

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.Nos.574 & 575 of 2018

Mrs.Narmatha
W/o J.Murali

.. Appellant in both the Appeals

-vs-

Mr.J.Murali

.. Respondent in both the Appeals

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Section 19(1) of the Family Courts Act, 1984, against the common order and decree dated 4.12.2017 made in H.M.O.P.Nos.32 & 2690 of 2013 on the file of the III Additional Principal Judge, Family Court, Chennai.

For Appellant :: Mr.C.R.Malarvannan
in both

For Respondent :: Mr.R.Vasudevan
in both

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

These two civil miscellaneous appeals have been directed against the impugned common order and decree dated 4.12.2017 made in H.M.O.P.Nos.32 & 2690 of 2013 by the learned III Additional Principal Judge, Family Court, Chennai.

2. Mrs.Narmatha, having lost her prayer for restitution of conjugal rights under Section 9 of the Hindu Marriage Act in H.M.O.P.No.2690 of 2013 and also being aggrieved by the dissolution of marriage granting divorce in H.M.O.P.No.32 of 2013, has filed these civil miscellaneous appeals.

3. Mr.C.R.Malarvannan, learned counsel appearing for the appellant/wife pleaded that after the solemnization of marriage on 17.2.2010 between the parties at Sri Krishna Mahal, Nos.91-A & 91-B, North Park Street, Venkatapuram, Ambattur, Chennai, as per the Hindu rites and customs in the presence of well wishers of both family members, both the husband and wife were leading a comfortable and happy life. During the stay at the appellant's parental home, there was no discomfort caused to the respondent/husband. But it was the allegation of the respondent/husband that during the stay at his wife's place, he is said to have faced some insulting and embarrassing situation, because his wife's parents treated the respondent like a servant. In view of the above allegation, they proceeded to shift the place of residence to Anupuram nearby Kalpakkam, where the respondent was working. It was the further allegation of the respondent that after moving away the residence to Anupuram, it was alleged that the appellant's attitude completely changed, because the appellant is said to have not respected the respondent/husband, as she was all the time scolding his parents and other family members. However, in the meanwhile, a girl child was born on 18.12.2011 who is named as M.Shanmitha. Thereafter, when the first birthday function of their child was celebrated on 18.10.2012, the respondent/husband has tried to make out a case against the appellant/wife and he has also filed a petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act alleging that the appellant was causing mental cruelty. Yet another ground taken in the petition was really alarming, since he has alleged that the appellant was frequently talking to her boy friend one Mr.Chandrasekar. When the appellant knew Mr.Chandrasekar while she was employed before marriage in Hewlett Packard (HP) as a marketing executive, the appellant at no point of time met the said gentleman. But when the respondent was also well aware of the appellant's office colleague, mistaking the few phone calls made out to him, the respondent has tarnished the image of the appellant in the petition filed for divorce, as though the appellant has been frequently talking to the said gentleman and that incident had caused mental cruelty to him. Yet another allegation made against the appellant in the said petition was that she used to abuse the respondent and his family members with filthy language, which was not correct. In one place in the petition for divorce, the respondent has also unfairly alleged that the appellant has treated the respondent as slave and she also used to throw hot coffee and other articles on him, which was also not correct. Moreover, these averments and allegations were not even established before the trial Court. When the respondent has filed the petition charging the appellant/wife that she was treating the respondent/husband as slave and that she was also throwing hot coffee and other articles on him, neither of the allegation was substantiated before the trial Court. However,

during the pendency of the said petition, as the respondent/husband has sought for a decree for dissolution of marriage, the appellant also filed H.M.O.P.No.2690 of 2013 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. In the petition for divorce invoking Section 13(1)(i-a) of the Hindu Marriage Act, the appellant also filed a detailed counter affidavit. After sometime, when the matters were taken up, the appellant was able to establish that she was all the time ready and willing to live with the respondent not only for herself but also for the future career of her girl child. When the appellant has been agitating all along by filing the petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights, every allegation made against the appellant by the respondent/husband that the appellant/wife has caused mental cruelty that has consequently led to the dissolution of marriage, should have been rejected by the trial Court, inasmuch as the respondent/husband has taken out a petition for divorce, for the simple reason that she filed a domestic violence case in D.V.C.No.6 of 2014 before the Tirukalukundram Judicial Magistrate Court seeking right of residence to live with the respondent, that goes without saying that the appellant was all along craving for reunion and also in the alternative to live with him in his own house along with the girl child. But this has not been properly appreciated by the trial Court and wrongly going to a non-issue that the filing of the D.V.C.No.6 of 2014 before the Tirukalukundram Judicial Magistrate Court seeking right of residence and filing one another case before the Mahabalipuram All Women Police Station stating that she was facing life threat from the respondent, the trial Court mistaking the genuine efforts shown by the appellant, wrongly proceeded as though the appellant has caused mental cruelty to the respondent. Even today, the appellant is ready for living together. When the respondent has not even shown any response for reunion, the appellant was left with no other option but to move the application seeking maintenance for herself and her child. Therefore, the filing of application seeking monthly maintenance and also moving another application before the Tirukalukundram Judicial Magistrate Court seeking right of residence, cannot be taken as the reason or foundation for causing mental cruelty. Although eight long years had rolled away, still the appellant is ready and willing to live with the respondent/husband. Therefore, by setting aside the impugned common order and decree passed by the trial Court, both the civil miscellaneous appeals be allowed, he pleaded.

4. We heard Mr.R.Vasudevan, learned counsel appearing for the respondent also.

5. Although the learned counsel appearing for the respondent/husband took us through the entire evidence and also

the averments made by the respondent/husband in the petition for divorce filed under Section 13(1)(i-a) of the Hindu Marriage Act and also the averments made by the appellant/wife in the petition for restitution of conjugal rights filed under Section 9 of the Hindu Marriage Act to show that the respondent was made to face innumerable incidents of mental cruelty, we were unable to appreciate why the respondent/husband has been fighting against his own wife forgetting the future career of the innocent girl child, for the reason that when major allegations were put against the appellant/wife that she used to treat the respondent/husband as slave when they were living together at the appellant's parental home immediately after the marriage, that she used to throw hot coffee and other articles on him, literally speaking, as these two allegations could not be established by the respondent/husband herein, we were not inclined to accept his case. But, all of a sudden, when the learned counsel appearing for the respondent/husband took us through the Advocate Commissioner's report dated 16.12.2014, the incidents of mental cruelty alleged for passing the decree for dissolution of marriage could not be simply disbelieved. It is pertinent to extract the relevant paragraphs of the report filed by the learned Advocate Commissioner, who was appointed by the trial Court to visit the residence of the husband at Anupuram to enable the respondent to take away the articles belonging to him, reading thus:

"9. I humbly submit that when the petitioner informed about the non-working of computer, camera, iron box and missing of tools to me, the respondent/wife scolded the petitioner in my presence and used some unparliamentary words against the petitioner and she was supported by her father and I requested both of them to keep quiet even inspite of my repeated request they have been continuously murmuring and created some unwanted scenes and on some occasions they threw some materials outside the premises and asked the petitioner to take them from outside the premises.

10. I humbly submit that the petitioner informed me that the AEECS membership card was inside two step drawer and requested the respondent to deliver the key of the said drawer. Originally the respondent refused to deliver the key and subsequently she said she don't have the key. Hence in the presence of all of us the drawer lock was broken but the said AEECS membership card was not there and the petitioner further informed me that the cash was also not

available. After break open of the drawer the respondent laughed and shouted.

11. I humbly submit that except the said few incidents the petitioner was able to take most of the articles as mentioned in the warrant and we have completed the procedures at 12.40 P.M.

12. I humbly submit that the petitioner with the help of his helpers brought the above said articles and kept inside of the traversa car and when we came out of the premises, the respondent's chithappa (maternal uncle) along with his men used filthy language against the petitioner and threatened him.

13. I hereby submit the report with the above said observations and I hereby return the warrant issued by this Hon'ble Court."

6. The above incidents picturized by the learned Advocate Commissioner in his report dated 16.12.2014 really brought before us the cruel and painful conduct as well the behaviour of the appellant/wife. As a matter of fact, we are able to imagine that when the appellant/wife had misbehaved so badly even in the presence of the learned Advocate Commissioner sent by the Court below by not only throwing the articles belonging to the respondent/husband, but also shouting and humiliating the respondent/husband to go and pick them up from the place where she threw the articles and valuable things, we do not think that we must search for any more evidence to disbelieve the case of mental cruelty and also physical cruelty underwent by the respondent husband.

7. We also wish to point out one more evidence that deserves a mention herein. When there was an allegation by the respondent that his wife without any reason or justification filed the domestic violence case against his entire family members, during cross examination, few questions were posed to her by the husband's counsel. One of the questions was whether the parents or her husband's brother and sister had prevented her from staying in the house, she clearly said 'No'. The second question therefore put to her was that when the family members of the respondent have not prevented her from using the house, was there any necessity or reason for lodging the case of domestic violence against the members of her husband's family, the answer of the appellant shows that she filed the said case for no reason at all. Moreover, the incidents created by the appellant/wife by throwing away the articles from the respondent's house and shouting at her husband to go and collect

them from outside in the presence of the learned Advocate Commissioner, clearly portrays that even the allegation made by the respondent that his wife used to throw hot coffee and some articles on him and also used to treat him as slave, appeared to be true.

8. The Apex Court in Pankaj Mahajan v. Dimple alias Kajal, (2011) 12 SCC 1, while culling out various instances of cruelty from the pleadings and evidence and how the acts of one party would constitute cruelty, in paragraphs 36 & 37, has held as follows:-

"36. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:

(i) Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.

(ii) Pushing the appellant from the staircase resulting into fracture of his right forearm.

(iii) Slapping the appellant and assaulting him.

(iv) Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to him.

(v) Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.

(vi) Not taking care of the baby.

(vii) Insulting the parents of the appellant and misbehaving with them.

(viii) Forcing the appellant to live separately from his parents.

(ix) Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the appellant to vacate the premises.

(x) Repeated fits of insanity, abnormal behaviour causing great mental tension to the appellant.

(xi) Always quarrelling with the appellant and abusing him.

(xii) Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant.

37. All these factual details culled out from the pleadings and evidence of both the parties clearly show the conduct of the respondent wife towards the appellant husband. With these acceptable facts and details, it cannot be concluded that the appellant husband has not made out a case of cruelty at the hands of the respondent wife. We are satisfied that the appellant husband had placed ample evidence on record that the respondent wife is suffering from "mental disorder" and due to her acts and conduct, she caused grave mental cruelty to him and it is not possible for the parties to live with each other, therefore, a decree of divorce deserves to be granted in favour of the appellant husband. In addition to the same, it was also brought to our notice that because of the abovementioned reasons, both appellant husband and the respondent wife are living separately for the last more than nine years. There is no possibility to unite the chain of marital life between the appellant husband and the respondent wife."

9. As the report of the learned Advocate Commissioner, in the case on hand, gives a clear picture about the quarrelsome attitude and behaviour of the appellant wife towards the respondent husband and also his family members even in his presence, we are of the considered opinion that the appellant wife has caused repeated mental and physical cruelty to her husband. When the conduct & behaviour of the appellant seen and recorded by the learned Advocate Commissioner were not even objected, that clearly speak that she indeed did not mend her ways to come and live with her husband and that the proof of mental cruelty explained in the report of the learned Advocate Commissioner is sufficient enough for granting the decree of dissolution of marriage, therefore, we do not find any justification to interfere with the impugned common order and decree passed by the trial Court granting the decree of divorce, while dismissing the petition for restitution of conjugal rights.

10. Therefore, for all the aforementioned reasons, both the civil miscellaneous appeals filed by the appellant are dismissed. Consequently, interim order stands vacated and the C.M.P.No.5060 of 2018 is also dismissed. No costs.

Sd/-

Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

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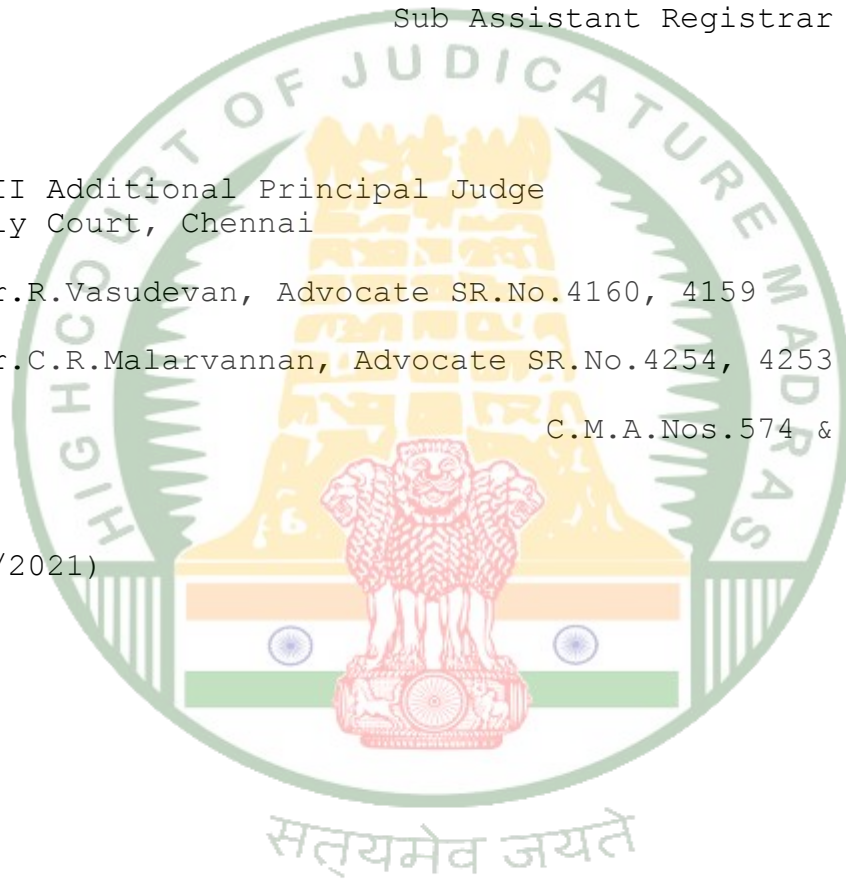
The III Additional Principal Judge
Family Court, Chennai

+2cc to Mr.R.Vasudevan, Advocate SR.No.4160, 4159

+2cc to Mr.C.R.Malarvannan, Advocate SR.No.4254, 4253

C.M.A.Nos.574 & 575 of 2018

VSN II(CO)
GMY(23/04/2021)



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