



CMA.No.2853 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.2853 of 2007

K.Baskaran

... Appellant/ Petitioner

Vs.

K.Sripoorna @ Parimala

... Respondent/Respondent

PRAYER : Appeal filed under Section 28 of the Hindu Marriage Act, 1955 against the judgement and decree in FCOP No.224 of 2003 on the file of the Family Court, Salem dated 27.07.2007.

For Petitioner : Mr.N.Srinivasan

For Respondent : No Appearance for sole respondent



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JUDGEMENT

The unsuccessful husband before the Courts below has filed the above appeal challenging the dismissal of petition seeking divorce from the respondent herein. The brief facts are as follows:-

2. The appellant and the respondent had got married on 06.03.1992 at Salem. They were blessed with three children and on the date of the filing of the FCOP.No.2224 of 2003 on the file of the Family Court, Salem, the 1st daughter was aged about 10 years, the 2nd son was aged about 6 years and the 3rd daughter was aged about 2 years. It is the case of the appellant that for about 3 months post the wedding the appellant and the respondent led a happy married life. Thereafter, the respondent started behaving weirdly and conducted herself in a manner unbecoming of a lady.

3. It is the case of the appellant that when they had got married the respondent's parents were residing at Coimbatore as his father in law was employed at the Lakshmi Mills at Coimbatore. The petitioner was taking care of his aged parents mother and father and the father had died just 2 years prior to the filing of the petition.



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4. The respondent used to misbehave and quarrel with his mother on trivial issues. She would also not participate in any of the house chores in fact she would always wake up late and had scant respect for either the petitioner or his mother. She would also have frequent burst of temper. He would submit that when she had gone for her 1st delivery to her parent's house she has left without informing the appellant and he had come to know about her leaving only when he returned home. He would submit that he waited for a month for the respondent to return but however she refused to do so. Meanwhile, the respondent along with her parents had come to Salem and lodged a complaint for Dowry harassment against the petitioner and his people as a result of which after enquiring the appellant the police had advised his parents to take him back immediately. The said complaint has been lodged on the ground that the respondent was harassed by the appellant's people for dowry.

5. The petitioner would contend that after the birth of his 1st son, the



respondent stayed over at her parent's house for about 3 years. Thereafter she came back with the child and returned for confinement for the 2nd child Mohan Babu. During this time the plaintiff would pick up unnecessary quarrels with the appellant. All of these have caused immense pressure and mental agony on the appellant.

6. It is his case that the respondent had returned to Salem and despite the efforts taken by the appellant there was no chance of the re-union. The appellant would further submit that whenever the appellant had enquired as to why the respondent was harassing his mother he received a response that the respondent would initiate proceedings for dowry harassment against him and his family members. Therefore, the appellant would submit that the respondent had wilfully deserted him and had also treated him cruelly and therefore he would seek for a divorce.

7. The respondent wife on entering appearance had filed a counter denying the various self-serving allegations made by the appellant. The respondent would further submit that she has never left her matrimonial home on the contrary, it was the petitioner who had left her at her parent's



home for confinement and had not bothered to take her back. At no point of time she had ill treated the petitioner or his people. She would submit that except for the vague statement made there is nothing to show that the respondent had deserted the appellant and had treated him with cruelty. Both the Courts below have dismissed the application. Challenging the same the appellant husband is before this Court.

7. The counsel who had appeared for the appellant would contend that there is no purpose in keeping the marriage alive since they have been living away from each other from the year 2003 and it was nearly two decades since they have separated. He would rely upon the Judgement of the Hon'ble Supreme Court reported in (2007) 4 SCC 511 - *Samar Ghosh Vs. Jaya Ghosh*. He would particularly rely upon the statement made therein in para no.102. which is extracted as follows:-

*"102. When we take into consideration
aforementioned factors along with an important
circumstance that the parties are admittedly living
separately for more than sixteen and a half years (Since
27-08-1990) the irresistible conclusion would be that*



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matrimonial bond has been ruptured beyond repair

because of the mental cruelty caused by the respondent."

He would therefore, submit that this Court can invoke its powers to grant decree on the ground of irretrievable break down of marriage.

8. From the records it is seen that the petitioner who has come forward with a suit for divorce on the ground of cruelty and desertion has not proved the same either in his pleadings or through evidences. Further, there appears to be a lot of ambiguity in the very pleading of the appellant. In paragraph No.VII of the petition for divorce, the appellant has stated as follows:-

" VII. For about three years the respondent was staying with her parents in their house without evincing any interest to come back to him. Considering the kind of treatment he was accorded by his parents- in -law, the petitioner was not willing to enter their house. After the lapse of three years the respondent came with her child and father to his office and he took them to his home.



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Thereafter for about a year the respondent was cohabiting without creating any problem. When the second child Mohan Babu was in her womb, the respondent began to indulge in her former erratically irrational ways of behaviour, picking up quarrels unnecessarily and abusing his parents in indecent language and treating them disgracefully. About two months before delivery, the respondent quarrelled with his parents and adamantly persisted in her demand to take her immediately her parent's house. So the petitioner took the child with mother and left them there."

9. It is to be remembered that the respondent has another child after the son Mohan Babu. That apart, even the cause of action which has been pleaded in paragraph No.XIV does not give any clear idea as to when the respondent/ wife had deserted the appellant and left for her parental home. Even going by the age of the children, the appellant would have returned to her parental home only for the delivery of her third child, whereas, in the petition filed for divorce there is nothing to state as to when the desertion



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had taken place. The learned counsel had argued that since the marriage has been irretrievably broken down the divorce has to be granted. Such a ground is not available in the statute book and considering the fact that the appellant has not been able to prove both the grounds for divorce the Courts below have rightly dismissed the same and I see no reason to interfere with the same. No costs.

18.10.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Family Court, Salem.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T. ASHA, J,

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