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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

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

C.M.A.Nos.1674 & 1715 of 2020

P.Maheswari .. Appellant in both the Appeals

-vs-

R.Manikandan .. Respondent in both the Appeals

Memorandum of Grounds of Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act, 1984, against the common fair and decretal order dated 01.10.2020 made in F.C.O.P.Nos.517 of 2013 & 123 of 2015 respectively, on the file of the Family Judge, Salem.

For Appellant :: Mr.M.Vijayan for
M/s Karan and Uday
For Respondent :: Mr.J.Sudhakaran

JUDGMENT

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

Mrs.P.Maheswari, the appellant herein, aggrieved over the common order of dismissal passed by the learned Judge, Family Court, Salem in F.C.O.P.No.123 of 2015 filed by her for restitution of conjugal rights and also having suffered yet another decree passed in F.C.O.P.No.517 of 2013 by dissolving the marriage that took place on 26.11.2012 between the appellant and the respondent, has come to this Court with these civil miscellaneous appeals.

2. Mr.M.Vijayan, learned counsel appearing for the appellant/wife pleaded that the marriage between the appellant and the respondent was solemnized on 26.11.2012 as per the Hindu rites and customs in the presence of the well-wishers belonging to both families and they were happily living together in the matrimonial home. However, after sometime, the respondent/husband filed the F.C.O.P.No.517 of 2013 seeking divorce under Section



13(1)(i-a) of the Hindu Marriage Act before the Court below making various allegations against the appellant herein. The first allegation was that the appellant has deliberately and wilfully concealed her first marriage with one Alageshan. The second allegation made by the respondent/husband was that even on trivial issues, the appellant/wife used to behave violently and pickup quarrels with the respondent/husband and his family members. The third allegation put against the appellant herein was that she never discharged her household duties as a dutiful wife. On the other hand, she caused bodily injuries to the respondent herein on many occasions and repeatedly scolded the respondent to leave his parents in an old age home. Opposing the above allegations, learned counsel appearing for the appellant pleaded that so far as the first allegation that the appellant/wife has suppressed the factum of her first marriage is concerned, the certified copy of the judgment and decree dated 6.7.2012 passed by the Family Court, Salem in O.S.No.25 of 2011 would clearly indicate that the said marriage with one Alageshan was declared as null and void and the said fact was also brought to the notice of the respondent and his family members by the appellant's parents even during the marriage talks. Secondly, one Mrs.Lakshmi, a relative of the appellant, who was examined as R.W.2, has also deposed that she was present during the marriage talks between the families of the appellant and the respondent and that the fact regarding the first marriage of the appellant with one Alageshan was intimated to the respondent's family during the marriage talks. Accepting the explanation offered by the appellant/wife, the Court below has come to the conclusion that the appellant and her family members has not suppressed the fact regarding the first marriage of the appellant with Alageshan. Therefore, when the alleged suppression of the first marriage was disbelieved, the Court below, accepting the other allegations that the appellant/wife has behaved violently and picked up quarrels with the respondent and his family members; that she did not do any household works and abused the family members and that she also caused bodily injuries to the respondent on many occasions, ought not to have allowed the petition for divorce filed by the respondent/husband on the ground of cruelty. Thirdly, the Court below ought not to have dismissed the petition filed by the appellant/wife under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights on the ground that it was filed belatedly after a period of two years only as a counter blast to the divorce petition filed by the respondent. Since the Court below has come to the conclusion that the appellant/wife has repeatedly filed criminal complaints against the respondent and his family members for no reason that have caused mental cruelty not only to the



respondent/husband, but also to his family members, which is not correct, the present appeals have been filed. Mr.Vijayan, assailing the impugned decretal order dissolving the marriage, further pleaded that when the respondent filed the F.C.O.P.No.517 of 2013 seeking divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act and started harassing the appellant/wife, only thereafter, the appellant/wife was constrained to file the case of domestic violence in D.V.O.P.No.72 of 2014 against the respondent's family. When the case of domestic violence filed by the appellant/wife against the respondent/husband and his family members was quashed by this Court in Crl.O.P.No.3452 of 2015 by order dated 6.8.2015 and that the private complaint filed by the respondent/husband against the appellant/wife and her family members that was taken cognizance in C.C.No.61 of 2015 was also quashed by this Court in Crl.O.P.No.755 of 2016 by order dated 8.5.2019, against which, when an appeal was moved before the Apex Court in Special Leave to Appeal (Crl.)No.7631 of 2019 by the respondent/husband, that was also dismissed on 21.10.2019, the impugned decretal order passed by the Court below dissolving the marriage is liable to be interfered with, for the reason that the appellant/wife is always keeping the doors open for the matrimonial life to proceed further. Again the learned counsel appearing for the appellant submitted that when the appellant was advised to file the F.C.O.P.No.123 of 2015 seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, as she was ready and willing for the re-union, the Court below has wrongly come to the conclusion that she has moved the petition for restitution of conjugal rights belatedly as a counter blast to the divorce petition. Therefore, the impugned decretal order is liable to be set aside.

3. Opposing the above contentions, Mr.J.Sudhakaran, learned counsel appearing for the respondent/husband submitted that after the marriage, at the repeated insistence of the appellant/wife to have a separate residence, the respondent/husband went for a separate residence with the appellant in the year 2013, although the exact date of setting up a separate residence has not been proved by both parties. But it is an admitted fact that both the appellant and the respondent lived separately at Sankari. Even when they were living separately, there was an allegation made against the respondent/husband that his parents often visited the separate residence and harassed the appellant for additional dowry of 20 sovereigns of gold, for which there was no complaint filed by the appellant. On the other hand, the divorce petition was filed by the respondent/husband citing several reasons that the appellant



was insisting upon the respondent to go for a separate residence leaving his age old parents; that she was all the time picking up quarrels with the respondent even in the separate residence; that she did not give importance to the household duties; that she behaved violently and caused bodily injuries to the respondent on many occasions and that she was wrongly advised to file the case in D.V.O.P.No.72 of 2014 against the respondent and his family members. This apart, the appellant also made several criminal complaints against the respondent and his family. When the Court below has also rightly found that the acts committed by the appellant/wife would constitute cruelty and has granted the decree of divorce, the impugned decretal order does not call for any interference. This Court also in R.Seenu v. N.Porkodi, 2018 (4) CTC 622 has held that if the wife files a false criminal complaint against her husband and his family, such act is nothing short of cruelty causing tremendous mental cruelty in the mind of the husband. Applying the same ratio, the Court below has rightly come to the conclusion that the mental pressure incurred by the respondent on account of registration of the false case in D.V.O.P.No.72 of 2014 by the appellant cannot be lightly ignored. The second reason cited by the Court below shows that the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act moved by the appellant/wife was only a drama enacted by the appellant to show that she was interested in the re-union. Had she been really interested, she would have filed the petition for restitution of conjugal rights within a week or fortnight or a month on receipt of notice in the divorce petition, which has not been done. On seeing the conduct and the approach adopted by the appellant herein, the Court below, rightly dismissing the petition for restitution of conjugal rights on the ground that it was belatedly filed after two years as a counter blast, accepting the ground of cruelty alleged by the respondent/husband, has granted divorce. Such a reasoned finding and conclusion reached by the Court below need not be interfered with, he pleaded.

4. We also find force in the submissions made by the learned counsel appearing for the respondent/husband. The reason being that although the allegation regarding the suppression of the first marriage by the appellant with one Alaghesan was disproved, the other crucial acts done by the appellant/wife by filing several criminal complaints and the case in D.V.O.P.No.72 of 2014 against the respondent/husband and his family members have been rightly viewed by the Court below as causing physical and mental cruelty upon the respondent/husband. We are also able to find from the documents filed by the respondent that even after both the husband and wife proceeded to set up a separate



residence at the instance of the appellant/wife leaving the age old parents of the respondent/husband in the lurch, even in the separate residence, the appellant/wife was causing repeated mental cruelty by not discharging her household duties and also picking up quarrels with the respondent on trivial issues. When the appellant/wife has filed the case in D.V.O.P.No.72 of 2014 against the respondent and his family members after initiation of the matrimonial proceedings, considering a similar and identical issue, our High Court in the case of R.Seenu v. N.Porkodi, 2018 (4) CTC 622, has held thus:-

"... In this case, the Criminal Complaint given by the Respondent against the Appellant and seven of his Family members, knowing it to be false, in our opinion, is nothing short of cruelty. The mental and physical pressure incurred by the Appellant, when his Family Members are sought to be maliciously prosecuted would be such that no prudent spouse would thereafter even think of having a reunion or to keep the Matrimonial relationship intact."

5. Therefore in view of the above in our considered opinion, the Court below, in support of its reasonings and conclusions for granting the decree of divorce, relying on two other decisions of this Court in the case of G.Jagan v. M.Eswari, 2019 (2) MWN (Civil) 263 and in C.M.Suresh v. Hemamalini, 2019 (2) MWN (Civil) 620, has rightly come to the conclusion that the conduct of the appellant/wife in initiating false proceedings against the respondent/husband and his family members would definitely amount to causing mental cruelty. Going further, the Apex Court has also indicated several instances of cruelty in Pankaj Mahajan v. Dimple alias Kajal, (2011) 12 SCC 1, in paragraphs 36 & 37, which read 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.



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(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."

6. In the light of the above, if we examine the case of the appellant/wife in the cases on hand, the respondent/husband has brought home the acts of mental cruelty as enunciated in clauses (v), (vii) (viii), (xi) & (xii) of paragraph-36 of the aforesaid judgment that his wife did not do any household works; that she has been insulting his parents; that she has been forcing the husband to live separately and that she has been quarrelling with him and abusing him every now and then and also caused bodily injuries. Besides, she was always behaving in an abnormal manner, causing great mental cruelty to the respondent. Therefore, when all these factual details from the pleadings and evidences of both parties clearly show that the conduct of the appellant/wife towards her husband has been substantiated, except disproving the allegation of suppression of the first marriage with one Alaghesan, resultantly, they are living separately for more than seven long years, we are of the view that it is not possible to unite the chain of marital life between them. Accordingly, finding no infirmity or error in the common fair and decretal order passed by the Court below granting divorce by dissolving the marriage solemnized on 26.11.2012 between the parties on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and dismissing the petition for restitution of conjugal rights, both the civil miscellaneous appeals are dismissed. Consequently, interim order stands vacated and the C.M.P.No.12322 of 2020 is also dismissed. No costs.

Sd/-
Deputy Registrar(Accounts)

//True Copy//

Sub Assistant Registrar

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To
1.The Judge, Family Court,
Salem.

+1cc to Mr.J.Sudhakaran , Advocate SR.No.18522

CM.A.Nos.1674 & 1715 of 2020

SS (CO)
CB(24/11/2021)