



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2021

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Civil Miscellaneous Second Appeal No.13 of 2018

Sellamuthu

...Appellant/Respondent

Versus

Selvi

...Respondent/Appellant

Civil Miscellaneous Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 12.01.2018 in C.M.A.No.2 of 2017 on the file of the III Additional District Court, Salem, reversing the order and decree dated 11.11.2016 in HMOP.No.40 of 2013 on the file of the Subordinate Court, Attur.

For appellant	:	Mr.D.Shivakumaran
For Respondent	:	Mr.M.Purushothaman

JUDGMENT

(This appeal was taken up for hearing through Video-conferencing)

This appeal has been preferred against the judgment and decree dated 12.01.2018 in C.M.A.No.2 of 2017 on the file of the III Additional District Court, Salem, reversing the order and decree dated 11.11.2016 in HMOP.No.40 of 2013 on the file of the Subordinate Court, Attur.

2.The appellant and the respondent are the husband and wife. The case of the appellant/husband is that the marriage between them was solemnized on 02.07.2001 and out of their wedlock, two children were born. According to the appellant, soon after the marriage, the respondent/wife's sister started staying with them and the appellant was compelled to spend Rs.50,000/- towards the education of his sister-in-law. It is further alleged that due to the compulsion of his wife/respondent, the appellant was forced to obtain loan of Rs.2 Lakhs from his Department and thereafter, again Rs.1 Lakh from his friends and gave the same to his father-in-law. Thereafter



due to continuous demands of his wife to buy a land, he borrowed loan and bought a land and the same was registered in the name of his wife/respondent. Even thereafter, the respondent/wife and his parents demanded more and more money from him. Since, he did not accede to the said demand, all of a sudden on 27.09.2012, the respondent/wife took all the household articles, jewels, two wheeler and all documents like voter I.D, Aadhar Card, Family Card, Bank Pass Book, ATM card, etc and left the matrimonial home and settled with her father. It is further alleged that the appellant was kidnapped by the respondent's men and got signatures in plain papers. Thereafter, the appellant managed to escape from them and gave complaint before the Chief Minister's complaint cell and also to all the concerned police officials on 08.10.2012. Since no action was taken, he filed CrI.O.P.No.29262 of 2012 to register the complaint, but the same was dismissed by this Hon'ble Court. The respondent/wife also filed C.M.P.577 of 2013 before the Judicial Magistrate No.1, Attur, under protection of Women from Domestic Violence Act and the same is pending.

3. According to the appellant/husband, he had been tortured by his wife and father-in-law extracted as much as possible and made him debtor and since the appellant failed to meet the demands made by his wife and father-in-law time and again, the respondent/wife was instigated to file cases against the appellant. Since the respondent/wife has been continuously causing financial, physical and mental cruelty apart from prosecuting him for the offences under Domestic Violence Act, the appellant is unable to lead matrimonial life with the respondent/wife and since the respondent/wife acted in inimical turns with the appellant/husband, the relationship between them had virtually come to an end. In such circumstances, the appellant/husband been constrained to move a petition in H.M.O.P.No.40 of 2013, before the Sub-Court, Aathur praying to grant decree of divorce by dissolving the marriage which was solemnized between the appellant and the respondent on 02.07.2001.

4. Before the trial Court, the appellant was examined as P.W.1 and marked Exhibits A1 to A9 and the respondent was examined as R.W.1 and no documents were marked.

5. The learned Trial Judge, after considering the oral and documentary evidence, came to a conclusion that the respondent/wife in order to uplift her family, had tortured the appellant and also filed a false complaint. alleging that the appellant has illicit relationship with another lady and thereby



damaged the reputation of the appellant and caused mental agony and therefore, allowed the petition for divorce.

6.As against the same, the wife/respondent filed an appeal in M.C.O.P.No.2 of 2017 before the III Additional District Judge, Salem, whereby the order of the trial judge was reversed and the order of dissolution passed by the trial Court, was set aside. Aggrieved by the said order, the appellant/husband has filed the present appeal.

7.The appeal is admitted on the following substantial questions of law:

- i) When the evidence on record are sufficient to establish cruelty by the wife upon the husband, is the lower appellate Court correct in law in reversing the well considered order of divorce granted by the trial Court?
- ii) Is not the judgment and decree of the lower appellate Court vitiated due to non-consideration of the materials available on record in their correct perspective?

8. The learned counsel for the appellant would contend that there is no dispute about the marriage between the appellant and the respondent and two male children born out of their wedlock. On perusal of the petition in H.M.O.P.No.40 of 2013, the appellant has sought for dissolution of marriage on the ground of cruelty. The alleged cruelty by the respondent are as follows:

- i) The appellant was coerced to spend money of Rs.50,000/- for the education of his sister-in-law.
- ii)The appellant was compelled by the respondent to borrow Rs.2,00,000/- from his department for his father-in-law.
- iii)The appellant was coerced to borrow Rs.1,00,000/- from the co-worker in order to give it to his father-in-law.
- iv)The parents-in-law and family were giving pressure to the respondent for payment and made him to suffer.
- v) The appellant was kidnapped to the respondent's village and was threatened to sign in blank papers.
- vi)The respondent filed an application under DV Act which is pending before the Judicial Magistrate No.I, Aathur in C.M.P.No.577 of 2013.

9.The learned counsel appearing for the appellant would submit that the trial Court considering the evidence of both the



parties rightly granted divorce on the grounds cruelty. Whereas, the first appellate Court without considering the merits of the case, erroneously allowed the appeal by reversing the order of the trial Court.

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10. On perusal, the first appellate Court considering that there is no evidence to prove that the appellant was coerced to spend money for his sister-in-law and he was compelled to borrow Rs.2,00,000/- from his department and borrow Rs.1,00,000/- from his co-worker, rightly disbelieved the allegation of the appellant herein.

11. Obviously, the allegation of the appellant herein, with regard to the coercion for spending money for his sister-in-law's education and borrowing money for his father-in-law would not amount to cruelty.

12. Next coming to the point of kidnapping the appellant to the respondent's village and threatened him to sign blank papers, the appellant herein has not produced any documents or examine any other independent witness apart from the petition sent to the Chief Minister and police official on 08.10.2012 and telegram to DIG of police on 09.10.2012. It is highly unbelievable when it is a case of the appellant is that he was kidnapped on 28.09.2012, the appellant was not stated any reason for the delay in sending petition or telegram belatedly. It is also pertinent to note that the CrI.O.P.No.29262 of 2012 filed by the appellant before the High Court, Madurai, was also dismissed. Hence, the above alleged cruelty of kidnapping him and he was threatened to sign in blank papers are proved to be false.

13. The learned counsel appearing for the respondent would submit that the respondent herein was very patient and was living with the appellant only because of the two children. But, when the respondent questioned about the illegal relationship of the appellant with another lady, and when he was questioned for not returning home for the past four months, the respondent was beaten and she was sent to her home with children. Further the house hold articles were returned. The learned counsel further submitted that the appellant retained 3 1/3 soverigns of gold bangle and only then the respondent gave complaint to the police and he was enquired. It is contended on the side of the respondent that only to escape from the above complaint, the appellant filed the false petition for divorce and the same was rightly considered by the first appellate Court and no interference is called for.



14. Though the learned counsel for the appellant submitted that the respondent caused financial cruelty, there is no single piece of evidence to prove the same. There is nothing to prove that the appellant was kidnapped and he was forced to sign in blank papers. Since the allegation of the appellant herein did not attract Section 13 (1) of Hindu Marriage Act, the first appellate Court has rightly reappraised the oral and documentary evidence of the parties allowed the appeal and set aside the order of the trial Court granting divorce. Hence, no interference is called for from this Court. Accordingly, the substantial questions of law are answered against the appellant.

15. In the result, the Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

1. The III Additional District Judge, Salem.
2. The Subordinate Judge, Attur.

CMSA No. 13 of 2018

BS (CO)
SP (06/01/2022)