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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.251 OF 2015

M.P.NO.1 OF 2015

P.T.Ruben

...Appellant

Vs.

P.Amudharani

...Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869, praying to set aside the fair and decretal order dated 09.10.2012 made in IDOP.No.62 of 2009, on the file of the Principal District Judge, Thiruvallur and allow the appeal with costs.

For Appellant : Mr.P.G.Thiyagu

For Respondent : No Appearance

J U D G M E N T

The appellant herein is the petitioner in IDOP.No.62 of 2009 filed by him against the respondent/wife herein, praying to pass an judgment and decree dissolving the marriage solemnized between them on 23.11.2006 and the same also contested by the respondent. The petition was dismissed by the Principal District Judge, Tiruvallur. Aggrieved by that he preferred this Civil Miscellaneous Appeal.

2. Points for consideration:

(i) Whether the trial Judge failed to appreciate the facts of the case with regard to the cruelty and desertion caused by the respondent/wife?;

(ii) Whether the trial Court failed to observe the fact that from 07.05.2007 onwards, the wife/respondent voluntarily deserted the appellant without any reason?;

3. The facts reveal that the petitioner and respondent married on 23.11.2006, as per the Christian rights and customs. The petitioner is a widower having three children at the time of marriage and the respondent is a divorcee and has no issues. Out of the wedlock a female child viz., Swetha was born on



13.07.2007. The respondent got employment as a Village Health Nurse and posted at Thathur Village in Coimbatore District. Thereafter, her attitude was totally changed and she has told the petitioner that she will not take care of the children born to the petitioner through his first wife. She told that if he wants to live with the respondent he should abandon the children and he has to live with her at Coimbatore only. Thereafter, the respondent not interested to continue the marital relationship with this appellant. Hence, she failed to discharge her matrimonial obligations which caused both mental agony to him from the year 2007 onwards she voluntarily left the matrimonial home caused the desertion without any reason. But according to the respondent she accepted the re-marriage and got a female child, after that she got appointment as a Village Health Nurse, the appellant assured that he would get transfer to Thiruvallur District, but has not taken any steps. On the other hand, he was very much interested in her salary, but, she maintained herself and the child with the help of income, because the appellant failed to maintain her. As, he has not given money to her misunderstanding arose between them.

4. On hearing both sides, the trial Court concluded that the wife is ready to live with the appellant always and due to her employment, she was stayed in Coimbatore. Hence, the petition was dismissed. Aggrieved by that, the appeal is preferred.

5. The learned counsel for the appellant submitted that from the year 2007 onwards, she left the matrimonial home and she refused to come and live with him. Even, during the holidays, the appellant is living separately. But, this fact has not been appreciated by the trial Judge and erroneously dismissed the petition. It is true that in the year 2007, she got appointment and settled at Coimbatore and the child was also born to them in the year 2007. This fact is admitted by both the parties. According to the husband, after employment she deserted him voluntarily and left the matrimonial home. Even assuming that she went there due to employment, all these years from 2007, both are living separately and the female child born to them is under the care of this respondent/wife but both parties are not interested to shift their residence.

6. As per the contention of the respondent, the husband is interested for her salary and not the welfare of the wife and child. On the other hand, the appellant submits that she is not interested to take care of the children born through the first wife. In the normal course of life no one interested to look after the children born to the first wife. So, it caused mental agony to the appellant and this fact was rightly appreciated by the trial Judge. Moreover, from the year 2007 onwards, the respondent along with her minor daughter living at



Coimbatore District, where she employed. Though she expressed her willingness to live with her husband, she has not taken any steps for re-union. So the respondent sufficiently proved that really she is not interested to live with her husband which itself is sufficient to conclude that she failed to discharge her matrimonial obligations which also would caused cruelty. Thereafter she is living separately with her minor child and not taken any steps to re-union with the appellant. From these circumstances, the appellant established the cruelty and desertion caused by her and without appreciating all these facts, the trial Judge erroneously dismissed the Original Petition. Accordingly, the divorce original petition filed by the appellant/husband is allowed by dissolving the marriage solemnized between the appellant and respondent. The substantial questions of law are answered.

7. This Civil Miscellaneous Petition is allowed. The order passed in IDOP.No.62 of 2009 is set aside. The divorce granted by dissolving the marriage solemnized between the appellant and the respondent dated 23.11.2006 and there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Principle District Judge,
Thiruvallur.

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

+1cc to Mr.P.G.Thiyagu, Advocate SR.No.21674

C.M.A.No.251 of 2015

AK-II(CO)
RVM(01/11/2021)