



C.M.S.A.No.10 of 2020

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P.T. ASHA. J,

Today, the matter has been listed under the caption “*For Being Mentioned*”.

2. It has been brought to the notice of the Court that in paragraph no.3 of the said order, the proceedings have been wrongly stated as MCOP instead of HMOP. The said error is corrected and the paragraph no.3 of the said order would read as follows:

“3.The petitioner had filed H.M.O.P.No.72 of 2010 on the file of the Subordinate Court, Ranipet seeking dissolution of his marriage with the respondent, which was conducted on 24.10.2007. The petitioner has based his petition on the following grounds of cruelty.”

3. The Registry is directed to issue fresh order copy to the parties.

10.02.2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.S.A.No.10 of 2020

M. Ganesa Moorthy

... Appellant

Vs

R.Selvi

... Respondent

PRAYER : This Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act read with Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 03.12.2019 passed in H.M.C.M.A.No.3 of 2017 on the file of the II Additional District Judge, Vellore at Ranipet.

For Appellant : Mr.Vasudevan
for E. Kannadasan

For Respondent : Mr.R.Rayeesa Fathima

JUDGMENT



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The husband, who has concurrently lost before the Courts below has filed the above civil miscellaneous second appeal.

2. The facts in brief are herein below set out and the parties are referred to in the same ranking as before the learned Subordinate Judge, Ranipet, Vellore.

3. The petitioner had filed M.C.O.P.No.72 of 2010 on the file of the Subordinate Court, Ranipet seeking dissolution of his marriage with the respondent, which was conducted on 24.10.2007. The petitioner has based his petition on the following grounds of cruelty.

a) Within 15 days of marriage, the respondent had left her matrimonial home and had not returned home.

b) She had accused her sister-in-law of theft.

c) Her behaviour towards her in laws leaves much to be desired.

4. The respondent had refuted the above allegations and would submit that it was the petitioner, who had allowed her to stay at her



parental home and it was he who left her at parental home where he would visit her every week. Whenever she asked about the date on which he would take her back, he stated that he was constructing a house and so soon as it is completed, he would take her back. She thereafter would submit that she is ready and willing to live with the petitioner. However, no steps have been taken by him in this regard. She would however seek to have the petition dismissed.

5. The learned Subordinate Judge, Ranipet dismissed the said petition, against which, the petitioner had filed an appeal in H.M.C.M.A.No. 3 of 2017 on the file of the II Additional District Judge, Vellore. The learned Judge has also dismissed the appeal and confirmed the judgment and decree of the Subordinate Court. Aggrieved by the same, the petitioner is before this Court.

6. Based on the arguments advanced by the learned counsel on either side, the following substantial question of law arises for consideration.

“(i) Whether the Courts below are correct in holding that the petitioner has not proved cruelty totally



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overlooking the pleadings and evidence of the respondent, which would go to show that the respondent has without reasonable cause stayed away from the petitioner-husband which has caused him a great deal of mental agony and hardship.”

7. Heard the learned counsel on either side and perused the materials available on record.

8. The petitioner has filed the divorce petition on the ground of cruelty. The first and main ground on which he has pleaded cruelty is the fact that the respondent-wife has stayed with him as his wife only for 15 days and thereafter left for her parental home, where from she has not returned. The respondent's counter to this statement is that it was the petitioner who had left her at her parental home and had assured to take her back once the house had been constructed and this assurance has been observed in breach.

9. A perusal of proof affidavit in lieu of chief examination filed by the respondent would indicate that she has pleaded entirely a new case



inasmuch as she has made allegations that her husband is an alcoholic and a women abuser. None of these allegations are contained in the counter filed to the divorce petition. The learned counsel for the respondent has also stated that the respondent had thereafter instituted a domestic violence case against the petitioner and all his sisters. A reading of the counter would show that the respondent was upset with the fact that all the 6 sisters of the petitioner was residing in the very same house of her husband, which was not palatable to her. This appears to be the reason for her shifting to her parental home within 15 days of the marriage. Thereafter, no steps whatsoever has been taken to rejoin the petitioner husband. In fact after filing of the petition for divorce, the respondent has not taken any steps in the form of a petition for restitution of conjugal rights to prove her *bonafides* that she wanted to continue her matrimonial life with her husband. The marriage between the two have lasted for just 15 days admittedly. This is definitely a case of inflicting cruelty inasmuch as the husband is deprived of the company of his wife for no reason. A reading of the counter does not indicate any reason as to why the respondent has kept away from the company of the petitioner. The conduct of the respondent post the filing of the divorce petition has also resulted in inflicting a lot of mental agony and tension on the



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petitioner as the respondent has indulged in filing the domestic violence case not only against the petitioner but also against his sisters.

10. The respondent, who has pleaded that she had suffered at the hands of her sisters-in-laws, has not let in evidence to prove the same. In her proof affidavit, she has also contended that her husband is an alcoholic and a women abuser. This statement does not find place in her counter statement. The allegation is highly defamatory in nature, which also amounts to cruelty, particularly when they are false and baseless allegations. This is definitely a case of causing cruelty to the husband. Both the Courts below have been swayed by the statement of the respondent that her husband left her at her parental home and not returned to take her back. The Courts below have not addressed the subsequent conduct of the respondent which amounts to cause of cruelty.

11. In the light of the above discussion, the judgment and decree of the Courts below are set aside and the civil miscellaneous appeal is allowed. The marriage between the appellant and the respondent solemnised on 24.10.2007 stands dissolved. No costs.



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Index: Yes / No

Speaking Order : Yes / No
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To

1. The Principal District Judge,
Vellore.
2. The Section Officer,
V.R. Section Officer,
High Court, Madras

P.T.ASHA, J.,

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