



C.M.S.A.No.23 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.S.A.No.23 of 2018

Sivagami @ P.Rajeswari

...Appellant

Vs

A.Thuyamani

... Respondent

Prayer: Civil Miscellaneous Second Appeal is filed under Section 13 (1) (1-A) of the Hindu Marriage Act, 1955, to set aside the order dated 01.03.2017 passed in C.M.A.No.8 of 2015 by the III Additional District Judge, Dharapuram in Tiruppur District reversing the fair and Decreetal order passed in H.M.O.P.No.35 of 2009 dated 22.12.2014 by the learned Subordinate Judge, Dharapuram.

For Appellant : M/s.B.Jijaa

For Respondent : Mr.R.Marudhachalamurthy



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JUDGEMENT

The unsuccessful wife before the Courts below in a petition for divorce is the appellant before this Court. The facts in brief as set out in the pleadings are as follows.

2. The appellant and the respondent had married on 24.01.2007 as per Hindu Rites and Customs and the marriage was arranged one. After the marriage, the appellant and the respondent had started their family life at the respondent's house at Dharapuram. The respondent's case is that initial six months of marriage was an happy one, thereafter, the appellant herein would quarrel unnecessarily and without any provocation by the respondent or his parents would go away to her parents house at Dhalavai Pattinam without any information. Every time she went to her mother's house, the respondent would bring her back.



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3. Thereafter, the appellant herein demanded the setting up of a separate residence. The respondent had initially not considered this request seriously as he thought that with passing of time, the appellant would reform. In the meantime, the appellant had given birth to baby girl on 08.11.2008 who was named Sai Dharshini. The birth of the child had also not made any change in the behaviour and conduct of the appellant.

4. On 19.05.2009, the appellant quarrelled with the respondent and attempted to consume poison and it was only on account of timely medical attention that she had survived. The appellant had on her recovery left for her parental home. After she had reached her parent's house, the respondent was not admitted to see the appellant or his child. The attempts to reconcile was also not fruitful. Since there was no possibility of reconciliation, the respondent had filed



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H.M.O.P.No.35 of 2009 on the file of the Subordinate Court, Dharapuram seeking dissolution of the marriage between himself and the appellant herein that had taken place on 24.01.2007.

5. The appellant herein had filed a counter denying the contentions made in the petition and contending that it was the respondent who was treating the appellant in a cruel manner. The appellant would contend that the respondent on the instigation of his mother, brother and sister-in-law demanded additional dowry and money. The respondent had demanded 7 sovereign gold and Rs.50,000/- in cash. This constrained the respondent to file a criminal complaint before the All Women's Police Station.

6. The appellant would further submit that after the birth of her daughter, her mother in law had visited her maternal house to see the child only after 5 months. The appellant has filed a complaint under



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Section 498 A and Section 4 of the Dowry Prohibition Act against the respondent. The appellant would submit that no case has been made out for the dissolution of the marriage on the ground of cruelty and the petition filed by the respondent deserves to be dismissed.

7. The learned Subordinate Judge, Dharapuram before whom H.M.O.P.No.35 of 2009 was pending, after considering the evidence on record and hearing the arguments, came to the conclusion that the respondent / husband has not been able to establish his case and therefore the petition deserved to be dismissed and accordingly dismissed the same.

8. The respondent had filed C.M.A.No.8 of 2015 on the file of the III Additional District Judge, Dharapuram. The Appellate Court had however reversed the Judgement. The Appellate Court has taken note of the subsequent conduct of the appellant in filing a complaint



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before the All Women's Police Station under Section 498 A and also sending a letter to the respondent's superiors that he should not be provided with employment till the disposal of the suit. Further, the Appellate Court has also considered the fact that the parties have been living separately for over 8 years. Therefore, the appeal was allowed and the order passed by the learned Subordinate Judge, Dharapuram, was set aside.

9. Challenging the same, the appellant wife is before this Court.

10. Heard the learned counsels on either side and perused the papers.

11. The above HMOP has been filed seeking dissolution on the ground of cruelty and desertion. From the pleadings it is seen that the appellant wife had not discharged the duties as expected of a wife as



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she has been constantly going away to her parental home leaving behind her husband. Pending the proceedings, the appellant has initiated proceedings before the All Women's Police Station alleging dowry harassment and cruelty against the respondent and his family members. The appellant has also addressed a letter to the respondent's superiors that he should not be provided work. This is a clear case of ruining the reputation of the respondent / husband on his work space, which definitely amounts to cruelty.

12. The attempts to reconcile had ended in a failure. Further, both the parties have been living away from each other for well over a period of 13 years. The respondent has been able to prove the cruelty being inflicted on him and therefore, no useful purpose would be served, if the parties are now forced to live together.



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13. The Lower Appellate Court had correctly taken into consideration the conduct of the parties and the fact that they have been living separately for well over a decade to reverse the order passed by the Subordinate Judge, Dharapuram. Further, the appellant has not been able to make out any question of law in the instant appeal.

14. In the result, the Civil Miscellaneous Second Appeal stands dismissed. No costs.

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Index : Yes/No

Speaking order/non-speaking order



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To,
1.The III Additional District Judge,
Dharapuram.

2.The Subordinate Judge,
Dharapuram.



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P.T.ASHA, J.,

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