



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

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

C.M.S.A.No.3 of 2013

P.R.Vimala

..Appellant/Respondent

Vs.

K.Annadurai

..Respondent/Appellant

Prayer : Civil Miscellaneous Second Appeal filed under Order XLIVII & Order XLIVIII of C.P.C. read with Order IV Rule 16 of A.S.Rules against the Fair and Executable Order dated 03.10.2012 passed in H.M. C.M.A.No.16 of 2012 on the file of the First Additional District Judge, Vellore, thereby setting aside the fair and executable order and decree dated 18.07.2011 made in H.M.O.P.No.56 of 2008 on the file of the Subordinate Judge, Ranipet.

For Appellant : Mr.T.Srinivasaraghavan

For Respondent : Mr.K.Thiruvengadam

J U D G M E N T

The present Civil Miscellaneous Second Appeal on hand is preferred against the judgment and decree dated 03.10.2012 passed in H.M. C.M.A. No.16 of 2012 reversing the judgment and decree of the Trial Court dated 18.07.2011 passed in H.M.O.P.No.56 of 2008. The respondent filed a petition in H.M.O.P.No.56 of 2008 with the prayer for dissolution of marriage. The marriage between the appellant and respondent was solemnized on 17.02.2002 as per the Hindu Rights and Customs. In view of the fact that there was lack of understanding between the spouses, they picked up frequent quarrels, which resulted separation of matrimonial life. The respondent/husband filed an application for divorce. The said petition was dismissed by the Subordinate Court, Ranipet, Vellore District. Challenging the said judgment and decree, the respondent/husband preferred an appeal in H.M. C.M.A.No.16 of 2011. The First Appellate Court adjudicated the issues and reverses the judgment of Trial Court and granted decree of dissolution of marriage. Thus, the appellant is constrained to move the present Civil Miscellaneous Second Appeal.

2.The substantial questions of law raised in the appeal are as follows:



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District for 6 years i.e., from 2002 to 2006. When they were residing at Pongalur, Coimbatore District, they came to Vannivedu Village to attend a marriage function at Walajah and after the marriage, the respondent picked up quarrel with the appellant. It is the case of the appellant that he asked the respondent to stay at Vannivedu Village and refused to take her to Pongalur whereas the respondent insisted the appellant to take her and the kids with him to Pongalur. On the same day, there arose another problem regarding the property situated at Vannivedu Village which stands in the name of the respondent's grandparents. R.W.2 Kannagi, the mother of the respondent said that the appellant had beaten her daughter mercilessly in the presence of her family members and refused to take her with him and hence she had taken her daughter and the children along with her to K.G.F., Karnataka State. In the chief examination, the appellant had stated that the respondent had left the matrimonial house without any reasonable cause. In spite of best efforts, she did not return. P.W.2 had also stated that the respondent's father assaulted the appellant on 10.02.2008 and abused him in a filthy language and criminally intimidated him as to do away with him. P.W.3, the sister of P.W.1 also had stated in the chief examination that the respondent was assaulted by the appellant in the quarrel which took place on 10.02.2008. She had also stated that panchayats were convened for the re-union, but their efforts went futile. So, the quarrels took place between the appellant and the respondent are not the petty quarrels which can be condoned and forgiven by either parties. It is worth mentioning here that the respondent in the cross examination had stated that she had married the appellant only on the ground that the appellant is her close relative. Hence, the frequent quarrels took place between them. Hence, I hold the above evidence is sufficient to hold that the respondent caused mental cruelty to the appellant. For the above aspect, I am relying the judgment reported in AIR 1999 SC 1318 = 1999 DMC 628 SC.

11.The appellant made allegations in his petition and gave evidence as PW.1 and also PW.2 and 3 have cogently spoken about the quarrels and corroborated the evidence of PW.1. It is not necessary to prove the case of the appellant beyond the shadow of doubt as it was done in the criminal cases. In a civil case like this that too in the personal relationship between the husband and wife, the concept of proof beyond the shadow of doubt cannot be applied which is held in



Naveen Kholi vs Neely Kholi reported in 2006(4) SCC 588. In the case on hand also the cruelty spoken by the appellant is sufficient to hold that the respondent had caused mental cruelty which is also spoken and corroborated by PW.2 and 3. When the appellant had come forward with definite plea of desertion that too admittedly from the year 2008 the duty is casted upon the respondent to come forward with justifiable explanation for leaving the company of the husband. There is no material to show that she had justifiable cause for leaving the company of the husband. Leaving the company of the husband without any justifiable cause will amount to cruelty. The cumulative effect of the evidence on record would show the respondent never intended to live with her husband. Irretrievable break down of marriage is not so far made as a ground for divorce. But the reasons stated above in my considered view that the appellant had made out the case for dissolution of marriage on the ground of mental cruelty. The learned Subordinate Judge, Ranipet in H.M.O.P.No.56/2008, dated 18.07.2011."

6.This Court is of the considered opinion that the evidences as considered by the First Appellate Court in the earlier paragraphs would be enough to understand that there was some deep-rooted allegations, which resulted separation of matrimonial home between the wife and husband. Cruelty may differ from person to person. The allegations of cruelty are wider in nature. Thus, the allegations of cruelty are to be decided based on the particular facts and circumstances and there cannot be any definite theory for establishing the grounds of cruelty.

7.In a matrimonial relationship, emotions, feelings, behaviour, conduct, way of life, everything counts and any indifferences in any of these aspects may constitute cruelty, as far as either of the spouse is concerned. Those facts and circumstances of each case are to be looked into for the purpose of ascertaining the allegations of cruelty and there cannot be any definite principle, so as to arrive at a conclusion for the allegations of cruelty, as established in the present case.

8.On plain reading of the evidence which was considered by the First Appellate Court in Paragraph Nos.10 & 11 would reveal that it is sufficient to grant decree of divorce. Thus, such allegations are disputed in the present second appeal. This Court cannot look into those aspects which would already considered by the First Appellate Court and Trial Court. Based on the very same evidence, the First Appellate Court considered and granted dissolution of marriage. Whatever it may be, the



question arises now at this length of time is such allegation raised can be considered or not?

9.This Court is of the considered opinion that the appellant and the respondent are living separately for more than 12 years and at this length of time, it is not preferable to reconsider the factual aspects in the present Civil Miscellaneous Second Appeal. The marriage become irretrievable breakdown and there is no possibility of reunion and on this circumstance, it would be better to confirm the judgment and decree passed by the First Appellate Court.

10.This apart, the appeal has raised unacceptable substantial questions of law, so as to consider other factual aspects, in view of the fact that there is no substantial question of law raised. This Court is not inclined to go further with reference to the findings already considered in the afore mentioned paragraphs.

11.Accordingly, the judgment and decree dated 03.10.2012 passed in H.M. C.M.A.No 16 of 2012 reversing the judgment and decree dated 18.07.2011 passed in H.M.O.P.No.56 of 2008 stands confirmed. Consequently, C.M.S.A.No.3 of 2013 is dismissed. No costs.

s/d-
Assistant Registrar(AD-IV)

True Copy

Sub-Assistant Registrar

Pns

To

1. The First Additional District Judge, Vellore.

2. The Subordinate Judge, Ranipet.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.S. Suresh, Advocate sr 6751.

C.M.S.A.No.3 of 2013

NMI (CO)

SP(06/09/2021)