



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.Nos.30 & 31 of 2011

V.Gomathi Lakshmi ..Appellant in both Appeals
Vs.
S.S.Venkatasubramanian ..Respondent in both Appeals

Common Prayer : Civil Miscellaneous Second Appeal filed under Section 28 (1) of Hindu Marriage Act, 1955 read with Section 100 of C.P.C., against the judgment and decree dated 08.03.2011 passed in C.M.A.Nos.18 & 27 of 2007 on the file of the District Judge, Nagapattinam reversing the order and decree of the Trial Court dated 20.11.2006 in H.M.O.P.Nos.47 of 2006 & 20 of 2005 on the file of Principle Subordinate Judge, Mayiladuthurai.

For Appellant : Mr.J.R.K.Bhavanantham

For Respondent : Mrs.Ahila.R.S
for M/s.Sudha Ramalingam

COMMON JUDGMENT

The common judgement and decree dated 08.03.2011 passed in C.M.A.Nos.18 and 27 of 2007 reversing the judgement and decree passed by the Trial Court dated 20.11.2006 passed in H.M.O.P.Nos.20 of 2005 and 47 of 2006 is under challenge in the present Civil Miscellaneous Second Appeals.

2.The appeal before this court is filed by the wife and the marriage between the appellant and the respondent was solemnized on 06.12.2000 as per Hindu Rights and Customs. The appellant and the respondent started their matrimonial life happily and they lived together for about six months, thereafter they left the matrimonial life and started living separately, on account of certain difference of opinions and disputes. They continued to live separately for about four years and the appellant/wife filed H.M.O.P.No.20 of 2005 for restitution of conjugal rights. Thereafter, the respondent/husband filed H.M.O.P.No.47 of 2006 for dissolution of marriage. Both the petitions were contested by the respective parties and the Trial Court adjudicated the issues with reference to the documents and evidences filed by the parties to the litigation.

3.The Trial Court made a categorical finding that six months



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after the marriage, both the husband and wife were living happily thereafter, there was a dispute between the spouses and as per the deposition of the respondent/husband there was an allegation that family of the wife had stated a false information regarding the Educational qualification of the wife, so also the age of the wife. The Trial Court disbelieved the statement of the husband that there was no cohabitation between the spouses. The Trial Court arrived a finding that both the husband and wife lived separately and thereafter, no evidence to establish that they lived together. Disbelieving the statement of the husband that there was no cohabitation at all between the husband and wife, the Trial Court dismissed the petition for divorce and allowed the petition for Restitution of conjugal rights.

4.Challenging the common judgement and decree of the Trial Court, the husband preferred C.M.A.Nos.18 and 27 of 2007. The First Appellate Court considered the issues with reference to the documents and evidences as well as based on findings of the Trial Court. The findings of the First Appellate Court reveals that "however the fact remains that after six months of the marriage a dispute arose between parties and from that day onwards there were serious misunderstanding, as a result, the respondent/wife permanently left the matrimonial home which fact has been clearly established in evidence".

5.The First Appellate Court made an observation that the contention of the husband is that during the marriage it was represented to him that the wife was qualified in B.Sc., Degree Mathematics and also pursuing B.B.A Degree, was found to be false. Therefore, the husband was of an opinion that he was cheated by the wife and her family members by providing false information regarding educational qualifications of his wife.

6.With reference to the evidence, PW2 about informing real facts to the husband clearly shows that the facts regarding educational qualifications was suppressed at the time of the marriage. The admission of PW2 after knowing these aspects by the husband reveals that the parents of the wife had given false information regarding educational qualifications as well as the correct age. In this regard, the first Appellate Court made a finding "it is to be noted that the expectation of the husband who is highly qualified and he wanted to help the wife by pursuing education and also take her to some achievement in academics cannot be faulted at all. The mutual trust originally he had at the time of marriage has been broken by suppression by the parents."

7.The First Appellate Court had not stopped with that point, contrarily, the First Appellate Court found the opinion that mere suppression of these facts cannot be a ground to infer the mere cruelty. Thus, the First Appellate Court has not merely depends on the suppression of fact by the wife and her family



members with reference to educational qualifications and age.

8. The First Appellate Court gone into the other allegations and made an assessment that "in the marriage life what has been transpired between the husband and wife in their relations there cannot be any direct evidence. Thus, the same is to be inferred from the circumstances and pleadings and evidence. The evidences of both the parties and their pleadings plays a vital role. The fact reveals that the wife used go to her parents house frequently and after such misunderstanding there was no co-operation between the parties for cohabitation. These facts were gathered by the First Appellate Court based on the pleadings and evidences of the parties itself". The First Appellate Court arrived a finding that the husband and wife lived happily for six months and thereafter, due to the misunderstanding that the wife went on going to her parents house frequently, there was no occasion for cohabitation between the parties. With regard to the restitution of conjugal rights is also not been seriously denied by the wife. Even before leaving matrimonial home permanently by the wife, the evidence of facts reveals that the wife frequently left the husband on many occasions which created a gap between the spouses and based on these factors, the allegation regarding the non-cohabitation was also established before the First Appellate Court.

9. Another eternal incident between the appellant and respondent was also considered by the First Appellate Court. When the respondent/husband refused to allow the wife to enter into his house, they went to the office in which the husband was working and there was a quarrel between the father of the wife and the husband and it created issues between the parties. The Police complaint was also lodged and these aspects were not in dispute. Thereafter, there was no scope for resumption of matrimonial home and all along the appellant and respondent are living separately for about 16 years. Under these circumstances, the First Appellate Court arrived a finding that on the conduct of the wife, leaving matrimonial home frequently and refusal of cohabitation is nothing but cruelty. Those two circumstances were considered by the First Appellate Court. Frequent absence of the wife in a matrimonial home which resulted denial of cohabitation were considered by the First Appellate Court for arriving a conclusion that husband established cruelty and therefore, he is entitled for a decree of divorce. The continuous refusal of cohabitation to the husband is also a cruelty.

10. This Court is of the considered opinion that refusal of cohabitation for a continuous period, more specifically, in the present case for years together certainly amounts cruelty and therefore, grant of dissolution of marriage is based on the evidence and documents established and there is no infirmity or perversity as such.



11.The parties are present before this court while the appeal is being heard. The attempt made by this court to conciliate also failed. The respective learned counsels appearing for the parties also made an attempt that also failed and both the parties are not willing for presumption of matrimonial home. Under these circumstances, the marriage become irretrievable breakdown and the efforts taken by the Courts as well as the learned counsels also went in vain. Apart from this, the finding of the First Appellate Court are candid and convincing and this Court do not find any perversity as far as the question of law is concerned.

12.The substantial questions of law raised are relatable to the circumstances with the First Appellate Court as considered the facts and circumstances in entirety and made a considered finding which seems to be appropriate in the facts and circumstances of the case. This Court do not find any sustainable substantial question of law which deserves any further adjudication in this second appeal.

13.This being the factum, the judgement and decree dated 08.03.2011 passed in C.M.A.Nos.18 & 27 of 2007 reversing the judgement and decree dated 20.11.2006 passed in H.M.O.P.Nos.20 of 2005 and 47 of 2006 stands confirmed. Consequently, C.M.S.A.Nos.30 and 31 of 2011 are dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1. The District Judge, Nagapattinam.

2. The Principle Subordinate Judge, Mayiladuthurai.

+4cc to M/s.Sudha Ramalingam, Advocate, S.R.No.7670&7671

+2cc to M/s.P.B.Ramanujam, Advocate, S.R.No.7637&7638

C.M.S.A.Nos.30 & 31 of 2011

RGN(CO)
RGA(25/11/2021) (14/12/2021)