



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3088 of 2019

Josephine Nisha Kumari

... Appellant/Petitioner

Versus

1.Emanual

2.The Commissioner,
Estate-Civil,
Karaikal Municipality,
Karaikal.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984 to set aside the order and decretal order, dated 31.01.2019 made in M.O.P.No.48 of 2017 on the file of the Family Court, Karaikal by allowing the appeal.

For Appellant : Mr.P.Parthiban

For Respondents : Mr.R.Natarajan

JUDGMENT

(Judgment of this Court made by Mr.Justice D.Bharatha Chakaravarthi)

This Civil Miscellaneous Appeal is filed by the unsuccessful wife, namely, Josephine Nisha Kumari, aggrieved by the judgement and decree of the Family Court, Karaikkal, dated 31/01/2019 in the M.O.P.No.48 of 2017 whereby the petition filed by the appellant wife for granting a divorce by dissolving the marriage between herself and the respondent husband, namely, Emanuel, on 03/02/2002 as per Christian rights at the Church at Church Street, Kariakkal and registered in No.30 of 2002 was dismissed.

2. The appellant and the respondent are Christians and



they got married as per Christian rites on 03/02/2002 at the Church at Church Street, Karaikkal. Even after taking treatment, they were not blessed with any child and therefore, they have adopted a female child on 6/8/2008. The child was born to her putative parents on 16/07/2008 and was taken in adoption within a month and the petitioner and the respondent named her as Sandaline Margaret. There was marital discord between the appellant in the respondent and the appellant is living separately away from the matrimonial home from the year 2015. The female child is living continuously with the father. The appellant is working as a Staff Nurse in the Health Department of the Government of Puducherry. The respondent is working as a Primary School Teacher in the Education Department of the Government of Puducherry.

3. The appellant wife is approaching the court of law praying for divorce for the second time. Earlier she filed M.O.P.No.29 of 2016, however, the Family Court, Karaikkal, was successful in effecting a conciliation between the parties and thus, a joint compromise memo was filed on 26/05/2016 and the earlier divorce petition was disposed off in terms of the compromise memo, whereby, the parties undertook to live together along with their adopted child.

4. Thereafter, the present M.O.P.No.48 of 2017 is filed by the appellant wife on the ground of cruelty. On a perusal of the petition filed by the appellant wife, she alleges the following acts of cruelty against her husband:

(a). From the beginning of the marriage, the respondent husband is interested only in money that is the salary of the petitioner wife and after extracting all her money and salary she was not treated well and this amounts to cruelty. The respondent husband has the ATM card and spends all the money from her account. The respondent husband also constructed a house property from and out of her salary. Thus, she was denuded of all her salary and the earnings while she got nothing in return the marriage. This behaviour of the respondent amounts to cruelty;

(b). The respondent husband twice behave violently by pressing her neck endangering her life and also ill-treated her by scolding in unparliamentary words;

(c). Even after undertaking to live together in the year earlier M.O.P., she was not allowed to enter the matrimonial home and is forced to live separately.

5. The respondent husband filed a counter. It is his case



that the parties can live together especially when they have adopted a female child who is now 13 years of age and she is studying in the high school. He denied that he was money minded and submitted that unmindful of money, he treated the appellant wife initially for getting pregnant by spending huge money. Thereafter, the appellant wife was suffering from tuberculosis and he took her to Thanjavur and gave her all the treatment. As far as the construction of house property is concerned he admits that only a minor part of money was given by the appellant wife while major part was obtained as a loan by him and he has produced all the loan documents. Therefore, he would deny that he was ever money minded and that he never ill treated the appellant. As far as the allegation of physical violence is concerned the same is denied by him. The final allegation that he did not allow the appellant wife to join the matrimonial home after the earlier decision of the family court is again denied by him and he would submit that it is the appellant wife who is continuously living in the same address and is refusing to join the matrimonial abode.

6. The appellant wife examined herself P.W.1 and her mother as P.W.2 and on her behalf Exs.P-1 to P-7 were marked. The respondent examined himself as R.W.1 and one Selvam was examined as R.W.2 and Exs.R-1 to R-4 were marked.

7. The Trial Court, after appreciating the evidence, came to the conclusion that from the cross-examination of the appellant wife it is clear that the respondent husband took good care of her by giving her treatment at the fertility clinics and thereafter, at Thanjavur for tuberculosis by spending money. Further, the loan documents produced by him clearly show that there is a housing loan from Indian Bank, Nagore and a GPF loan for construction of the house. The wife did not produce any bank statement of her even to show that the husband has been spending by using her ATM card. Therefore, the trial court found that the first allegation that the respondent husband was money minded and was not treating the wife well as unfounded. The trial court, further relying upon the cross-examination of the appellant wife, where under she went back from her specific allegation of pressing the neck and deposed before the court that she is only generally alleging cruelty, the trial court found that the second set of allegations relating to physical torture and verbal abuse as not proved. Finally, from the fact that the appellant wife continues to reside in the same address from the year 2015, it was clear to the trial court that it is the appellant wife who did not join the matrimonial home in spite of the respondent husband taking care of the adopted



WEB COPY

female child, who is now in her teenage. The Trial Court, therefore, found that it is not a fit case for grant of divorce in the interests of the parties as well as the child and accordingly dismissed the petition. Aggrieved by the same the present appeal is filed before this court.

8. Mr.P.Parthiban, the learned counsel appearing on behalf of the appellant wife would submit that even though the respondent husband was a signatory to the joint memorandum filed before the Family Court on the earlier occasion, he miserably failed and neglected to properly behave with the appellant wife and to take her to the matrimonial home. In this regard he would submit that the wife has categorically deposed that in spite of her attempt it is the respondent husband who has not taken her into the matrimonial home and therefore this conduct amounts to cruelty. This apart the learned would counsel submit that what amounts to mental cruelty would depend on the facts and circumstances of each case and the from the background of the parties. In this case, the appellant wife has categorically alleged that the respondent husband after married her and because of the said fact that she got a residence certificate in Puducherry and Government employment, is persisting to live with her only because of the salary received by her under has been treating her only as a money yielding machine without showing any love and affection and therefore the wife has complained that she is unable to bear the mental agony and torture and come before the court. It was the duty of the Family Court to see things from the perspective of the appellant wife and it ought to have seen that the cumulative acts of the respondent husband amounted to cruelty and therefore ought to have dissolved the marriage by granting a decree of divorce

9. Mr.R.Natarajan, the learned counsel appearing on behalf of the respondent husband would submit that the appellant wife is unconscionably praying for divorce after consenting for adoption of female child. The child was taken in adoption by a proper deed of adoption and was being brought up by both the appellant and the respondent. But, however, from the year 2015, it is only the respondent husband who is taking care of the child since the appellant wife is living separately in the address mentioned in the petition, and in spite of compromise by the Family Court on the earlier occasion she refused to vacate the house and join the matrimonial home. As a matter of fact, the appellant had taken good care of her without any concern for money whenever needed. As a matter of fact, the appellant spends her salary and money on her parents, relatives and in the manner she wants and therefore to allege that the respondent is money



mind is factually incorrect. Each and every allegation of cruelty alleged by the appellant wife has been dealt with by the Family Court and on the basis of the evidence on record found to be untrue and factually incorrect and therefore the Family Court has rightly dismissed the petition filed by the appellant wife and there is no ground to interfere in this appeal.

10. We have considered the rival submissions made on behalf of both sides. We have gone through the records. The point for consideration in this appeal is that whether or not the appellant wife has made out a case of cruelty so as to grant her the relief?

11. As far as the first and major act of cruelty alleged by the appellant wife is that all along she was not showered with any love and affection and the respondent husband is approaching her only with the salary in his mind. The very fact that he is continuously exploiting all her money vouches the said fact. On the said allegation if the evidence on record is looked into, the appellant wife in her cross-examination firstly admitted that the respondent husband took her for treatment in the fertility clinics by spending huge money. It is further admitted by her that the respondent husband took her to Thanjavur for treatment of tuberculosis disease. As far as the construction is concerned, Exs.R-1 and R-2 would clearly prove the fact that it is the respondent husband who had obtained loan for the purpose of construction of the house it is also clear from the evidence that there is also one more property purchased by them which stands in the name of the appellant wife also. All along the respondent husband is taking care of all the maintenance and care of the daughter and is upbringing her. All these factors cumulatively disprove the allegation that the respondent husband is money minded and that he approaches the appellant wife only with her salary in mind and the trial court rightly disbelieved the appellant wife and upheld the case of the respondent husband.

12. Similarly, when the appellant wife herself has got into the box and certified that her husband is of good character and has not got any vices and she is alleging cruelty only generally and therefore gave up her specific instances of cruelty by pressing the neck etc., the allegations of physical cruelty and the verbal abuse fade away.

13. The further allegation that even after the earlier order the appellant wife is not permitted to enter the matrimonial home is denied by the respondent husband and he is



ready to welcome her home. From the very fact that it was the appellant wife who left the matrimonial home and started living at the present address from the year 2015 and continues to live at the same address disproves her own case. As a matter of fact, the appellant wife is knocking the doors of the court for the second time seeking for divorce. We gave our anxious consideration to look at the things from the appellant's perspective and see if there is any allegation of cruelty which is pleaded and proved by her but we couldn't find any merit to justify her prayer to dissolve the marriage and we have therefore no other option than to dismiss the civil miscellaneous appeal.

14. The Civil Miscellaneous Appeal is, therefore, dismissed. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs

To

- 1.The Family Court,
Karaikal.
- 2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Natarajan, Advocate SR.No.2499

C.M.A.No.3088 of 2019

AK(CO)
GN(16/02/2022)