



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2021

Pronounced on : 25.01.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Civil Miscellaneous Second Appeal No. 31 of 2018

G.V.Muthukumar .. Appellant/ Petitioner

Vs

Akilandeswari .. Respondent/ Respondent

Prayer: Civil Miscellaneous Second Appeal is filed under Section 100 of the Civil Procedure Code against the order and decretal order passed by the III Additional District and Sessions Court, Gobichettipalayam, Erode District dated 18.08.2018 in C.M.A.No.3 of 2018 confirming the order and decretal order dated 16.03.2018 passed in HMOP No.12/2011 on the file of the Sub Court, Gobichettipalayam.

For Appellant	...	Mr.R.Subramanian for Mr.M.Narayanasamy
For Respondent	...	Mr.N.Manokaran

JUDGMENT

This Civil Miscellaneous Second Appeal is preferred against the order and decretal order passed by the III Additional District and Sessions Court, Gobichettipalayam, Erode District dated 18.08.2018 in C.M.A.no.3 of 2018 confirming the order and decretal order dated 16.03.2018 passed in HMOP No.12/2011 on the file of the Sub Court, Gobichettipalayam.

2. Facts briefly narrated and necessary for the disposal of this Civil Miscellaneous Second Appeal are as follows:

2.1. The appellant is the husband. The respondent is the wife. The marriage between the appellant and respondent was solemnized on 12.11.2003 as per Hindu rites and custom. Their marriage was a love marriage and it was registered before the office of the Sub Registrar, Kothagiri. Out of the wedlock, they have been blessed with a baby girl by name Rithika. While so, there was a difference of opinion between them and



the respondent wife harassed the appellant by making allegations after allegations. On the ground of cruelty, the appellant filed divorce petition before the Sub Court, Gobichettipalayam.

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2.2. It was the case of the respondent wife that the appellant had illegal relationship with one woman by name Tamilpriya and when the respondent wife questioned the appellant, the appellant threatened her with dire consequences. It was her further case that in order to marry the said Tamilpriya, the appellant did not take care of her and her child. Since their marriage was a love marriage and against the wishes of their parents, the respondent wife is neither at the mercy of her parents nor on the side of the appellant's parents and she is without any means and hence, she prayed for dismissal of the divorce petition.

3. Before the trial Court, on the side of the appellant husband, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, D.W. 1 to D.W.6 were examined and Ex.D1 to Ex.D7 were marked. The Court on its own motion marked Ex.C-1 and Ex.C-2.

4. Considering the oral and documentary evidence, the trial Court dismissed the petition seeking divorce, on the ground that the appellant is the trouble monger and there is no iota of material against the respondent wife to establish cruelty and harassment, as alleged by the appellant husband, against which, the appellant husband preferred an appeal in CMA No.3 of 2018 before the III Additional District and Sessions Court, Gobichettipalayam, Erode.

5. On appeal, the first appellate Court, considering the oral and documentary evidence and the fair and decretal order of the trial Court, came to the conclusion that there is no ground to interfere with the findings rendered by the trial Court and, accordingly, dismissed the appeal, against which, the appellant is before this Court with this appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the material available on record.

7. Based on the submissions made on the side of the appellant, the following substantial question of law is framed:-

Have not the Courts below failed to see that the respondent made unsubstantiated extra-marital affair allegations, which constitute mental cruelty, justifying decree of divorce, as held in 2016 (9) SCC 455 and 2017 (4) SCC 194 and 2021 (3) SCC 742 ?



8. Learned counsel for the appellant raised the following grounds:

(i) The Courts below failed to consider the fact that the appellant has established his case with regard to cruelty committed by the respondent wife through the evidence of P.W.2 and P.W.3; (ii) The Courts below failed to appreciate the fact that the appellant has been driven out of the house by the respondent, which clearly amounts to cruelty; (iii) The Courts below failed to consider the exhibits Exs.P5, P.6 and P8 namely, complaints given by the appellant against the respondent and (iv) The Courts below failed to see the fact that both the appellant and the respondent are living separately for the past eight years, which clearly establish the fact that the parties cannot be reasonably expected to live together. In support of his contention, the learned counsel relied on various judgments of the Hon'ble Supreme Court as well as this Court.

9. Learned counsel for the appellant Mr.R.Subramanian would submit that based on the false allegation of extra-marital affair by the respondent against the appellant herein, the Courts below ought to have granted a decree of divorce. It is further submitted that the conduct of the respondent wife in making serious allegations of character assassination would amount to mental cruelty, for which he relied on a decision of the Hon'ble Supreme Court in Joydeep Majumdar v. Bharti Malumdar, 2021 (3) SCC 742. The learned counsel would also submit that the appellant and the respondent are living apart from the year 2010 onwards and the wife has not filed a petition for restitution of conjugal rights, but, instead, she has chosen to verbally attack the appellant by associating him with a third party and, accordingly, he sought for a decree of divorce, by setting aside the orders and decretal orders of the Courts below.

10. Per contra, Mr.N.Manokaran, learned counsel for the respondent, would vehemently object to the arguments put forth on the side of the appellant and contend that the appellant made the respondent to get divorce from her first husband with the threat of committing suicide and compelled the respondent to agree for marriage. The learned counsel would further contend that after having got married and given birth to a girl child, there occurred change in the attitude of the appellant and the respondent came to know about the extra-marital relationship of the appellant with one Tamilpriya, who was examined as R.W.6. The learned counsel also submits that the respondent believed the words of the appellant and got divorced from her first husband and married the appellant, by ignoring and neglecting the words of her parents, and the respondent can not give up her life with the appellant.

11. It is also contended on the side of the respondent that the evidence of R.W.4, Ex. R4 and R5 would go to prove



the attitude and the wrong committed by the appellant. Ex.R4 and R5 are admittedly written apology and undertaking by the appellant and it is pertinent to point out that one of the witnesses is appellant's own brother and the other witness is the paternal uncle of the appellant, as admitted by the appellant himself. Accordingly, the learned counsel sought for confirming the orders of the Courts below.

12. There is no dispute that the appellant and the respondent loved each other during college days and later the respondent was given in marriage to some other person. The fact also remains that the marriage of the respondent with the other person ended in divorce and subsequently the marriage between the appellant and respondent was solemnized and a girl child was born out of that wedlock.

13. While coming to the point of extra-marital relationship of the appellant with one Tamilpriya, who has been examined as R.W.6, the entire evidence of R.W.6 would categorically prove the extra marital relationship of the appellant with R.W.6. The Courts below have rightly discussed all the aspects and the attitude of the appellant and correctly observed that there is no cruelty committed by the respondent herein.

14. The first Appellate Court has elaborately discussed the evidence of Tamilpriya, who has been examined as R.W.6, and C1 and C2 , doctor certificate, about the pregnancy of Tamilpriya in the year 2016 and the application of Tamilpriya for maternity leave from 30.12.2016. The first Appellate Court has also observed that the said Tamilpriya got divorce from her first husband in the year 2013 and living all alone and the doubtful answers by Tamilpriya in the cross examination were not clarified by the appellant herein.

15. This Court is also of the view that the respondent herein has proved her allegation of extra-marital relationship of the appellant with Tamilpriya to the subjective satisfaction of the Court. Hence, the contention of the learned counsel for the appellant that the Courts below failed to see that the respondent made unsubstantiated extra marital affair allegations, which constitute mental cruelty, has to be simply rejected.

16. The rulings relied on by the learned counsel for the appellant are not applicable to the facts of the present case. Learned counsel for the appellant would insist for grant of divorce on the ground of long separation of the appellant and the respondent.

17. Learned counsel on the side of the respondent, relying on the ruling reported in 2013 (6) CTC 560 in Darshan



Gupta Vs. Radhika Gupta, submitted that a party seeking divorce is guilty or at fault would be disentitled for seeking Divorce. It is submitted that because of the fault on the part of the appellant, the respondent is made to live away from the appellant and the appellant is not entitled for divorce for his own fault and sought for confirming the order passed by the Courts below.

18. As rightly pointed out by the learned counsel for the respondent, the appellant has not proved any cruelty or desertion by the respondent and his own evidence and documents and the evidence of witnesses have categorically proved the fault on the part of appellant. It is also pertinent to note that the respondent, in order to save her marriage with the appellant, and that too the marriage at the insistence of the appellant, has not preferred any complaint against him. As already mentioned, the Courts below have discussed all the points and rightly dismissed the petition for divorce filed by the appellant and no interference by this Court is warranted.

19. For the reasons discussed above, this Court finds no merits in the appeal and the same is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RR/dixit

To

1. The III Additional District and Sessions Judge,
Gobichettipalayam, Erode District
2. The Subordinate Judge, Gobichettipalayam.

Copy to:

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

+1 cc to Mr.N.Manokaran, Advocate Sr.NO.4507

+1 cc to Mr.M.Narayanasamy, Advocate Sr.NO. 4833

C.M.S.A.No.31 / 2018

sr(CO)

A.SK(07/03/2022)