



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021

Delivered on : 16.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.204 of 2014

and

M.P.(MD)No.1 of 2014

Sohna Chandra Packiavathy

... Appellant / Respondent

Vs.

Dr.Moses Paul

... Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of the Divorce Act, 1869, against the fair and decreetal order, dated 06.11.2013, made in I.D.O.P.No.25 of 2013, on the file of the Principal District Judge, Thanjavur.

For Appellant : Mr.D.Rajkumar

For Respondent : Mr.Arivukumar for Mr.K.Karthick

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 06.11.2013, made in I.D.O.P.No.25 of 2013, on the file of the Principal District Judge, Thanjavur.

2.The appellant herein is the wife and the respondent in the I.D.O.P. Petition and the respondent herein is the husband and the petitioner in the I.D.O.P. petition.

3.Brief substance of the petition, in I.D.O.P.No.25 of 2013, is as follows:

The marriage between the petitioner and the respondent was solemnized on 16.01.2003 at Saint Peter's Church in Thanjavur. They lived at Palayankottai and then they lived in Thanjavur in the respondent's house, for a period of six months. The petitioner was a practising Doctor working at Kovilpatti. The petitioner and the respondent lived in Kovilpatti. The respondent went to her matrimonial home for delivery. A male child was born on 23.09.2004. The birth of the child was not informed to the petitioner. Later, the petitioner and his parents invited the respondent to the matrimonial home. The respondent refused to live with the petitioner. The petitioner invited the respondent to come to the matrimonial home in the month of April, May and June, during the year 2005. He issued an Advocate notice on 13.07.2005. The respondent sent a reply notice, on 28.07.2005, refusing to come over to the matrimonial home. The petitioner sent a notice seeking for permission to see the child. That notice was also not accepted. The



petitioner went to see the child on 15.06.2005, but, he was not allowed to enter into the house. On 23.02.2012, the petitioner sent a divorce notice and the respondent sent a false reply. The respondent deserted the petitioner for the past eight years, which amounts to cruelty and the petitioner filed this petition for divorce.

4.Brief substance of the counter, in I.D.O.P.No.25 of 2013, is as follows:

After marriage, the petitioner and the respondent started their matrimonial life only at Thanjavur, as mutually agreed between the elders of both the families. The respondent's father is a leading Physician at Thanjavur and they wanted to bring up the respondent as a popular Doctor. But, on the instigation of the mother of the petitioner, the petitioner has demanded money from the parents of the respondent. The parents of the respondent agreed to pay Rs.5,000/- every month, till the petitioner completed his higher studies.

5.The Pregnancy was confirmed in the month of February - 2004. In the month of April - 2004, the petitioner demanded Rs.1,00,000/- to discharge his debt. The respondent's parents pay a sum of Rs.50,000/- by way of a cheque. The petitioner himself has withdrawn from the house at Thanjavur. He had not taken care to see his child. The petitioner and the respondent never lived at Palayankottai or at Kovilpatti. On 23.09.2004, the birth of the male child was informed to the petitioner by way of Telegram. The petitioner left the matrimonial home, at the time of pregnancy of the respondent, which amounts to mental cruelty. The petitioner was busy in spending time to defend his mother in a criminal case. The atmosphere is not suitable for marital life at his residence. The respondent's father had driven the petitioner only to avoid unpleasant situation. Though the petitioner was working at Chennai, he wanted her to come to Kovilpatti. The respondent is working in a deemed University at Thanjavur and it was not possible for her to live with the petitioner at Kovilpatti. The respondent is willing to live with her husband only at Thanjavur and her father is also ready to help her and her husband at Thanjavur. The respondent is willing to have matrimonial relationship with her husband forgetting all the misdeeds of her husband. If the petitioner severed all his connections with his family members, then only there is a possibility for reunion.

6.On the side of the petitioner, one witness was examined and nine documents were marked. On the side of the respondent, one witness was examined and eight documents were marked.

7.After hearing both sides, the Trial Court ordered for Divorce. Against the same, the appellant / wife has approached this



Court, by way of this Civil Miscellaneous Appeal.

8. On the side of the appellant, it is stated that no case was made out under Sections 10 (1)(ix) and (x) of the Indian Divorce Act. The respondent / husband was receiving financial assistance from the appellant / wife, to enable him to pursue higher studies. The appellant / wife could not move out of Thanjavur, because of her past experience that does not amount to denial of the conjugal rights of the husband. The parties never resided at Palayamkottai. The matrimonial home is only at Thanjavur. The in-laws resided in the upstairs. The appellant / wife and the respondent / husband resided in the down stairs. It was the respondent / husband, who left the matrimonial home. There is no desertion on the part of the appellant / wife. The Trial Court failed to consider that the respondent / husband did not bother to visit the child or discharge his duty as a father. Though the respondent / husband had left the marital home in January - 2004, he has filed the Divorce Petition only on 03.09.2012. The father of the appellant is a practising Physician hailing from a reputed and traditional family, the appellant could not come to terms with the fact that her mother-in-law is an accused in a criminal case.

9. On the side of the appellant, it is further stated that the trial Court failed to decide which is the matrimonial home. Without deciding which is the matrimonial home, the trial Court has come to a wrong conclusion that the matrimonial home was at Kovilpatti. As per the agreed terms, the matrimonial home was at Thanjavur. The respondent / husband completed his higher studies at Thanjavur, until he completes his higher studies, both the parties lived at Thanjavur and the appellant's father was supporting the family of the respondent / husband and the father of the petitioner was paying Rs.5,000/- per month to the respondent's family. It was the husband, who left the matrimonial home and deserted the wife.

10. On the side of the respondent, it is stated that after marriage, the husband and wife lived at Palayamkottai and R.W.1 has admitted the same in her evidence. Till the completion of his higher studies the couples reside at Thanjavur. Subsequently, the husband got an appointment as a Government Doctor and he was working in Kovilpatti. They had a residence at Kovilpatti. Only from the residence at Kovilpatti, the wife left the matrimonial home. So many efforts were taken 'for compromise', through the Church and the same was admitted by the wife in her evidence. Even during the year 2013, the wife was not ready to live with the husband. Mother-in-law facing a criminal case is not a valid ground for refusal for living with the husband. The wife has not taken any steps for re-union. It was the husband, who took all the efforts.

11. It is seen that the appellant has gone to her parents home



for delivery and she did not return back to Kovilpatti. She has admitted that she had not gone to the house of the respondent, after the delivery. It is seen that only after the misunderstanding between the couples, the appellant has completed M.Phil., and Phd., and she joined a private University as Controller of Education. The husband was posted as Government Doctor at Kovilpatti much earlier and naturally, Kovilpatti must have been their matrimonial home. There is no evidence to prove that both side elders decided Thajavur as the matrimonial home for the couples.

12.On the side of the appellant, it is stated that the trial Court is wrong in deciding that the relationship between the parties is irretrievably broken. The burden is on the husband to prove "desertion without any reason". The husband used the money of the wife for his higher studies and for his supporting family and now he is deserting the wife. If the husband is ready to live at Thajavur, the wife is ready to live with him. This cannot be treated as desertion. The wife is working at Thajavur and Thajavur is the matrimonial house and it was the husband, who deserted the wife.

12.On the side of the respondent, it is stated that even at the time of filing of the I.D.O.P petition, they were separated for seven years. The marriage took place in the year 2003 and both the parties are living separately from the year 2004 and their relationship is irretrievably broken and prayed the appeal to be dismissed on that ground also.

13.On the side of the respondent, it is stated that the birth of the boy was not intimated to the husband. On the side of the appellant, it is stated that the same was intimated to the husband, but, he refused to visit the child. The case of the husband is that he sent a letter for visitation right and the right was refused. Again, on 15.06.2005, when the husband went to Thanjavur, to see the child, he was not permitted to enter the house or to see the child. The wife in her counter has stated that due to the unruly behaviour of her husband, her father driven her husband away. This wording clearly reveals that the husband tried to visit the child, but the same was refused by the father of the wife.

14.It is seen that the husband was working in Kovilpatti and the wife was not willing to reside in Kovilpatti. She has some hesitation to come over to Kovilpatti as her mother-in-law was having a criminal case. The mother-in-law was residing in Palayamkottai and the wife had to live only in Kovilpatti. So, the reasons stated by the appellant / wife is not acceptable.

15.In the counter, the appellant / wife had imposed two conditions that is if the husband severs all his connections with his family members, the appellant / wife is willing to reside with



him and that too only if the husband is residing in Thajavur. These two sentences clearly reveals the intention of the wife is not genuine.

16. It is seen that from the year 2004 onwards, there is misunderstanding between the couples and they were living separately, now, 17 years passed. The relationship between the parties is irretrievable broken and the reasons stated by the appellant / wife are not satisfactory. Hence, it is decided that there is nothing sufficient enough to interfere in the orders of the Trial court. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal District Judge,
Thanjavur.

Copy to:

1.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.K.KARTHICK, Advocate (SR-26343[F] dated 16/08/2021)

+1 CC to MR.D.RAJKUMAR, Advocate (SR-26478[F] dated 17/08/2021)

C.M.A(MD)No.204 of 2014

16.08.2021

MGJ(01.09.2021) 5P 6C