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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1677 of 2015
and M.P.No.1 of 2015

J.Rajathi @ Arokiarani ... Appellant/1st Respondent

Vs.

1.D.Joe Thirumavalavan ...1st Respondent
2.Selvam ...2nd Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, praying to set aside the judgment and decree dated 13.02.2015 passed by the 1st Additional District Judge, Salem in IDOP.No.237 of 2010 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.V.Kathirvelu

For Respondents : M/s.J.Antony Jesus

J U D G M E N T

The appellant herein is the wife. Against whom, her husband/1st respondent herein filed a petition under Section 10 (1) (i) 10(1) (ix) of Divorce Act, 1869 to dissolve the marriage of the petitioner and the 1st respondent, which was held on 27.11.2000 at Sacred Heart Church at Erode. She also contested the said petition. After full trial, the trial Court allowed the application by granting divorce. Aggrieved by that, the wife filed this appeal.

2. Facts reveal that the marriage between the appellant and the first respondent was held on 27.11.2000 as per Catholic Rights and Customs and they lived happily for few months at Salem Camp at Mettur and shifted the matrimonial home to Erode at the request of this appellant. They are settled at Lenin Street, Erode Town. After shifting the matrimonial home to Erode, the attitude of this appellant was changed and she has started to demand sophisticated articles to lead the luxury life and very often she was quarrelled with her husband and abused him in filthy language. She prevented her husband to look



after his aged widow mother and not allowed to give monetary support. Besides, they developed illegal intimacy with the second respondent/Selvam and they used to visit cinema theatre and other places in the absence of the petitioner. In spite of his advice, she continued her illegal activities, so he shifted the house to Salem Camp in the month of March 2004. Thereafter, quarrelled with him and went back to her parents house at Erode. He made several attempts to bring back, but she is not interested to live with him. She developed illegal intimacy with second respondent and she took her belongings and started adultery life with second respondent at Erode. The whereabouts of the appellant was not known for after seven months, thereafter, she was traced out. Notice was issued in the year 2005, but at the instigation of the second respondent, she threatened him with rowdy elements, she caused desertion, cruelty and also adultery life with the second respondent, hence he approached the Court for divorce.

3. The learned counsel for the respondent submitted her objection, she admits the marriage, but denied other allegation and she also submits that it is impossible to re-union with her husband and also prayed to allow the application. Thereafter, she filed an additional counter and she would further submit that mediation for final settlement was arranged and divorce agreement dated 23.09.2011 was executed, but the husband has not acted as per the agreement. So the wife returned the Demand Draft for a sum of Rs.1,00,000/- received towards maintenance to her husband. The husband also promised to hand over articles and jewels and she is willing to perform the terms of the divorce agreement. But she denied her illegal intimacy with second respondent and she submits that she is ready to live with her husband. The second respondent denied all the allegation levelled against him. She submits that the mother of the appellant is known to him and he participated in the mediation talk apart from that he has not developed any illegal intimacy with her. Hence, he prayed to dismiss the appeal.

4. The husband was not interested with the wife as she developed illegal relationship. However, he also contended that he requested to co-habit with him but she picked up quarrel without any reason. Though the appellant denied her illegal relationship with second respondent, but on seeing her evidence, she received notice which was addressed to 2nd respondent's residence.

5. According to the first respondent, the appellant along with the second respondent are residing in the same address, where the said notice was served. Though, she denied that she is not living with him, but the summons and notice was



served to No.23, Anna Nagar, S.P.P.Colony, Pallipalayam, Thiruchengode Taluk, Namakkal District. This fact is totally denied by the appellant stating that she went to post office and received the said notice. It is unbelievable that how she came to know about the notice, which was in the post office.

6. However, there is no evidence of the appellant to disprove all these allegations levelled against her. Even in the year 2005 itself the appellant filed complaints against her husband, which reveal that from the year 2000 there was no love and affection between them. After the marriage, they have no issues. In spite of the Panchayats, she has not preferred to live with her husband and filed divorce agreement. Though there is no direct evidence to prove the adultery but facts reveals that they are leading a life in one house as discussed above. Both facts are rightly appreciated by the trial Judge and divorce application was allowed and there is no merit in this appeal.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The 1st Additional District Judge,
Salem.

Copy to

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

C.M.A.No.1677 of 2015

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