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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2021
PRONOUNCED ON : 02.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K. KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.1908 OF 2021

Dr.P.Veerapandiyan

...Appellant / Petitioner

Vs.

Dr.Kasthuri

...Respondent / Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act to set aside the Judgment and Decree passed by the Learned Judge (Family Court), Tiruvannamalai in H.M.O.P.No.37 of 2020 dated 29.01.2021.

For Petitioner : Mr.R.Manickavel

For Respondent : Mr.A.Arulmozhi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-husband, being aggrieved by the judgment and order dated 29.01.2021 in H.M.O.P.No.37 of 2020 passed by the Family Court, Tiruvannamalai.

2.The appellant-husband is a Doctor and the respondent-wife is also a Doctor by profession. The marriage between the appellant and the respondent was solemnized on 22.02.1977 at Thirupathur in Vellore District. On 21.11.1979, a male child was born to them and unfortunately the child died due to Phenomonina at CMC Hospital, Vellore. On 03.05.1981, a female child, viz., Vinodhini was born. Now she is also become a Doctor.



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3.The appellant-husband filed a petition in H.M.O.P.No.37 of 2020,seeking dissolution of marriage on the ground of cruelty and desertion, under Section 13(A) (ii)(iii) (viii) of the Hindu Marriage Act, 1955. The respondent filed counter and contested the proceedings and denied all the allegations made by the appellant-husband in the petition and also made allegations that the appellant-husband is having illicit relationship with his nurse, viz., Vijayageetha @ Rohini and further alleged that the appellant was responsible for the separation, which took place between them.

4.The learned trial Judge after considering the oral and documentary evidence, dismissed the petition on the ground that the appellant-husband failed to establish the grounds for dissolution of marriage, which was challenged before this Court by way of this Civil Miscellaneous Appeal.

5.The learned counsel for the appellant submitted that the appellant is living separately from the year 2006. On 14.06.2010, he issued legal notice to the respondent - wife, since good part of the life of both had been spent separately and the marriage relationship between both having irretrievably broken down and there is no chance for re-union. He would further submit that there was complete break down of the marriage, due to the attitude of the respondent - wife and the appellant- husband was under severe mental agony and that the various acts committed by the respondent amounted to mental cruelty. Further, the respondent - wife tutored her daughter-Vinodhini as against the appellant and she also has not turned to her father. Unfortunately, the trial Court has failed to consider these aspects and simply dismissed the petition and committed an error. Thus, the learned counsel for the appellant pleaded to allow this appeal.

6.The learned counsel for the respondent supported the order of the learned trial Judge and further contended that the learned trial Judge passed the order on the basis of the oral and documentary evidence adduced by both the parties. Hence,the order passed by the learned trial Judge needs no interference at the hands of this Court. Further, the allegations raised by the appellant in the petition was not proved, but the counter allegation that the appellant is having illicit relationship with his nurse, viz., Vijayageetha @ Rohini and he is living



with her has been well established through Ex.R.1 and thus, the learned counsel for the respondent pleaded to dismiss this appeal.

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7. Heard the learned counsel for the parties and perused the materials available in the record.

8. We have gone through the pleadings of the appellant before the trial Court. On perusal of the pleadings, it is found that the appellant failed to mention when the respondent had deserted him. In paragraph 17 of the pleadings, he failed to mention the cause of action as when his wife deserted him, which runs as follows:-

"The cause of action for this petition arose at Tirupattur on 22.02.1977, when the marriage between the petitioner and the respondent took place, when a male child was born and died, when daughter-Vinodhini was born, who is following the footsteps of the respondent, on all the dates when mental torture and physical cruelties were caused to the petitioner and ill-treatments meted out on him, on all dates when mediation efforts failed, and at Chengam Town, within the jurisdiction of this Hon'ble Court".

9. On perusal of the evidence adduced by the appellant, it is found that he had not clearly mentioned that when his wife deserted him and further, there is no evidence in respect of the allegation of mental cruelty caused by the respondent to him. Only strange allegations are available in the petition. As per Section 13(A) (ii)(iii)(viii) of the Hindu Marriage Act, 1955, the marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party, after solemnization of the marriage treated the other party with cruelty and also if deserted voluntarily without any reason. Though the appellant-husband contended that his wife left him, he failed to give any evidence when she left him and deserted him. Further, what are all the efforts taken by him to bring his wife back to the matrimonial home also has not been mentioned in the petition and also there is no evidence to show that the appellant-husband had been making persistent efforts to persuade the respondent-wife to return to the matrimonial home. Only on 14.06.2010, he sent a



notice that he is constrained to take steps for dissolution of marriage. Thereby, the learned trial Judge has rightly found that all the allegations made by the appellant-husband in the petition were not satisfactorily substantiated by him. We also find no valid reason to interfere with the order of the learned Principal Sub-Ordinate Judge (Family Court), Tiruvannamalai in H.M.O.P.No.37 of 2020 dated 29.01.2021.

10. Accordingly, This Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Jer

To

The Judge (Family Court),
Tiruvannamalai.

+1cc to M/s.A.Arulmozhi, Advocate SR.No.44115

+1cc to M/s.R.Manickavel, Advocate SR.No.44104

C.M.A.No.1908 of 2021

RSV(CO)
RVM(02/11/2021)