

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Judgment reserved on 11.03.2022

Judgment delivered on 14.06.2022

CORAM:

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
C.M.S.A.Nos.12 and 13 of 2000
and
C.M.P.No.5348 of 2000

V.S.Srinivasan

...Appellant in both the appeals

Vs

Janaki

... Respondent in both the appeals

PRAYER: Civil Miscellaneous Appeals filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 100 of the Code of Civil Procedure, 1908, against the fair and final order dated 01.09.1999 made in CMA Nos.59 and 60 of 1998 on the file of II Additional District Judge, Erode, reversing the fair and final order dated 08.07.1998 made in HMOP Nos.10 of 1997 and 74 of 1994 on the file of Principal Subordinate Judge, Erode.

For Appellant : Mrs.Zeenath Begum

For Respondent : Mr.C.Rajaguru

COMMON JUDGMENT



Challenging the fair and final order dated 01.09.1999 made in CMA

Nos.59 and 60 of 1998 on the file of II Additional District Judge, Erode, reversing the fair and final order dated 08.07.1998 made in HMOP Nos.10 of 1997 and 74 of 1994 on the file of Principal Subordinate Judge, Erode, the appellant/husband filed the present Civil Miscellaneous Second Appeals.

2. The appellant herein is the husband and the respondent herein is the wife. The parties are referred to as to their relationship as husband and wife for the sake of convenience.

3. The facts of the case, in brief, is as follows:

i) The case of the husband is that they got married on 24.06.1993 in Thirvarur, according to Hindu rites. Even before marriage, she was a cancer patient. Because of cancer, she is not fit for marital obligations. She was treated in Tiruvarur, Erode, Coimbatore and Pondicherry. Since her disease could not be cured, she is not expected to lead a normal matrimonial life. Therefore, he filed a petition in H.M.O.P.No.74 of 1997 for dissolution of marriage.

ii) The case of the wife is that at the time of marriage, 22 sovereigns of jewels for the bride and 2 sovereigns of jewels for the groom along with



household articles worth Rs.10,000/- were gifted by her parents as Sreedhanam. After marriage, they led a happy matrimonial life in Erode. Subsequently, her husband and his family members started ill-treating her and also demanded TVS 50 Motorcycle, which her parents were not able to afford. During February, 1994 her husband demanded motor cycle and when she refused, he kicked on her breast. Therefore, she became ill and she was treated in various places. She was driven out of matrimonial home and is living with her parents. She underwent an operation in the breast and became perfectly normal. But her husband refused to take her to matrimonial home. Hence, she filed an application in HMOP.No.10/1997 for restitution of conjugal rights.

4. Both the petitions were clubbed together and common evidence were recorded and a common judgment was passed, in which, the respondent/wife lost in both the cases. Aggrieved over the same, the wife preferred appeals in CMA Nos.59 and 60 of 1998. On appeal, the petition for restitution of conjugal rights was allowed and the petition filed for divorce was dismissed. Aggrieved over the same, the husband filed the present Appeals before this Court.



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5. Learned counsel for the appellant/husband would submit that after marriage, most of the time, the respondent/wife, was living with her parents at Tiruvarur and had not taken any steps to be with her husband at Erode. Further, only after receiving summons in H.M.O.P.No.74/1994, she filed a complaint on 19.09.1994 before All Women Police Station, Nagapattinam, alleging harassment by the appellant/husband. This would clearly show that the respondent's intention was to harass the appellant. Learned counsel further submits that Ex.A2 would show that his wife was having fibroid growth in her breast and the same was not revealed at the time of marriage proposal. Exs.A3 to A8 revealed that the respondent was taking treatment for this growth even before marriage and it was also not revealed to the husband before marriage. Learned counsel would further submit that the respondent/wife has been harassing the appellant/husband with mental cruelty by filing police complaint. He would further submit that the respondent underwent surgery on 20.07.1994 and only thereafter, she has filed a false complaint on 19.09.1994 alleging that her husband had ill-treated her and kicked her which had caused fibroid growth in her breast. He would further submit that when a party to a marriage is suffering from a



communicable disease, a decree for divorce should be granted in the interest of both the parties. He would further submit that the respondent has given a police complaint against him and not withdrawn the same and thus, it has caused mental cruelty to him and on this ground also the appellant is entitled for divorce. The appellate Court has reversed the well considered order passed by the trial Court which is untenable in law. Hence, he would pray to allow the Appeals.

6. Learned counsel for the respondent had submitted that she is not a cancer patient as alleged by the appellant. Only because the appellant/husband kicked her, it developed abscess in her breast and she was operated and she is perfectly normal. Further, she has also lodged a police complaint before the All Women Police for the above said act of the husband and also stated about the demand of TVS 50 motorcycle by the appellant from her parents. Learned counsel further submitted that the respondent/wife is physically fit for matrimonial life. Hence, she prayed for dismissing the appeals.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed on records.



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8. While admitting the appeals, the following substantial questions of law were framed:

i) Whether a decree for restitution of conjugal rights can be granted in favour of a defaulting party staying away from the matrimonial home?

ii) When the wife had lodged a police complaint against her husband and has not withdrawn the same, whether this harassment by mental cruelty should not be a ground for negating the relief for restitution of conjugal rights?

iii) Whether a decree for restitution of conjugal rights can be granted in favour of a party who has been suffering from a communicable disease?

iv) When a party to a marriage is suffering from a communicable disease whether a decree for divorce should not be granted in the interest of both the parties?

9. The appellant/husband had filed a petition for divorce on the ground that the respondent/wife is not fit for matrimonial life because of her health issues and also on the ground of cruelty as his wife/respondent had lodged a police complaint against him and has not withdrawn the same.



10. The respondent/wife filed a petition for restitution of conjugal rights stating that she was having only fibroid in her breast and that was also operated and she had become normal and that she is fit for matrimonial life.

11. In the light of the above, now, it has to be decided whether the averments made by the appellant which were denied by the respondent would amount to matrimonial cruelty and whether the respondent is suffering from communicable disease and whether those averments would be suffice for grant of decree of divorce.

12. This Court has gone through the averments made in the original petition as well as in the counter affidavit. The deposition of the appellant as P.W.1 and the respondent as R.W.1 has also been thoroughly scrutinised. A reading of the entire averments would only show that the matrimonial life between the appellant and the respondent is not cordial. Therefore, the appellant has filed the original petition for divorce. At this juncture, it should be seen whether cruelty has been committed by the wife. Perusal of the material evidence Ex.A2 would clearly reveal that the respondent was taking treatment at Thiruvavur and further, it is found that she was not well and she



had undergone a surgery as is evident from the letters written by her and also by her relatives, Exs.A3 to A8 and the same was also not denied by the respondent. According to Ex.A2, there was a cyst in the right breast and the same was removed at Jipmer Hospital which can be culled out from Ex.P3 and from the statement of R.W.2. However, the doctor who treated the respondent was not examined as a witness. It is pertinent to note that the allegation of the wife that only due to the assault made by her husband she sustained such an injury which led to surgery, cannot be accepted and no statement was made by the doctor in the report to corroborate the above said allegation. Further more, there can be no doubt that the conduct of the respondent in giving a police complaint against the appellant after the filing the petition for divorce, could be considered as an act of cruelty. Therefore, it can reasonably be presumed that in a situation of this nature, the appellant would not be in a position to continue the matrimonial life with the respondent in a peaceful manner and therefore, the findings of the trial Court need not be interfered with.

13. Moreover, the marriage has taken place on 04.10.1993 and



thereafter, they were living separately from September, 1994, till date i.e., for more than 27 years. The matrimonial relationship between the parties has snapped and there is no chance of reunion among them. Though several counselling were conducted, all went in vain. Hence, this Court is inclined to confirm the fair and final order passed by the trial Court. Therefore, in the interest of parties, the decree of divorce can be granted. Accordingly, the substantial questions of law are answered in the affirmative.

14. This Court finds that the marriage has been irretrievably broken down and there will not be any useful purpose in asking the appellant and respondent to live together and therefore, in the interest of justice, this Court is inclined to grant divorce to the appellant as ordered by the trial Court. However, this Court finds that it would be just and reasonable, if the appellant is directed to pay a sum of Rs.5 lakhs towards permanent alimony to the respondent/wife. Accordingly, Divorce is granted, subject to payment of Rs.5 lakhs by the appellant/husband to the respondent/wife.

15. In the result, the Appeals are allowed and a decree of divorce is granted, subject to payment of Rs.5,00,000/- (Rupees Five Lakhs only) by



the appellant to the respondent within a period of twelve weeks from the date of receipt of a copy of this judgment. The fair and final order dated 01.09.1999 made in CMA Nos.59 and 60 of 1998 on the file of II Additional District Judge, Erode, are set aside confirming the fair and final order dated 08.07.1998 made in HMOP Nos.10 of 1997 and 74 of 1994 on the file of Principal Subordinate Judge, Erode. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2022

Speaking/ Non speaking order
Index:Yes/No
vsi

To

1. II Additional District Judge, Erode.
2. The Principal Subordinate Judge, Erode.

J.NISHA BANU,J.



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CMSA Nos.12 and 13 of 2000

vsi

Pre-delivery judgment made in
CMSA Nos.12 & 13 of 2000

14.06.2022