



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2020

DATE OF DECISION : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.25 of 2016

E.Vedi ..Appellant/Respondent/Petitioner

-vs-

Jothi @ Naduthai
W/o E.Vedi

..Respondent/Appellant/1st Respondent

Memorandum of Grounds of Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 100 of the Code of Civil Procedure, against the judgment and decree dated 18.12.2015 passed in H.C.M.A.No.4 of 2013 on the file of the learned III Additional District Judge, Vellore at Tiruppatur, reversing the judgment and decree dated 08.07.2013 passed in H.M.O.P.No.11 of 2006 on the file of the learned Subordinate Judge, Tiruppatur, Vellore District.

For Appellant :: Mr.R.Subramanian
Senior Counsel for Mr.B.Ravi

For Respondent :: Mr.S.Subbiah
Senior Counsel for Mr.P.Raja

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. Mr.E.Vedi, the appellant herein has brought this civil miscellaneous second appeal against the impugned judgment and decree passed by the learned III Additional District Judge, Vellore, reversing the judgment and decree of divorce granted by the learned Subordinate Judge, Tirupattur.

3. The appellant/husband filed the H.M.O.P.No.11 of 2006 before the learned Subordinate Judge, Vellore under Section 13 (1) of the Hindu Marriage Act alleging various grounds that



WEB COPY

after 23 years from the date of marriage and giving birth to two daughters, namely, Saritha and Sasikala in the year 1985 & 1989 respectively, the attitude and conduct of the respondent/wife underwent a complete change and she also failed to discharge her duties as a dutiful Hindu wife towards the appellant. Besides, on many occasions, she started behaving in an indifferent manner and also left the appellant without informing him and the elder members in the family to lead a wayward life by going to Tirupattur, Vaniyambadi and Ambur. Later on, the appellant came to know that the respondent has been leading an immoral life. Moreover, she was also addicted to alcohol and she behaved in a recalcitrant manner towards the appellant. When several steps were taken by the appellant to correct her, keeping the welfare of daughters and the family as a whole, his efforts ended in vain and the respondent has not even paid any heed to the advice given by the appellant. This apart, the respondent also had gone to the extent of disposing all the jewels including that of the daughters for her extravagant life. In view of this, there was no cohabitation between the appellant and the respondent for the last 15 years. Alleging illicit intimacy with one Malayan, S/o Periya Malayan of Athanavoor, who is permanently residing at Chinna Vattanur of Pungampatti Nadu in Javadhu Hills, the appellant charged the respondent for leading an adulterous life. It was further pleaded that the said Malayan was running a grocery shop as a tenant in a portion of the building owned by the appellant in Punganur Village, Yelagiri Hills. The respondent joining hands with the said Malayan, a Paramour, filed a false complaint against the appellant at Yelagiri Hills Police Station and after enquiry, a panchayat was convened and in the said panchayat, the appellant was asked to pay a sum of Rs.44,000/- to the said Malayan to leave the rented shop. The appellant's first daughter Saritha, conniving with the said Malayan, has been supporting their illegal adventures. After getting the amount, the respondent got emboldened and openly supporting the said Malayan started going to various places to lead an adulterous life. When the matter stands as above, the respondent has not only given a false complaint against the appellant, but also filed a case seeking monthly maintenance and in addition thereto, the respondent also filed a civil suit seeking partition along with her daughters. Therefore, when the police complaint and maintenance case have been filed and a suit for partition also has been filed, the conducive matrimonial atmosphere in the house had vanished. Moreover, as they are living separately for more than 25 long years, the question of reunion and living together does not arise. When the trial Court, after considering these three vital facts, (i) that the respondent has been leading an immoral life with one Malayan, as a result, refused to cohabit with the appellant for 15 years; (ii) that a false complaint has been filed before the Yelagiri Hills Police Station that was also subsequently



WEB COPY

settled; (iii) that a case of maintenance has been filed and the respondent also joining hands with her daughters filed a suit for partition, the appellant and the respondent cannot live together and consequently, when a decree for divorce was granted dissolving the marriage between the appellant and the respondent, the lower appellate Court, on an appeal filed by the respondent/wife in H.C.M.A.No.4 of 2013, without even considering any of the facts, namely, the filing of the case of maintenance and the filing of the suit along with her daughters for partition and that there was no cohabitation for over 15 years, erroneously reversed the said decree, against which the present civil miscellaneous second appeal has been preferred, raising the following substantial questions of law:-

- (i) Whether the filing of a false complaint before the police station along with the filing of the maintenance case and also a civil suit seeking partition by the respondent/wife, would not amount to causing mental cruelty to the appellant/husband?
- (ii) When the trial Court has granted divorce by dissolving the marriage solemnized 23 years ago between the parties, whether the lower appellate Court can simply reverse the decree of divorce without advertting to the evidence available on record?

4. Mr.R.Subramanian, learned Senior Counsel appearing for the appellant submitted that when the trial Court has taken up the issue that the tenant, who was running a grocery shop in a portion of the building belonging to the appellant, had illicit intimacy with the respondent leading to the matrimonial dispute between the parties resulting in convening of a village panchayat, wherein the appellant was asked to pay a sum of Rs.44,000/- to the said tenant to leave the rented shop, the lower appellate Court has failed to consider the same. Moreover, when the appellant and the respondent were not living together for more than 15 years and that the respondent has filed the case for maintenance and also the suit for partition seeking division of the appellant's property, the lower appellate Court has wrongly reversed the judgment of the trial Court granting divorce, that indicates the total non application of mind. When the allegation of adultery levelled against the respondent with the tenant could not be proved by any oral and documentary evidence, accepting the legal position in the case of Rajendra Agarwal v. Sharda Devi, AIR 1993 M.P.142 holding that direct evidence of proof of adultery is very rare and it is therefore accepted as a rule that it can be proved by circumstantial evidence, and in the present case, when the tenant was asked to leave the rented shop belonging to the appellant in view of the alleged illicit intimacy with the appellant's wife that resulted



WEB COPY

in the matrimonial dispute between the parties, the lower appellate Court ought to have accepted the findings and conclusions reached by the trial Court for granting divorce. But without affirming the decree of divorce, the lower appellate Court, against the oral and documentary evidence that the respondent has filed multiple proceedings, namely, false complaint, maintenance case and the suit for partition, simply reversed the judgment against the weightage of evidence produced by the appellant. Therefore, the impugned judgment and decree passed by the lower appellate Court are liable to be set aside and the decree of divorce granted by the trial Court deserves to be confirmed, he pleaded.

5. Opposing the above prayer, Mr.S.Subbiah, learned Senior Counsel appearing for the respondent, submitted that a mere allegation made against the respondent that she was leading an adulterous life with one Malayan without producing any evidence, has been properly gone into by the lower appellate Court. Moreover, when the appellant has alleged that the respondent is having venereal disease since she has been leading a wayward life, no evidence whatsoever either oral or documentary is placed on record. Therefore, the lower appellate Court has rightly reversed the judgment of the trial Court granting divorce. Coming to the filing of a false case before the police, learned Senior Counsel appearing for the respondent submitted that when there was a complaint by the respondent against the appellant, this has been compromised. Subsequently, when the appellant has assaulted the respondent and his daughters, she had resorted to legal remedy for getting monthly maintenance and finally the civil suit in the manner known to law, which cannot be considered as a ground for causing mental cruelty. Therefore, the appeal has to be dismissed.

6. But this Court finds it difficult to accept the findings and conclusions reached by the lower appellate Court for reversing the judgment of the trial Court granting divorce. When the appellant/husband has filed the H.M.O.P.No.11 of 2006 seeking divorce on the ground of cruelty under Section 13(1)(i) of the Hindu Marriage Act after 23 years from the date of marriage alleging that the respondent has been leading an immoral life and besides she was leading a wayward life by going to different places, namely, Tirupattur, Vaniyambadi and Ambur, absenting herself from Yelagiri Hills and refusing to lead the matrimonial life, he has also placed documentary evidence in Exhibit P4 dated 4.10.2005 & Exhibit P5 dated 3.11.2005, the rental agreement and the undertaking respectively. A perusal of the Ex.P5 shows that the rental agreement has been cancelled due to the difference of opinion developed between the appellant and the respondent and a sum of Rs.44,000/- has been paid to the tenant to leave the rented shop. Although the respondent has



accepted the payment of Rs.44,000/- by the appellant to the tenant in her evidence, she has completely denied the existence of the rental agreement. The denial of the relationship of landlord and tenant against Exhibits P4 & P5 to escape from giving a reply to the allegation of adultery, is unacceptable. The denial of the fact that the tenant was running a grocery shop by the respondent itself clearly shows that she does not want to give any room for the alleged illicit relationship between her and the tenant. So far as the proof of adultery is concerned, it is well settled legal position in the case of Rajendra Agarwal v. Sharda Devi, AIR 1993 M.P.142 that the direct evidence to prove adultery is very rare and therefore it is accepted as a rule that it can be proved by circumstantial evidence. In the case on hand, when the appellant has proved by documentary evidence that one Malayan, while staying as tenant in a portion of his building, had improper conduct with the respondent and finally he has established that he got rid of the tenant by paying Rs.44,000/- to leave the rented shop, the respondent has completely denied that he was not even staying as a tenant. This aspect has been completely overlooked by the lower appellate Court. Accordingly, the second substantial question of law whether the lower appellate Court can simply reverse the decree of divorce granted by the trial Court without adverting to the evidence available on record, is answered against the respondent and in favour of the appellant.

7. Coming to the first substantial question of law whether the filing of the false criminal complaint before the Yelagiri Hills Police Station and the filing of the maintenance case seeking maintenance as well as the filing of the civil suit seeking a share in the appellant's property by the respondent would cause mental agony to the appellant is concerned, it cannot be denied that the filing of a false case by the wife joining hands with the tenant, who is alleged to be a paramour, and getting the issue settled by getting the payment of Rs.44,000/-, will definitely cause mental cruelty to the appellant/husband. In addition thereto, the respondent joining hands with her daughter filed a case seeking monthly maintenance. This apart, she has also filed a civil suit along with her daughter for partition of the husband's property and it appears that the matter is pending in Second Appeal No.540 of 2016 before this Court. When the respondent has initiated legal proceedings, namely, maintenance case seeking monthly maintenance and also a suit for partition demanding share in the appellant's property, it is not known how the couple who have been visiting Courts can live together happily. Moreover, when the appellant and the respondent are living separately for more than 25 years, naturally both of them are deprived of the matrimonial life. Yet another fact is that the respondent has not even filed any petition for restitution of conjugal rights.



In fact, when the matter was referred to mediation, the respondent has also refused to participate in the mediation. Therefore, when there is no love and affection shown for more than 25 long years, granting of divorce by the trial Court dissolving the marriage between the couple can never be found fault with. Accordingly, the first substantial question of law is also answered against the respondent and in favour of the appellant.

8. In the result, the civil miscellaneous second appeal stands allowed and the judgment and decree passed by the lower appellate Court are set aside and the judgment and decree passed by the trial Court granting divorce by dissolving the marriage are restored. Since this Court has found that the appellant has proved by documentary evidence that one Malayan, while staying as tenant in a portion of his building, had improper conduct with the respondent and finally he has established that he got rid of the tenant by paying Rs.44,000/- to leave the rented shop and that the respondent has completely denied the said fact, taking on record the memo dated 30.11.2020 filed by the appellant, the appellant is directed to pay a sum of Rs.5,00,000/- and also the residential property situate in S.No.45/1B2 in favour of his daughter Sasikala, instead of in favour of the respondent. However, so far as the partition suit filed by the respondent along with her daughter claiming a right in the appellant's property is concerned, the parties shall abide by the outcome of the Second Appeal No.540 of 2016. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ss

To

1. The III Additional District Judge
Vellore District at Tiruppatur.
2. The Subordinate Judge, Tiruppatur.
Vellore

C.M.S.A.No.25 of 2016

SSD(CO)
RGA(24/09/2021)