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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.02.2021

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.2801 and 2802 of 2013

Pavul Joseph .. Appellant in both CMAs/Petitioner

Vs.

Arul Mary .. Respondent in both CMAs/Respondent

PRAYER in CMA.No.2801 of 2013 : Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act , against the fair and decretal order of District Court, Nagapattinam, dated 18.04.2011 made in DOP.No.3 of 2009.

PRAYER in CMA.No.2802 of 2013 : Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act , against the fair and decretal order of District Court, Nagapattinam, dated 18.04.2011 made in MOP.No.19 of 2009.

For Appellant
in both CMAs : Mr.S.Sounthar

For Respondents :Mr.S.Kaithamalai Kumaran
in both CMAs

C O M M O N J U D G M E N T

The appellant in both Appeals are husband, who filed H.M.O.P.No.3 of 2009 for divorce against the respondent herein. He is the respondent in M.O.P.No.19 of 2009 filed by his wife for restitution of conjugal rights. Since both parties are same in the petitions, both cases were tried together and common order was passed. Accordingly, the divorce petition filed by the husband was dismissed and the restitution of conjugal right petition filed by the wife was allowed. Aggrieved by that order, the husband/appellant preferred these appeals. The wife/respondent contested both appeals.

2. The facts of the case are as follows:

The marriage between the appellant and the respondent was solemnized on 19.06.2005 as per the Christian rites. After



marriage, both husband and wife were living together in the appellant's house. It is admitted fact that both were teachers by profession. Immediately, within two months from the date of the marriage, according to the appellant, his wife left the matrimonial home without any reason and also she had lodged a dowry complaint against the appellant and his family members. During that time, the respondent was pregnant and she gave a birth to child in the year 2006. But she gave a false complaint before the police station with the allegation of cruelty, and inspite of his best efforts, she refused to live with him and left the matrimonial home with an intention to cause desertion and therefore, he approached the Court for divorce.

3. The respondent admits the marriage and her employment but she denied other allegation levelled against her by her husband. She submits that due to the ill-treatment by her in-laws and out of cruelty, she was forced to leave the matrimonial home, but she was always intended for reunion, for that purpose only she gave a complaint before the police, but her husband refused to live with her on the ill-advice of her in-laws, besides, he has not seen her child. More over, even before the Panchayatdars, her husband refused for reunion and willing for separation for which she is not interested, so she prayed for restitution of conjugal rights.

4. At the time of trial, the husband was examined as PW.1 and the wife was examined as RW.1 and the Panchayatdars were examined as RW.2 and RW.3.

5. Considering the oral and documentary evidence, the trial Court dismissed the divorce petition filed by the husband and decreed the restitution of conjugal rights petition filed by the wife.

6. Aggrieved by that, the appellant/husband prayed to set aside the order passed by the trial Judge by filing this appeal.

Point for consideration:

Whether the trial Judge failed to appreciate the oral and documentary evidence adduced on the side of the appellant and dismissed the divorce petition and erroneously concluded the conduct of the respondent that she is always intended for reunion.

7. From the facts, it reveals that within two months from the date of marriage, the husband and wife were separated in the year 2005. At the time, she was conceived and she gave birth to the child in the year 2006. Thereafter, till date, she is living separately along with her child. The appellant/husband



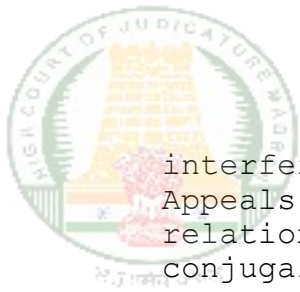
contended that she gave a false complaint against him and his family members. But, the learned trial Judge pointed out that there is no material evidence on the side of the appellant to establish that she gave a false complaint against her husband. As per the evidence of the wife/RW.1, she gave complaint to the police only for reunion. After the birth to the child in the year 2006, the Panchayat was held at the request of the wife before the Velankanni Madha Church. The panchayatdars were examined as RW.2 and RW.3. This fact not been denied by the appellant that in that panchayat, the husband agreed to return back the articles but not interested for reunion with his wife. The relevant portion of (PW.1-cross examination) reads as follows:

"வேளாங்கண்ணி பங்கு தந்தை முன்னிலையில் பஞ்சாயத்து நடத்தினார்கள். அவர் குடும்பம் நடத்த சொன்னார். ஆனால் நான் குடும்பம் நடத்தவில்லை.

So in the said panchayat also, the panchayatdars insisted the appellant to live with his wife but he refused. With the help of the RW.2 and RW.3, the wife is able to establish that she always also intended for re-union and she has no intention to cause desertion.

8. At the time of the arguments, the learned counsel for the appellant submits that from the year 2005 to till date, they were separated and there is no possibility of reunion and prayed for dissolution of marriage. It is true that from the year 2005, the husband and wife were separated and the wife always intended for live with her husband along with her child, but the conduct of the appellant reveals that he always insisted for divorce and not interested to live with his wife. Separation for a period more than 15 years was caused due to the non-cooperation of the husband, on the other hand, the wife is ready for reunion all these years. Furthermore, she left the matrimonial home nor with intention to cause desertion, but the facts of the case reveals that due to the ill-treatment made by her in-laws, she left the matrimonial home. However, she took all efforts for reunion all these years. Therefore, the appellant is not entitled to take advantage of the long separation between himself and his wife nor it is a ground for divorce.

9. Considering these facts, the trial Court rightly allowed the petition for restitution of conjugal rights filed by the respondent which calls no interference by this Court. The appellant failed to establish that his wife/respondent voluntarily left the matrimonial home with intent of cause desertion. Therefore, the trial Court rightly dismissed the divorce petition filed by this appellant which warrants no



interference by this Court. Hence, both Civil Miscellaneous Appeals are dismissed as no merits. Considering the relationship between the parties. Time for restitution of conjugal rights three months. There is no order as to costs.

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Sd/-
Assistant Registrar(Spl.Cell CJ Conf)

//True copy//

Sub Assistant Registrar

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To

1. The District Court, Nagapattinam

2. The Section Officer,
VR Section, High Court, Madras-104

+2ccs to Mr.S.Sounthar, Advocate SR.No.6736, 6737

+2ccs to Mr.S.Kaithamalai Kumaran, Advocate SR.No.6132, 6133

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NRL(CO)
GMY(06/09/2021)