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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3644 of 2021
and
C.M.P.No. 21420 of 2021

M. Elumalai
S/o.Munuswamy

... Appellant / Respondent

Vs.

K.P.Kavitha
D/o.Paramasivam

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, against the Fair and Decreetal Order dated 18.11.2021 in O.P.No. 1888 of 2012 passed by the VI Additional Principal Family Court, Chennai.

For Appellant	:	Ms.Thenmozhi Shivaperumal
For Respondent	:	Mr.S.Vijayakumar

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal has been filed against the fair and decretal order in O.P.No.1888 of 2012 on the file of the VI Additional Principal Family Court, Chennai dated 18.11.2021.

2.The appellant- Elumalai is the husband of the respondent/wife - Kavitha. She filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act, seeking dissolution of marriage, solemnized between the appellant and respondent on 13.12.1999 at Gowri Kalyana Mantapam, Salem Road, Banruti. Since, the respondent/wife succeeded in getting the divorce, the appellant/husband is before this Court.



3. Brief facts are that the marriage of the appellant and respondent is arranged one and solemnized on 13.12.1999 at Gowri Kalyana Mantapam, Salem Road, Banruti. After marriage, they started their matrimonial house at No.110, LIG KHB Colony, Chennarayapatna TK, Hasan District, Karnataka, as its being appellant's house. Out of the wedlock two male children were born to them. Right from the inception of marriage, the respondent/wife met horrible life with the appellant/husband and his relatives. In the due course, the appellant/husband started torturing the respondent/wife in suspicious way, daily coming to home in an inebriated condition, assaulting the respondent and abusing her in filthy language. Further, the appellant has not spent a single penny as dutiful husband, towards the respondent and her children too. Therefore, left with no other option, the respondent/wife filed a petition for divorce before the Family Court, Chennai.

4. The Trial Judge, after analyzing the facts put forth by the parties, allowed the petition, by dissolving the marriage.

5. Aggrieved over the same, the present appeal has been filed.

6. The learned counsel for the appellant submitted that the Trial Court failed to appreciate the evidence adduced by the appellant. The respondent/wife did not prove the allegation of cruelty and not let in sufficient evidence to substantiate her claim, besides there was no ground raised by the respondent/wife for desertion. But the Trial Court without any pleading and evidence found the appellant/husband deserted his wife and granted divorce. The appellant is willing for re-union and to lead a peaceful marital life. The Trial Court committed illegality and the finding is recorded perversely and reiterated other grounds raised in the grounds of appeal and thus pleaded to set aside the order passed by the Family Court, Chennai and allow this appeal.

7. The learned counsel for the respondent/wife supported the order of the Trial Court and further contended that un-reasonable desertion of the wife by the appellant/husband caused mental cruelty. The Trial Court taking into consideration of the mental cruelty and other evidences for cruelty caused by the husband accepted the contention of the wife and rightly granted divorce and relieved the wife from the husband to lead a peaceful life. There is no reason to interfere with the order of the Trial Court and thus pleaded to dismiss the appeal.

8. Heard the counsel for the parties and we have considered the matter in the light of the submissions made by the parties.



9. In the instant case, the relationship of the parties are not in dispute and it is an admitted fact that the marriage between them was solemnized on 13.12.1999. From the perusal of the records, it is evident that there is no cordial relationship between the parties from the day one of the marriage. On perusal of evidence, it indicates the fact that the appellant/husband was having the habit of consuming liquor and coming to home in an intoxicated condition. He had not provided any means to the family. Therefore, the respondent/wife with her children came out of the matrimonial home and started living separately at Chennai and also earned. Immediately the appellant/husband also came to Chennai and stayed with his wife. But, he never stopped his behavior of ill treatment. The respondent/wife could not be able to understand the appellant either of his act or attitude. Sometimes, the appellant used to make tiny issues as a big one and picked up quarrel by making bellicose statements. In these circumstances, the respondent/wife lodged a complaint before the Thirumangalam Police Station on 10.05.2012 and since the same is civil in nature, the police personnel advised her to approach the Court. Further, in the evidence of P.W.1, it has been clearly stated that due to the events taken place in the family, there is no possibility for reunion.

10. Another contention of the learned counsel for the respondent/wife is that the parties have been living separately for several years and therefore, it is a fit case for grant of divorce on the ground of desertion under Section 13(1)(b) of the Hindu Marriage Act. It is seen that after the solemnization of the marriage on 13.12.1999, she left the matrimonial home during the year 2012. Since then, there is no cordial relationship between the parties and they are living apart. The Hon-ble Apex Court in the case of Kanchan Devi Vs. Pramod Kumar Mittal reported in AIR 1996 SC 3192 ruled that if the parties are living separately for more than 10 years, there is no possibility of reconciliation and as such, the Court can grant a decree for dissolution of marriage. Similarly, in yet another decision in Naveen Kohli Vs. Neelu Kohli reported in AIR 2006 SC 1675, the Hon-ble Apex Court held that since the parties are living separately for more than three years, there cannot be any doubt that the marriage between the parties has irretrievably broken down. In the case on hand, as the parties have been living separately for more than a decade, a good part of the lives of both parties has been consumed in the litigation and that the allegations made against each other by the parties in the petition and the counter affidavit will go to show that living together is out of question, hence, in our considered view, directing them to live under one roof is not in the realm of possibility.

11. Though the respondent/wife sought divorce on the ground of cruelty, taking note of the undisputed facts that



there is no possibility for reunion, we find no reason to interfere with the conclusion reached by the Trial Court. This appeal has no merit, hence, this appeal is liable to be dismissed.

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12.In the result, this Civil Miscellaneous Appeal stands dismissed as devoid of merits and the fair and decretal order in O.P.No.1888 of 2012 on the file of the VI Additional Principal Family Court, Chennai dated 18.11.2021is confirmed. However, there will be no order as to cost.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Principal Judge,
Family Court, Chennai.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

+lcc to Ms.Thenmozhi Shivaperumal, Advocate, S.R.No.13102

+lcc to Mr.S.Vijayakumar, Advocate, S.R.No.12990

C.M.A.No.3644 of 2021
and
C.M.P.No. 21420 of 2021

AD[co]
NSK/24/05/2022