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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1774 of 2017

R.Manimudi

... Appellant

Versus

M.Bagyalakshmi

... Respondent

Prayer : Civil Miscellaneous Appeal has been filed under Section 19 of Family Courts Act, against the Order and Decree dated 21.10.2016 passed in H.M.O.P.No.985 of 2008, by the Learned Principal Judge, Family Court at Coimbatore.

For Appellant : M/s.AL.Ganthimathi

For Respondent : Mr.B.Vijayakumar

JUDGMENT

D.Bharatha Chakravarthi, J.

This Civil Miscellaneous Appeal is filed by the appellant/husband viz., Mr.R.Manimudi, aggrieved by the Judgment dated 21.10.2016 in H.M.O.P.No.985 of 2008, dismissing the application filed by him under Section 13(1)(ia) of the Hindu Marriage Act, 1955, for dissolving the marriage between him and the respondent/wife viz., M.Bagyalakshmi, solemnized on 06.07.2006.

2.The case of the appellant before the Family Court, Coimbatore is that his marriage with the respondent was solemnized on 06.07.2006. Even from the date of marriage, without informing him, frequently, the respondent/wife would go to her parents' house and thereafter threatened him to come and take her back, by stating that she would otherwise commit suicide. She did



not perform the domestic chores at the matrimonial home right from the date of marriage. She attempted to commit suicide in the year 2006 i.e., 20 days before the Deepavali Festival by consuming cow dung powder. Thereafter, upon compulsion of the appellant's parents, a separate residence was set up, even then she lived with him only for 20 days. Thereafter, she picked up a quarrel and went away. Again upon the insistence of the appellant, she came back, and by citing that she was seven months pregnant and there was no assistance to her, she again went back to her parents' house.

3. On 24.08.2007, the appellant received a message that she delivered a boy baby and he visited her in the hospital. Thereafter, again the respondent/wife went back to her parents' house. Without even consulting the appellant or his parents, the respondent/wife named the child. After a prolonged delay, she came back, but, however, immediately, by breaking her bangles and making emotional drama, she went back to her parents' house. The respondent/wife came back after four months for living, even during that period also she did not do any domestic chores and she did not properly look after the child. Thereafter, on 30.06.2008, the appellant picked up a quarrel and called her brother Raja, who also telephonically abused the appellant. However, in spite of the persuasion, on the same day, she left to the parents' house.

4. The appellant also lodged a complaint on 07.07.2008 before the Alandurai Police Station to unite the respondent/wife and the child, however, the respondent/wife even refused to come for enquiry. Even then the appellant wanted to forget the past and again live with the respondent. Therefore, he issued a legal notice on 17.07.2008 calling upon her to come and live together. Since she did not come even after receipt of the legal notice, a petition for divorce was filed.

5. The case of the respondent/wife before the Family Court, Coimbatore was that after the marriage, she was performing all the domestic chores as a dutiful wife, and she fulfilled all the necessities of her husband including cooking, sending him at a time for his business. After the respondent came to the matrimonial home, on 18.02.2008 i.e., after the birth of the child, the appellant insisted for jewels for the child and also money for building a house. Demanding the same, the respondent was sent to her parents house. On 03.06.2008, she was also physically tortured. Therefore, she went to the Police Station where the police compromised both. Only because, the appellant did not allow her in the matrimonial house demanding the above



things, the respondent was unable to join with the appellant. The respondent is willing to join with the appellant, by considering her own future and the future of the child, therefore, she prayed for dismissal of the petition.

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6.Unable to find any resolution through counseling, the Family Court, proceeded with the trial. The appellant/husband examined himself as P.W.1, and his relative one Venkatachelam as P.W.2 and his mother Kaliammal as P.W.3. The Ration Card of the appellant was marked as Ex.P-1; The marriage invitation was marked as Ex.P-2; The complaint given by the appellant/husband was marked as Ex.P-3; The legal notice of the appellant to the respondent was marked as Ex.P-4; The acknowledgment card as Ex.P-5; A copy of the settlement deed as Ex.P-6; The encumbrance certificate was marked as Ex.P-7.

7.The respondent/wife examined herself as R.W.1 and on behalf of the respondent, the reply notice sent by her to the legal notice sent by the appellant as Ex.R-1; The Sale Deed in favour of the appellant to show that the property originally belonged to him was marked as Ex.R-2 and another Sale Deed to show that the property was originally in the name of the appellant was marked as Ex.R-3.

8.After considering the evidence on record, by its Judgment dated 21.10.2016, the Family Court found that the allegation that the respondent was insisting the appellant should come to Coimbatore to set up a separate residence as unacceptable, based on the testimony of the respondent.

9.Similarly, the Family Court found that the appellant failed to prove his allegation that the respondent was not in favour of the marriage and only upon the compulsion of her parents, she got married. The Family Court found that except for the ipse dixit of the appellant and his mother, no independent witnesses were examined to prove that the respondent/wife was not performing the domestic chores.

10.As regards the allegation relating to the attempt to commit suicide, by appreciating the evidence and also considering the fact that in the legal notice the said incident was not mentioned, held that the same was not proved. Even P.W.2 examined by the appellant had deposed that the appellant and the respondent would frequently fight together, but, thereafter, they will live together.



11.The Trial Court, further found that there was no fault on the wife for approaching the Police Station that too only once, where the couple were compromised and sent back home. The further allegation of the husband is that he was put to cruelty because, he was unable to live with his child and he was separated from his child was also found untrue, because, the respondent/wife was all along willing to come and live together and the appellant was only not ready to live together. Considering all the above, the Family Court held that the appellant has failed to prove any of his charges of cruelty and dismissed the petition. Aggrieved by the same, the present appeal is laid before this Court.

12.Heard M/s.A.L.Ganthimathi, Learned Counsel for the appellant and Mr.B.Vijayakumar, Learned Counsel appearing for the respondent.

13.The Learned Counsel for the appellant would submit that the Family Court had rendered the findings in solely relying upon the testimony of the respondent/wife, while not giving any reasons for not believing the testimony of the appellant/husband, therefore, she would submit that the findings of the Family Court cannot stand the scrutiny of this Court. The Learned Counsel would further submit that the appellant even before the filing of the divorce petition issued a legal notice requesting the respondent/wife to come and live together, but, however, she has continuously refused and they are living separately for all these years. Therefore, it would only show that the respondent/wife is not also interested in joining with the appellant, therefore, the Learned Counsel has submitted that this is the case for interference by this Court in exercising the appellate jurisdiction. She would further submit that going back to the parents' house, without any valid reasons and refusing lawful company to the husband and also denying him the time with his child would amount to mental cruelty and therefore, she prayed for divorce.

14.Opposing the above submissions, Mr.B.Vijayakumar, Learned Counsel appearing for the respondent has submitted that in this case, the Family Court has rightly found that there is no serious allegation of cruelty, which is made against the respondent/wife for filing the petition for divorce. He would submit that the appellant/husband, after issuing a notice for joining together, immediately, filed the petition for divorce. Even after the filing of the divorce petition, the respondent/wife was willing to live together and she again attempted to rejoin and as a matter of fact, she live together



only to be sent back by the appellant. Only because the appellant was driving her back to her parents' house, demanding jewels for the baby and money for building a house the respondent was forced to go back to her parents' house. She doesn't have any means to live on her own and at present, she was taken care of only by her parents and the appellant not even paid interim maintenance of Rs.2,000/- ordered by the Family Court and there are huge arrears.

15. Apart from the above, it is the respondent who has been single-handedly taking care of the child from his birth and the appellant has not even taken any care to discharge any of the duties as a father for minor child. Thus, having all the faults on himself, the appellant is trying to take advantage of his own faults and pleading that the respondent did not want to live together and seeking for divorce and therefore, he would plea that the appeal to be dismissed.

16. We have given our consideration to the submissions made on either side. We have gone through the material records of the case.

17. Points for consideration in this appeal is that:-

"Whether the appellant/husband has proved the charge of cruelty against the respondent/wife, so as to be entitled for praying a decree of divorce?"

18. In this case, it is the case of the appellant that the respondent/wife had unnecessarily picked up the quarrel and gone away to her parents' house demanding separate residence at Coimbatore and that even during the period in which she was living together, by giving emotional threats, attempting to commit suicide, and not doing any of the domestic chores, etc., she committed cruelty. It is the case of the respondent/wife that all the allegations are a figment of imagination and that she was performing all the domestic chores as a dutiful wife and after the child birth, she was forced to live with her parents' house, as she was physically and mentally tortured to bring jewels for baby and also money for construction of building house. Both sides stood to the ground by filing proof of affidavit and in the cross-examination.

19. Under these circumstances, upon appraising the evidence on record, we are inclined to answer the question against the appellant and in favour of the respondent/wife for the following circumstances:-



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a) The appellant, after issuing Ex.P-4/legal notice on 17.07.2008, calling for the respondent/wife, to come and live with him, however, filed the petition for divorce on 17.11.2008 itself;

b) Even while issuing the legal notice on 17.07.2008, a few months before on 04.07.2007, he had executed a Settlement Deed of the property standing in his name in favour of his mother. Therefore, the conduct of the appellant, exposes him, that, he did not genuinely request the respondent/wife, to come to live with him;

c) This apart on the side of the respondent/wife, Ex.R-2 and Ex.R-3 have proved that the property was originally in the name of the appellant, but having determined to send the respondent/wife out of the matrimonial home and to go for divorce, only to avoid paying maintenance, the property was settled in the name of the mother;

d) Coupled with the above fact that the appellant himself in his cross-examination has categorically admitted that even though only a sum of Rs.2,000/- was ordered as interim maintenance, he has kept arrears of more than Rs.50,000/-, even as on the date of cross-examination;

e) Further, P.W.2 in his cross-examination had admitted that even after filing of the petition for divorce, the respondent/wife came back to the matrimonial home and she was living with him for sometime. Therefore, first pending the petition for divorce, the appellant had joined with the respondent/wife and lived together, it goes without saying that he has condoned the alleged acts of the cruelty. That also falsifies that the respondent/wife did not join matrimonial home all along pestering the appellant to come to Coimbatore and she was not ready to live with him at Viraliyur.

20. Therefore, taking into consideration of the above circumstances and the findings of the Family Court, believing the evidence of the respondent/wife that she did not commit the alleged acts of cruelty, in the absence of any other independent witness or corroborating documentary evidence, we are of the view



that the appellant has not made out any case in the appeal, so as to interfere and to upturn the findings of the Family Court.

21. Therefore, we confirm the Judgment and Decree dated 21.10.2016 passed in H.M.O.P.No.985 of 2008, on the file of the Learned Principal Judge, Family Court at Coimbatore. Accordingly, the Civil Miscellaneous Appeal is dismissed. However, on the facts and circumstances of the case, the parties shall bear their own costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

klt

To

The Principal Judge, Family Court,
Coimbatore.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mrs.AL.Ganthimathi, Advocate SR.No.6941
+1cc to Mr.B.Vijayakumar, Advocate SR.No.6503

C.M.A.No.1774 of 2017

NR(CO)
CB(15/03/2022)