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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No. 37 of 2013

Sarathi Semman

..Appellant/Petitioner

Vs

Anitha

..Respondent/Respondent

Prayer : Appeal filed under Section 28(1) of the Hindu Marriage Act read with Section 100 of CPC against the judgment and decree dated 08.01.2013 made in H.M.C.M.A.No.1 of 2010 on the file of the III Additional District Court, Vellore at Tirupattur (HMCMA No.9 of 2007 on the file of the Principal District Court, Vellore), reversal of the judgment and decree dated 27.03.2007 made in H.M.O.P.No. 32 of 2003 on the file of Sub-Court, Tirupattur.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.T.L.Thirumalaisamy

JUDGMENT

The judgment and decree dated 08.01.2013 passed in H.M.C.M.A.No. 1 of 2010, reversing the judgment and decree dated 27.03.2007 passed in H.M.O.P.No. 32 of 2003, is under challenge in the present civil miscellaneous second appeal.

2. The substantial questions of law raised by the appellant are as under:

"a) Whether the First Appellate Court has committed an error in dismissing the petition for divorce on the ground of cruelty by treating them as an ideal husband and ideal wife instead



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of considering the social status of the parties, their ways of life, relationship, temperament and emotions that they have been conditioned by their social status?

b) Whether the First Appellate Court is right in dismissing the divorce petition particularly when the parties have been living separately for the past 12 years and their marriage has been broken down irretrievably?

c) Whether act complained of by the appellant would amount to mental cruelty when the feeling deep anguish, disappointment and frustration has rendered the marriage life as a misery to him?

d) Whether the judgment of the First Appellate Court is in compliance with the mandatory provisions of Order 41 Rule 31 CPC?"

3. The marriage between the appellant and the respondent was solemnized on 06.07.1998 at Vaniambadi as per the Hindu rites and customs. The appellant, during the relevant point of time, was working as a Computer Science Engineer at Singapore. After marriage, the appellant and the respondent were living together and the marriage was also consummated. It is stated that the respondent/wife came from a highly affluent family and not well acquainted with domestic chores and thoroughly unfamiliar with cooking. The petitioner states that he being from a humble background and timid, kind disposition learnt to live with her apart from the domestic chores in spite of his pressure in the work. The respondent fell ill frequently and on investigation it was found to the shock and dismay of the appellant that the respondent was suffering from a tumor in her right breast and she was brought back to India and treated at Vellore C.M.C. Hospital. The respondent did not intimate the in-laws regarding the process of treatment being taken. She was at Vaniambadi for over eight months and under those circumstances, the appellant has taken a decision to file a petition for divorce. However, by the end of 1999, the respondent/wife was diagnosed to have pulmonary tuberculosis and was repeatedly complained of illness. Again she was brought back to India to undergo treatment at C.M.C Hospital, Vellore where she had to stay at Vaniambadi in her parent's house for a longer duration, during which time also, she never visited the house of the appellant at Natrampalli. Finally, the appellant



arrive at a conclusion that the marriage became irretrievably broken down and filed a petition for dissolution of marriage.

4. The case was contested by the respondent/wife. The trial Court granted the decree of divorce on the ground that the respondent never visited the house of her husband at any point of time. The respondent/wife did not attend the funeral of her father-in-law. The respondent was suffering from various ailments and continuously taking treatment between 1998 and 2002. The respondent is medically unfit for procreation even through IVF. There was no conjugal relationship between the parties as on the date of filing of the petition and the marriage between them is unworkable. The respondent has caused serious emotional and sentimental stress in the mind of her husband and made allegation against the appellant as if he intended to marry a widow with her daughter aged 18 years. The respondent has tried to demoralize the character of the appellant/husband. Considering all these grounds, the trial Court granted dissolution of marriage.

5. The respondent/wife preferred appeal before the trial Court, Vellore, which was subsequently transferred to III Additional District Court, Vellore at Tirupattur. The First Appellate Court adjudicated the issues based on the findings of the trial Court and allowed the appeal by setting aside the judgment and decree passed by the trial Court.

6. Learned counsel appearing on behalf of the appellant mainly contended that the marriage became irretrievably broken down as the spouses are living separately for about twenty years. Further, the appellant got re-married during the year 2008. After granting of the decree of divorce by the trial Court and before receiving the information, an appeal was filed by the respondent/wife. Now, the appellant is living with his wife and, therefore, it may not be possible for any reunion at all.

7. Learned counsel appearing on behalf of the appellant further contended that the appeal filed by the respondent/wife was allowed on the ground that the appellant could not take the respondent/wife to attend the funeral ceremony of his father. The appellant and the respondent lived together till 2002. Therefore, it cannot be stated that there was no matrimonial relationship. The appellant got remarried even without awaiting for the disposal of the appeal filed by the respondent. The grounds



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relied upon by the First Appellate Court are unsustainable in view of the fact that when the respondent had no intention to attend the funeral function of the father-in-law and further taking treatment for serious disease of cancer and pulmonary tuberculosis, there is no reason to consider the said ground to reject the contentions of the appellant/husband. Further, the finding of the First Appellate Court is that the appellant and the respondent lived together till 2002 is immaterial in view of the fact that the respondent was living separately from the year 2000 onwards. This apart, soon after the marriage, the respondent frequently fell ill and subsequently diagnosed to serious disease, which resulted in continuous treatment for the respondent/wife. This apart, the respondent/wife is not fit to give birth to a child and therefore the First Appellate Court has committed an error in considering the said ground raised by the respondent/wife.

8. Regarding remarriage, the decree of divorce was granted by the trial Court and the re-marriage was solemnized even before the receipt of notice on the first appeal. Therefore, there is no impediment for solemnization of re-marriage and the said ground taken by the First Appellate Court is untenable. The right of the appellant for re-marriage after getting the decree of divorce cannot be restricted or denied.

9. Learned counsel appearing on behalf of the respondent objected the said contention by citing that both the appellant and the respondent started their matrimonial home happily. They were living together for about one year at Singapore and there was no complaint about the respondent by the appellant/husband. This being the fact situation, the illness cannot be a ground to make the claim that she is not fit for the matrimonial life. Such a serious allegation raised by the husband is untenable in view of the fact that the respondent had taken treatment and even thereafter she met the husband and made a request for reunion. Instead of accepting the proposal of reunion, the appellant/husband has filed a petition for divorce and, therefore, his intention was otherwise and thus the finding of the First Appellate Court is in consonance with law and there is no perversity as such. Thus, the appeal will have to be dismissed.

10. This Court is of the considered opinion that the



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admitted fact is that the spouses are living separately for twenty years. Undoubtedly, the marriage became irretrievably broken down. The marriage was solemnized on 06.07.1998. Though the matrimonial life started between the appellant and the respondent at Singapore, the respondent was continuously not well and subsequently taking treatment for the diseases cancer and pulmonary tuberculosis. Thus, she had to take treatment continuously by staying in her parents house at Vaniyambadi. One could understand the minds of young married couple. If the young married couple within a short span of period diagnosed with serious diseases, they will get agitated and then they will find an alternative solution for this. In the present case, one year after the marriage, the serious disease was diagnosed and further the husband came to know that the respondent/wife is not capable of giving birth to a child. This being the fact circumstances established, it was not repudiated by the respondent/wife and the Court can come to a reasonable conclusion that the mind of the spouses would be frustrated and the continuance of matrimonial home would become difficult. Under those circumstances, one cannot find fault with the husband or wife in either way for the purpose of seeking dissolution of marriage. Undoubtedly, every husband is duty bound to take care of her wife or vice versa. However, certain serious circumstances, if arisen, soon after the marriage, either of the spouses will get frustrated and, therefore, the decision taken by the husband is to be construed as an act of a normal man and cannot be seen in isolation. This being the factum, though the husband in the present case is duty bound to take care of the wife, his conclusion for filing a petition for divorce cannot be found fault with. However, the appellant/husband carefully sent her back to India for taking treatment, such a conduct also cannot be brushed aside. He lead the respondent to take continuous treatment in her parents house but his complaint was that his wife did not attend the funeral of his father. However, it is contested by stating that the wife was not in a position to travel alone and it is the duty of the appellant/husband to take her to the house of his father and that was not done by him. Thus, this Court is of the opinion that beyond all these allegations, the factum remains that the respondent/wife was affected with certain serious disease soon after the marriage, more specifically, cancer and pulmonary tuberculosis. Thus, she was forced to take continuous treatment by staying in her parents home that created a breakage in their matrimonial life and which would not have been avoided by either



of the parties as it was a compelling situation and circumstances which cannot be stated to be a motivated on either side. Certain unforeseen circumstances are an act of God which separates the matrimonial home on account of certain serious diseases. One cannot find fault with either the husband or the wife. However, the rights of the parties cannot be denied once the husband found that the wife is not capable for continuing the matrimonial life. However, he has got every right to file a petition for divorce and in the present case that was done by the husband. The trial Court rightly considered the reasons stated for grant of decree of divorce are certainly candid and convincing and this Court do not find any perversity. But the First Appellate Court has proceeded based upon misplaced sympathy. Undoubtedly, the situation of the respondent/wife was pathetic as soon as after her marriage with the appellant she was diagnosed with certain diseases. Certainly, the same would have caused mental agony to the respondent/wife. However, that cannot be taken for the purpose of reversing the judgment of the trial Court. In the present case, the husband cooperated for taking treatment and there was no such allegation against the husband. But the circumstances made them to live separately as the respondent/wife was taking continuous treatment for certain serious disease, more specifically, cancer and pulmonary tuberculosis. She has to take treatment in C.M.C. hospital, Vellore. This being the facts and circumstances, the First Appellate Court has committed an error in not appreciating the evidence as well as the findings arrived by the trial Court with reference to the documents and evidences.

11. Accordingly, the judgment and decree dated 08.01.2013 passed in H.M.C.M.A.No. 1 of 2010, reversing the judgment and decree dated 27.03.2007 passed in H.M.O.P.No. 32 of 2003 is set aside and consequently, the C.M.S.A.No. 37 of 2013 stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SSM



1.The III Additional District Court,
Vellore at Tirupattur

2.The Subordinate Judge,
Tirupattur.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.11726

+1cc to Mr.T.L.Thirumalaisamy, Advocate, S.R.No.11944

C.M.S.A.No. 37 of 2013

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