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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 31.08.2021

CORAM

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

C.M.A.NO.74 OF 2018

Chennakrishnan

.. Appellant/Petitioner

.vs.

1.Rajeshwari
2.Rangaperumal

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 19 (1) of the Family Court Act against the judgment and decree dated 26.10.2017 passed in F.C.H.M.O.P.No.161 of 2017 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For R1 : Mr.B.Bharath kumar
for Mr.V.Nicholas

J U D G M E N T

[Judgment of the Court was made by V.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal arises against the order of the Family Court, Dharmapuri, passed in F.C.H.M.O.P.No.161 of 2017 on 26.10.2017.

2. Brief facts of the case is that the appellant had filed a petition in F.C.H.M.O.P.No.161 of 2017 seeking for divorce on the ground that the first respondent who is the wife of the appellant had illicit relationship with the second respondent and left the matrimonial home and the same was dismissed by order dated 26.10.2017. Challenging the same, the present appeal has been filed before this Court.

3.The learned counsel appearing for the appellant submitted that the appellant had married the first respondent on



16.04.2008. The appellant is a lorry driver by profession and thereby, he used to go out frequently to attend his profession and come home once in 15 days. While being so, the first respondent developed relationship with the second respondent and subsequently, on 14.03.2017, the first respondent eloped with the second respondent and she had written a letter that she is not willing to live with the appellant. Subsequently, the appellant gave a complaint before the Kadathur Police Station on 21.03.2017 and thereafter, he filed H.C.P.No.1158 of 2017. Subsequently, the first respondent was produced before the Court and she refused to join with the appellant. In such circumstances, the appellant filed a petition for divorce before the family Court in H.M.O.P.No.161 of 2017 on the ground that the second respondent, knowing fully well that the first respondent is a married women, voluntarily had sexual intercourse with the first respondent and caused cruelty to him. The first and second respondents remind ex-parte before the trial Court. However, the trial Court, without considering the oral and documentary evidence filed by the appellant, dismissed the petition. The trial Court failed to consider the fact that the first respondent eloped with the second respondent on 14.03.2017 and expressed her willingness to live with the second respondent and not to live with the appellant. The marriage life between the appellant and first respondent has already been broken due to the elopement of the first respondent with the second respondent. The elopement of the first respondent caused mental pain to the appellant and that the trial Court, without taking into account of the mental pain, dismissed the divorce petition and thus, pleaded to allow the appeal.

4. In the appeal, notice was sent to the first respondent and Mr.V.Nicolas learned counsel appeared for the first respondent and he reported no instructions from the first respondent. Thereafter, a notice was issued to the first respondent. However, the first respondent failed to appear before this Court. Under these circumstances, this Court, considering the arguments of the counsel for the appellant and the materials available on record, is passing this order.

5. Admittedly, the appellant has married the first respondent on 16.04.2008 at Kadathur and they were living together at the appellant's house. The appellant is working as a lorry driver and frequently he used to go out of the house to attend his profession. While being so, it is alleged that the first respondent had developed illegal intimacy with the second respondent and in consequence of the illegal intimacy, the first respondent left the matrimonial home on 14.03.2017 and continued her illegal relationship. Thereafter, the appellant preferred a complaint against the first respondent before the Kadathur



Police Station on 21.03.2017 and also gave a complaint to the Superintendent of Police on 27.03.2017. These facts are evident by documents marked as Ex.P.2 and Ex.P.3 filed before the trial Court. Apart from this, the appellant also filed H.C.P.No.1158 of 2017 that was marked as Ex.P.8 before the trial Court and the first and second respondents remind ex-parte before the trial Court.

6.The allegation of the appellant against the first respondent is that she voluntarily had illicit relationship with the second respondent and left the matrimonial home and living with the second respondent. The conduct of the first respondent has caused mental pain to the appellant. Further, the first respondent got separated from the appellant from the year 2017 and there is no reunion between them and the parties cannot reasonably be expected to live together. The Habeas Corpus petition filed before this Court in H.C.P.No.1158 of 2017 is marked as Ex.P.8 wherein, it is stated that the first respondent went out of the matrimonial home without any intimation. The complaint filed by the appellant before the Superintendent of Police and the Habeas Corpus Petition in H.C.P.No.1158 of 2017 shows that the parties cannot reasonably be expected to live together.

7.Under such circumstances, we are of the opinion that the grounds for divorce are to be construed as proved by the appellant. The trial Court failed to consider the evidence adduced by the appellant. Hence, we set aside the order of the trial Court passed in F.C.H.M.O.P.No.161 of 2017 dated 26.10.2017 and allow the appeal, and thus the marriage held between the appellant and first respondent on 16.04.2008 is dissolved by the decree of divorce.

8.In the result, this Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

To

The Judge,
Family Court,
Dharmapuri.



Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

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+1cc to Mr.M.Selvam, Advocate, S.R.No.43982
+1cc to Mr.V.Nicholas, Advocate, S.R.No.43971

C.M.A.No.74 of 2018

PA (CO)
CS/16/11/2021