

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2022

PRONOUNCED ON : 23 .06.2022

C O R A M :

THE HON'BLE MRS. JUSTICE J.NISHA BANU

CMA.NO.3819 OF 2011

T.SampathKumar

..Appellant/Petitioner

..Vs..

1.R.V.Sheela

2.R.Vijayakumar

..Respondents/Respondents

PRAYER :

CMA filed under Section 55 of Indian Divorce Act, praying to set aside the decree dated 13.06.2011 in O.P.No.16 of 2009 on the file of learned District Court, Nilgiris.

For Appellant : Mr.K.F.Manavalan

For respondents : Mr.T.V.Xavier for R1

JUDGMENT

This appeal is filed against the order passed in O.P.No.16 of 2009 whereby, the District Judge, by order dated 13.06.2011, dismissed the OP filed by the husband seeking divorce.

2. The brief facts of the case is that:

(i) Appellant is the husband. 1st respondent is the wife. Appellant herein filed O.P.No.16 of 2009 seeking a decree dissolving the marriage between the appellant/petitioner and the first respondent held on 07.04.1989.

(ii) In the petition filed under Section 10(1)(I) and 10(1)(x) of Divorce Act, it is averred by the petitioner/husband that he married the first respondent on 07.04.1989, two girls were born to them, elder daughter was born on 27.03.1991 and younger daughter was born on 30.05.1992. Till the end of 2005, they lived happily. In 2006, the first respondent developed illicit relationship with the 2nd respondent and inspite of the petitioner persuading her to discontinue her relationship, she refused to heed to his advise. First respondent preferred false complaints against him before Police Officials. The petitioner was dragged to Police station for enquiry on the false complaints. According to the petitioner, the first respondent was violent and her unruly behaviour is on the increase and unable to bear the torture by the first respondent, the petitioner filed the OP seeking divorce.

(iii)(a) In the counter filed by the wife/first respondent, it is stated that petitioner is a person who always suspects the fidelity of the first respondent ever since the marriage and he used to harass the first respondent both mentally and physically by suspecting her fidelity. On the other hand, at no point of time, the first respondent/wife ill treated the petitioner.

(b) The petitioner was not taking care of the day to day needs of the first respondent and her daughters and as such they had taken up the matter before Pastor Joshua Deva Sagayanm God's Church, Coonoor and the matter was compromised. The allegations in the petition are false.

(c) The petitioner assaulted the first respondent, ill treated, so complaint was given by the first respondent to All Women's Police Station, Coonoor. The petitioner has not heeded to several request of the first respondent or the daughters for re union and without being maintained by the petitioner, the first respondent has no source of income to lead the day to day living of the first respondent and her daughters.

(iv) Second respondent also filed counter stating that the allegation that the first respondent developed illicit relationship with the second respondent is false and baseless. The second respondent is not aware of other allegations made in the petition. The petitioner had filed the petition with bald allegations against this respondent without any truth.

3. Before the trial court, on the side of petitioner, three

witnesses were examined as P.Ws.1 to 3, Exhibits A. 1 to 6 were marked. On the side of the first respondent, R.W.1 to 4 were examined, Exhibits R.1 to R.3 were marked.

4. The trial court framed the following issues for consideration of the petition:

" 1)Whether the first respondent was having illicit relationship with the 2nd respondent.

2)Whether the petitioner has proved by proper witness that the first respondent caused mental and physical cruelty."

5. As far as 1st issue is concerned, the trial court based on evidence of plaintiff's side witness and also the respondents side witnesses, found that as stated by the petitioner an audio cassette wherein both first and second respondents would accept their illicit relationship, was not at all produced before the court. Further, R.W.4 (wife of 2nd respondent) also deposed that no incident happened on 03.01.2009 as alleged by the petitioner. She stated that she and her husband/2nd respondent are in good terms; on 08.01.2009, the allegations of the petitioner as said to have happened and that she caught the 1st and 2nd respondent red handed is not true and further R.W.4 refused the statement of the petitioner/husband in the trial court.

6. The trial court pointed out the contradictions in the statement of the petitioner who in his cross examination stated that he did not enquire 2nd respondent in November 2006 and he did not inform the parents of 1st respondent/wife about the illicit relationship with the 2nd respondent. In such circumstances, the allegation of the petitioner that he come to know about the illicit relationship of his wife/1st respondent with the 2nd respondent from the enquiries made on the 2nd respondent on November 2006 cannot be accepted. The trial court also pointed out the variations and contradictions in the testimony of Pastor Nesamani/P.W.2. The Petitioner alleged that first respondent assaulted him with tennis racket and P.W.3 enquired the said allegation. In this regard, P.W.3's evidence is that 1st respondent has left the enquiry with her daughter but not spoken anything about the incident. The trial court pointing out the same, held that nothing is proved by the petitioner.

7. It was clearly pointed out by the trial court that the petitioner failed to prove either by evidence or establish with

the circumstances that there was illicit relationship between 1st and 2nd respondent. The 2nd respondent also stated in clear terms that there is no such connection between him and the 1st respondent. The petitioner has not produced any medical evidence to substantiate his allegation that because of the assault by his wife, there was fracture and he underwent treatment in the hospital. The further allegation of the petitioner that he and his friend has been assaulted by the 1st respondent and he has given complaint to the Police Station has not been established by any oral or documentary evidence. The trial court has dismissed the petition filed by the petitioner/husband holding that the allegations of adultery and cruelty has not been proved with substantive evidence.

8. Heard both sides and perused the records carefully.

9. It was argued by the petitioner counsel that it is not normal wear and tear of family life and the first respondent actions amounted to cruelty. There are number of incidents taken place the appellant found it impossible to live with first respondent. Learned counsel relied on catena of judgments wherein instances of mental cruelty has been proved in evidence and documents and the courts held that the action of the wife amounted to cruelty.

10. On the other hand, the counsel for first respondent would submit that the action of the appellant is detrimental to the 1st respondent and her daughters. When the appellant retired on 31.03.2014 he filled the form of application for pensionary benefits showing column No.9 Family details and he indicated the name of family members as Nil and Relationship as Nil, Married/unmarried as..... even though the first respondent being legally wedded wife and the daughters are legal heirs of appellant are living. The appellant's attempt of producing fake photograph of 1st respondent with her cousin brother saying that he took from the 1st respondent's facebook is not at all relevant to the case on hand as the 1st respondent is not using the facebook.

11. On a careful perusal of the allegations of the appellant/husband on the one hand and the judgment of the trial court on the other hand, it is relevant to observe that the burden to prove the adultery is on the person who seeks dissolution of marriage on the ground of adultery. Therefore the question before the Court is whether the appellant-husband has

discharged this burden to the satisfaction of the Court by adducing cogent and convincing evidence.

12. The evidence before the trial court is so ample and cogent that only a faint attempt was made by the petitioner-husband and nothing has been proved to the satisfaction of the court. In such view, the challenge of the appellant made to the trial Judge's finding has no merits. In such circumstances, this court has no hesitation in confirming that finding. Accordingly, the impugned order passed in O.P.No.16 of 2009 on the file of District Court, Nilgiris, dated 13.06.2011 is confirmed. The appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The District Judge,
The Nilgiris.

Copy To

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.K.F.Manavalan, Advocate, S.R.No.39461

+1cc to Mr.C.Elamurugan, Advocate, S.R.No.38468

C.M.A.No.3819 of 2011

MG(CO)
PM/20/07/2022