



CMA No.3249 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2022

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA No.3249 of 2014
and M.P.No.1 of 2014

Shanthi @ Glory Shantharuby

...Appellant

Vs.

Joseph Prabakaran
Respondent

...

PRAYER: Civil Miscellaneous Appeal filed under Section 28 of Hindu Marriage Act to set aside the order passed by the 1st Additional District Judge, Salem in IDOP: 252 of 2008 dated 27.09.2013.

For Appellant : Mr.D.Muthukumar

For Respondent : No appearance

JUDGMENT

Appeal filed under Section 28 of the Hindu Marriage Act against the order in IDOP: 252 of 2008 dated 27.09.2013 passed by the learned 1st Additional District Judge, Salem.



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2. For convenience, the parties will be referred to as husband and wife in this appeal.

3. Brief facts, which are necessary for disposal of this appeal, is succinctly narrated hereunder:

The respondent herein is the husband of the appellant, who has filed a petition in I.D.O.P.No.252 of 2008, seeking dissolution of marriage, which was solemnized on 22.05.2008 at CSI Zion Church at Attur. It is the case of the husband that after the marriage, he and his wife were living together only for a period of 3 months and 20 days. While they were residing together, his wife compelled the respondent/husband to set up a matrimonial home at Kallakurichi and also demanded to give his entire salary to her and directed him not to leave the house after 8 p.m. and also ordered to sever the relationship with his brothers and sisters. The wife also refused to have sexual relationship with the respondent/husband from the date of the marriage. The respondent/husband states that there is no consummation of marriage from the date of solemnization of the marriage and therefore, he has taken the appellant/wife to one Dr.Sakunthala, residing near to their matrimonial house to



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provide proper medical treatment and guidance.

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3.1. After diagnosis, the Doctor, who treated her, has informed the husband that the wife was not capable of having any sexual relationship and advised the respondent/husband not to have any sexual relationship with his wife. Thereafter, the wife deserted the husband and left the matrimonial home and while leaving, she has also taken all her belongings including the jewels. In spite of the best efforts of the husband, as his wife was not ready to join him at his matrimonial home and also the husband, having been denied of having sexual relationship with his wife, which has caused mental agony, the respondent/husband has filed a IDOP petition for dissolving the marriage.

4. Denying the averments made in the petition, the appellant/wife has stated that her husband and his family members harassed her by demanding 50 sovereigns of jewels and they also physically attacked her. The husband also snatched her ATM card and utilized the entire salary. He also refused to bear the day-to-day expenses to her. Moreover, she submitted that she did not undergo any medical treatment with regard to her capacity to have sexual relationship and no such examination was done by Dr. Sakunthala, as narrated by the respondent/husband.

5. Before the Trial Court, the respondent/husband examined himself as P.W.1



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and three documents were marked as Ex.P1 to Ex.P3. The appellant/wife examined herself as R.W.1 and three documents were marked as Ex.R1 to Ex.R3.

6. The learned Judge, after considering the entire pleadings and documents available on record and on hearing both sides, held that the marriage between the appellant and the respondent has not consummated and hence, as per Section 10 (1) of the Divorce Act 1869, the respondent/husband is entitled to get divorce. Accordingly, the learned Judge allowed the petition filed by the respondent/husband and dissolved the marriage between the appellant and the respondent. Aggrieved by the same, the appellant/wife has come out with the present appeal.

7. Heard the learned counsel for the appellant and there is no representation on behalf of the respondent.

8. Learned counsel for the appellant/wife would submit that the ground on which the learned Judge granted divorce is unsustainable, since Ex.R-3 Dr.Sakunthala, Doctor, who examined the wife, has not given any opinion as to her sexual incapacity.



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9. This Court gave its anxious consideration to the submissions advanced by the learned counsel for the appellant and also perused the materials available on record.

10. A mere family dispute, which normally occurs between the newly married couple seems to have been blown out of proportion for reasons best known to the husband, who sought divorce. Equally true, based on certain biological references in the letter of the Doctor, the Court below came to the conclusion that the marriage has not been consummated or that the wife was incapable of having sexual relationship and accordingly, granted divorce on the said sole ground. However, the Court below has not appreciated any single material or evidence, which could form the basis for this Court to approve the same. The Doctor has given an opinion as to the medical condition of the wife stating that she is suffering from anemia and that a healthy diet is the necessity to regroup herself medically. Nowhere in the said document, there is any reference to the wife's incapacity for sexual intercourse.

11. It is to be borne in mind that denial of sexual relationship is a ground for divorce, but, nevertheless, the said ground has to be proved through documentary



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evidence. It is the case of the husband that the marriage was not consummated and the wife is incapable of having sexual relationship and that the said ground has not been proved with documentary evidence. As discussed above, there is no iota of material to show that the husband was denied sexual relationship and that marriage has not been consummated.

12. Further, it is borne out by record that the matter has been referred to Mediation, which has taken place, but not fructified. In the absence of any material to prove that the marriage has not been consummated, the finding of the Court below has to be set aside.

13. For the reasons aforesaid, the finding of the Court below that the marriage has not been consummated and granted divorce on the said sole ground, is wholly erroneous and this Court is of the considered view that the said finding deserves to be interfered with.

14. In the result, the appeal is allowed. The judgment and decree passed by the Court below in IDOP.No.252 of 2008 dated 27.09.2013 is set aside. No costs. Consequently connected miscellaneous petition is closed.



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msv/RR

Internet: Yes/No

Speaking order/Non-speaking order

To

1. The 1st Additional District Judge, Salem.

2. The Section Officer,
VR Section, High Court, Madras.



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J.NISHA BANU,J.

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