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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON
21.01.2021	09.02.2021

CORAM:

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

CMA NO.1367 OF 2016
AND
CMP NO.10480 OF 2016

P.Kamatchi

... Appellant/Respondent

Vs.

R.Parthipan

... Respondent/Petitioner

This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act against the judgment and decree dated 23.03.2016 passed in HMOP No.2940 of 2010 by the learned Principal Family Court Judge at Chennai.

For Appellant : Mr.V.Kannadasan

For Respondent : Mr.A.Lakmi Raj Rathinam

JUDGMENT
(Judgment of the Court was made by G.CHANDRASEKHARAN.J)

This Civil Miscellaneous Appeal is filed against the order of the learned Principal Family Court Judge, Chennai in HMOP No.2940 of 2010.

2. The respondent, as the petitioner, filed HMOP No.2940 of 2010 under Section 13(1)(ia)(ib) of the Hindu Marriage Act,

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1955, for dissolution of the marriage held on 12.07.2000 between the respondent and appellant on the grounds of cruelty and desertion. A male child R.P.Rengarajan was born out of this wedlock. The appellant was a pampered child at her parental home and therefore, she behaved in an authoritative manner with the respondent and his relatives. She was not doing any household work including the cooking. She did not give any respect to respondent's mother and abused her in filthy language. Inspite of arranging a separate kitchen for the appellant, she used to abuse the respondent's mother and threatened to kill her and during 2005, she left the matrimonial home and stayed with her parents for nine months. Therefore, the respondent issued legal notice on 10.11.2005, in reply thereto, the appellant sent a response expressing apology for her acts, but she did not keep up her promise. The respondent starting cooking for himself alone, thus deserted the respondent from 30.05.2005. The respondent sent a legal notice dated 10.06.2005 and 11.06.2007 for restitution of conjugal rights, but the appellant did not come to live with him. Therefore, this petition was filed for divorce.

3. This case of the respondent is refuted by the appellant on the ground that it was the respondent and his parents, who insulted and abused the appellant and her family members. In fact, the appellant was doing all the household works including cooking. The respondent and his family members were torturing the appellant and they did not provide her food. Appellant was taking care of her son. Due to the violent behaviour by the respondent, their son was mentally affected. During September 2004, the respondent had severely beaten up the appellant and drove her from matrimonial home. She sent a reply to the respondent asking him to take her back to the matrimonial home as she was willing to join with the respondent. Accordingly, prayed for dismissal of the petition for divorce.

4. During the enquiry, respondent was examined as PW.1 and the appellant was examined as RW.1. Exs.P1 to P8 and Exs.R1 and R2 were marked. Considering the oral and documentary evidence, the learned Family Court Judge allowed the petition and granted divorce under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, by dissolving the marriage between the appellant and respondent. Against this order, this Civil Miscellaneous Appeal is filed.

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5. The learned counsel for the appellant submitted that the order impugned was passed without properly considering the evidence. The findings reached by the learned Family Court Judge is against the evidence available in this case. The findings that the respondent had been living separately for more than 10 years is not a ground for granting divorce. The appellant was always ready and willing to live with the respondent. Though the respondent issued notice seeking restitution of conjugal rights, he had not filed a petition for restitution of conjugal rights, but filed a petition for divorce on false and unfounded grounds. The grounds of cruelty and desertion have not been proved by acceptable evidence. On the other hand, it is proved from the evidence of respondent that the respondent had alone caused cruelty against the appellant by physically assaulting and abusing her. Therefore, the learned counsel for the appellant prayed for setting aside the order of the learned Family Court Judge and dismissal of the divorce petition.

6. Per contra, the learned counsel appearing for the respondent stated that the respondent proved, by oral and documentary evidence, about the acts of cruelty and desertion and therefore, the learned trial Judge rightly allowed the petition and granted divorce. Therefore, he prayed for dismissal of this Appeal by confirming the order of the learned trial Judge.

7. Point for consideration in this Appeal is whether the order of the learned trial Judge granting divorce to the respondent on the grounds of cruelty and desertion is correct ?

8. We have seen that the respondent filed this divorce petition on the grounds of cruelty and desertion. The main allegation is that the appellant was a pampered child in her house and therefore, she treated the respondent and his family members without showing any respect and with contempt. She not only abused the respondent, but also abused his mother and also threatened to kill his mother. When questioned, she left the matrimonial home. Before filing this divorce petition, the respondent had given a notice to the appellant alleging ill-treatment at her hands, desertion and asked her to join him, else petition will be filed for restitution of conjugal rights. This notice was marked as Ex.P4. The appellant sent Ex.P5-reply

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dated 28.04.2006 alleging that she had committed some mistakes due to ignorance and she prayed pardon and expressed her willingness to live with him. Again the respondent sent Ex.P6-notice dated 11.06.2007 reiterating the alleged acts of cruelty and desertion and requested her to join him for matrimonial life. The appellant sent Ex.P7-reply dated 02.07.2007 denying the allegations made in Ex.P6-notice and expressed her willingness to join with the respondent for matrimonial life. It is seen from Exs.P4 and P6 that the respondent had only requested the appellant to join him in matrimonial life, else he would initiate proceedings for restitution of conjugal rights. Through Exs.P5 and P7, the appellant expressed her willingness to join him in matrimonial life. However, it appears that the parties are living separately from 2005. The respondent instead of filing a petition for restitution of conjugal rights, filed a petition for divorce. He has not given any proper explanation as to why he has not filed a petition for restitution of conjugal rights, but filed a petition for divorce.

9. Though it was the case of the respondent that the appellant was ill-treating him, his mother, she was not cooking, she had deserted him, his evidence showed otherwise. It is seen from his evidence that the appellant used to bring tea while he was working in the xerox shop. The appellant used to clean the utensils and cook at home. When a suggestion was made to him that the appellant was not performing the duty of a good wife, he surprisingly denied this suggestion meaning that the appellant was performing the duty of a good wife. He admitted that the appellant was living with him in the joint family for five years and she also used to go to her parents home. The appellant specifically alleged that the respondent was physically assaulting and abusing her. He stated that he did not remember how many times he took the appellant to hospital. When a suggestion was put to him that he had beaten the appellant till she lost her consciousness and his father took her to hospital, instead of denying this suggestion, he answered that he did not know. He admitted that she delivered a pre-matured baby at nine months because of his beating her. It is his admission that the dispute between him and the appellant started from the first day of marriage and when he informed his father that he did not prefer black complexioned woman as his wife. It is his evidence that his junior paternal uncle and aunt had beaten the appellant. The appellant had taken steps to

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unite with him by submitting a petition to the panchayat President. He admitted that he had not taken any steps to resume cohabitation with the appellant. Thus, it is clear from his evidence that though he has not proved the alleged acts of cruelty by the appellant on him, it is clear that he and his family members physically assaulted the appellant, particularly the respondent had beaten the appellant to an extent, that resulted in giving birth to a pre-matured baby. It is also proved from his evidence that the appellant had taken steps to resume matrimonial relationship with him and she is even now ready to live with the respondent.

10. When the evidence is not in favour of granting divorce, it is seen from the order of the learned trial Judge that she has just narrated the case advanced by both the parties and granted divorce on the sole ground that the appellant and respondent were living separately for more than 10 years. This finding, in the considered view of this Court, is against the evidence available in this case. The evidence available in this case clearly proves that the respondent had alone committed cruelty on the appellant and the appellant was always ready to unite with the respondent. Though the respondent had sent notices informing that he would initiate proceedings for restitution of conjugal rights, instead of filing petition for restitution of conjugal rights, he filed petition for divorce on the grounds of cruelty and desertion, which is not supported by any acceptable evidence. Therefore, this Court is of the considered view that the order of the learned Judge has to be necessarily set aside and accordingly, set aside and the petition in HMOP No.2940 of 2010 filed for divorce under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 is dismissed and this Appeal is allowed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

The Principal Judge,
Family Court, Chennai.

+1cc to Mr.V.Kannadasan, Advocate, S.R.No.7749

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and
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