, when the respondent asked her to part with her jewels to meet some expenses, immediately the appellant parted with four sovereigns of Aram. Without the knowledge of the appellant, the respondent sold the said jewel.

iii) Moreover, the respondent asked the appellant to transfer 3.5 cents of land which was purchased in the name of the appellant by her grandmother, to his name. When the appellant refused to accede to his demand, the respondent and his mother started scolding and ill treating the appellant without any reason. Respondent's mother would send the respondent only after 11.00 p.m. Since the appellant was subjected to mental torture, the 2-1/2 months old foetus got aborted in May 2003. When the appellant and the respondent started separate living, happiness lasted only for few months. The respondent started to come very late in the night. The appellant was waiting to have dinner with him and when asked him to join for dinner, he would state that he already had dinner at his mother's house. He would rise at 4.30 in the morning and go to his mother's house and then to office from there. Once in a week he would bring the dirty clothes for washing. Repeatedly the respondent was asking her to transfer the plot in his name for construction of a house. She told him that she would consult her father and then transfer the plot to him.

iv) On 11.3.2004, the respondent left the home informing her that they would visit her father to get his consent and thereafter he did not come home. Subsequent panchyat by relatives has also not yielded positive result. The appellant waited till March 2004 in the rental house with a fond hope that her husband would join her. When he failed to return, she moved to her parents house. Since then she is living with her parents. She has great love and respect towards her husband, her mother-in-law and her husband's family members. There is absolutely no truth in the alleged act of cruelty said to have been committed by the appellant.

5. During trial before the Family Court Judge, on the side of the husband, three witnesses have been examined as PWs.1 to 3 and twelve documents have been marked Exs.P1 to P12. On the side of the wife, three witnesses have been examined as RWs.1 to 3 and nine documents have been marked as Exs.R1 to R9.

6. While considering the points that whether the appellant is entitled for restitution of conjugal rights and whether the respondent is entitled for a divorce on the ground of cruelty,

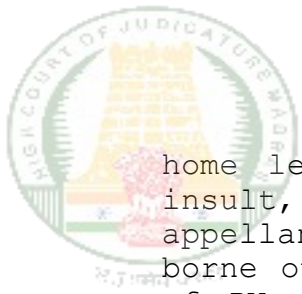


the learned Family Court Judge, found that the oral and documentary evidence are in favour of the husband/respondent herein and allowed the petition filed for divorce and dismissed the petition filed for restitution of conjugal rights by a common order passed on 13.06.2014. Against the said common order, the appellant/wife preferred both these appeals.

7. The learned counsel appearing for the appellant submitted that the learned Family Court Judge, has not properly appreciated the evidence and based his findings and decision based on the vague allegations which are not substantiated by any acceptable evidence. He failed to note that PWs.2 and 3 examined on the side of the respondent are the brother and friend of the respondent and they are interested witnesses. On the other hand, RW2 examined on the side of the appellant clearly stated that the appellant and the respondent were living happily in their rented house. It is not as though the appellant deliberately aborted the 2-1/2 months old foetus, but it got aborted on its own and only D&C was performed to clear the uterus. Abortion had taken place only once and not twice as claimed by the respondent.

8. It is the further contention of the learned counsel appearing for the appellant that the alleged suicidal attempts made by the appellant, had not been supported by any independent evidence. She has not compelled the respondent to come separately from his parents and it is the respondent who initiated a move for separate living. However, without considering this aspect and also the fact that there is no acceptable evidence to substantiate the claim of the acts of cruelty alleged to have been committed by the appellant against the respondent and his family members, the learned Family Court Judge wrongly allowed the petition for divorce and dismissed the petition for restitution of conjugal rights. Therefore, the learned counsel appearing for the appellant prayed for setting aside the common order dated 13.06.2014 passed by the Family Court Judge, Coimbatore, by allowing these appeals.

9. Per contra, learned counsel appearing for the respondent submitted that though the appellant and the respondent are close relatives, the appellant's physical and mental condition, prior to the marriage, was deliberately suppressed to the respondent and his family members. Sometime immediately after the marriage, the appellant showed her true colours and started to disrespect and ill treat the respondent and his mother. She would not do any household work when she was asked to do and that she would threaten that she would commit suicide and in fact, she attempted to commit suicide three times and the same was thwarted by the timely intervention. Only at the insistence of the appellant, the respondent had to move out of the matrimonial



home leaving his old mother and brother in lurch. By showing insult, disrespect and exhibiting unusual behaviour the appellant caused untold sufferings to the respondent. These were borne out by the evidence of the respondent and by the evidence of PWs.2 and 3. Finding that the respondent has made out and proved the case of cruelty, the learned Family Court Judge, accepted the case of the respondent and ordered dissolution of marriage and granted divorce. At the same time, dismissed the petition filed for restitution of conjugal rights. The learned counsel for the respondent prayed for sustaining the common order of the learned Family Court Judge and prayed for dismissal of these appeals.

10. The points that arise now to be considered in these appeals are:

(1) Whether the finding of the learned Family Court Judge that the respondent proved the rude behaviour of the appellant, insistence on separate residence, termination of pregnancy without the consent of the respondent and the attempts to commit suicide and these acts constituted cruelty, entitling the grant of divorce is correct?

(ii) Whether the finding of the trial court that the appellant is not entitled for the restitution of conjugal rights, is correct?

(iii) To what other reliefs?

11. Admittedly, the appellant and the respondent are close relatives even before the marriage. The respondent is the son of her own aunt. Respondent's mother and the appellant's father are siblings. The important allegations made by the respondent against the appellant are that: (i) she showed indifferent attitude towards the respondent and his mother and disrespected them, (ii) did not perform the duties of a wife and daughter-in-law, (iii) beaten respondent's mother, (iv) attempt to commit suicide several times, (v) behaved unusually in the mid of night by crying and screaming, (vi) abortion of foetus without the consent of the respondent and (vii) insistence on separate living. These are totally denied by the appellant and she would state that it was she who suffered harassment and cruelty by the acts of the respondent and his mother. When she questioned her husband for selling her four sovereigns of gold jewel, the respondent and her mother abused her and caused mental torture. The respondent wanted her to transfer 3.5 cents of land to him for construction of a house. Even after going separate, the respondent used to go to his mother's house and have food there and stay there most of the time.

12. As already stated, the respondent examined himself, his brother as PW2 and one Raja as PW3 in support of his case. It is



seen from the evidence of PW2 that since the appellant is the daughter of his uncle, as the eldest member of the family, he alone arranged the marriage between the appellant and the respondent. However, after the marriage, the appellant failed to perform any of her duties as dutiful wife and daughter-in-law, and she showed bad temperament and weird behaviour by shouting and screaming in the mid of night. Her mother also supported her and joined her in shouting at the residence and his mother. Only at the insistence of the appellant, the respondent had to move her into a separate residence. One day, she tried to commit suicide by hanging. Along with PW3-Raja and some other relatives, they broke open the door and saved her. His evidence is supported by the evidence of PW3.

13. Though PW1 extensively stated about the acts of cruelty alleged to have been committed by the appellant, he was not effectively cross-examined by the appellant especially, there was no cross-examination at all on the allegation of attempts to commit suicide by the appellant not once but thrice. Though the appellant denied the attempt to commit suicide, the evidence of PWs1 to 3, clearly proved that the appellant attempted to commit suicide. She admitted that the witness K.Raja @ Bhuvanesh knew whether she attempted to commit suicide. The said witness is examined as PW3. He clearly stated the attempts made by the appellant to commit suicide.

14. The only question that was asked with regard to the attempts to commit suicide was, whether the respondent had given any police complaint with regard to the attempt made by the appellant to commit suicide, for which the respondent replied that he did not give any complaint. PW2 stated that since the attempt to commit suicide was done by a family member was within the family, no police complaint was given.

15. Admittedly, immediately after the marriage, the appellant and the respondent started their marital life in the house of the respondent. Respondent's family consisted of his wife, his mother and brother. It is the case of the respondent that because of continuous insistence of the appellant, he had to find a separate residence and leave his mother and brother. The appellant admitted that she lived in a separate residence with the respondent nearly for 33 months. During their separate living, the respondent had alone paying the monthly rent apart from paying the advance amount. She clearly admitted that because of some misunderstanding only, they had to move to separate residence and she stated that she was not able to see eye to eye with the respondent's mother. It is her evidence that after moving to separate residence, there were disputes between the appellant and the respondent and they got separated.



16. A man is not only a husband, but he is also a son to his parents, a brother to his siblings. The duty of a son to maintain his mother and younger brother, when father is not alive, cannot be ignored. Here, in this case, after they started their marital life, the appellant and the respondent started living in a joint family consisting of appellant, respondent, respondent's mother and brother. It is seen from the evidence of the appellant that she was not comfortable with her mother-in-law and there were misunderstandings between them and therefore, they had to move to a separate residence. It primarily shows that, it was the appellant who was responsible for separating the respondent from his mother. Certainly this act of the appellant, would amount to cruelty.

17. When there is an allegation against the appellant that she used to cry and scream in the mid of night and one Sivakumar, would come and perform pooja and tie thyathu and when she was questioned about the same, she directed these allegations against her husband. It is her evidence that her husband alone used to perform poojas in the night and he would scream at the time of performing pooja. When it was brought to her notice that she has not made this allegation in her counter, she replied that she made these allegations against her husband because of the reason that he made these allegations against her. PWs.2 and 3 had given clear evidence with regard to the unusual abnormal conduct of the appellant. Therefore it can be concluded from the evidence of PWs.1 to 3 that the abnormal conduct of the appellant in the mid of night by crying and screaming caused mental cruelty to the respondent.

18. Though the respondent claimed that the appellant aborted the foetus twice, except the oral evidence, no medical record is produced in this regard. Even in his proof affidavit, he stated that he had taken the appellant to doctor. The evidence of the appellant is that the foetus got aborted at the house itself, only D&C was performed in the hospital to clear the uterus. Therefore, the allegation that the appellant deliberately aborted the foetus, in our considered view, is not conclusively proved by the respondent. Accordingly the first issue is answered.

19. Admittedly, both the appellant and the respondent are living separately from 2004. It is the case of the appellant that the respondent deserted her. On the other hand, the respondent contended that the appellant has left the matrimonial home. RW2 was examined on the side of the appellant, who stated that the appellant was taken to her parents house by her father on the ground that her mother was not well and thereafter, she did not come to live with the respondent. Thus, it is clear from her evidence that it was the appellant who deserted the



respondent and not the respondent.

20. From the discussions above, it is clear that the appellant had proved to the satisfaction of the court that she had shown disrespect to the respondent and his family members, not performed the duties of wife and attempted to commit suicide, and insisted on a separate residence and separated the respondent from the mother and brother to live with her. These acts of the appellant, would certainly amount to cruelty, entitling the respondent for divorce. Therefore, answering the second issue, we in our considered view, the order passed on these grounds is based on the evidence and cogent reasons. Hence, we do not find any infirmity or perversity in the order of the learned Family Court Judge dated 13.06.2014, in granting divorce to the respondent and dismissing the petition filed by the appellant, for restitution of conjugal rights.

21. In this view of the matter, the common order of the Family Court Judge, Coimbatore dated 13.06.2014 passed in H.M.O.P. Nos.392/2007 and 311/2007 granting divorce and dismissing the relief of restitution of conjugal rights, respectively, is confirmed and consequently, these appeals are dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

To

The Family Court,
Coimbatore

Copy To:

The Section Officer
V.R.Section, High Court,
Madras.

+2cc to Mr.H.Adaikala Arockaiaraj, Advocate, S.R.No.19790
+2cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.19802,19803

C.M.A. Nos.1445 & 1446 of 2015

AJB (CO)
SB(05/08/2021)