



C.M.A.(MD)No.1043 of 2006

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.1043 of 2006

and

M.P.(MD)No.1 of 2013

Dasan Wellington Bestas,
S/o.N.Xavier Thangaraj

... Appellant

vs.

Sahaya Ithal Rose,
D/o.J.Kasidurai Nadar

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, 1869 read with Order 41 of the Civil Procedure Code, against the judgment and decree, passed in I.D.O.P.No.10 of 2005, on the file of the Additional District Court, Tirunelveli, dated 18.03.2006.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.S.Sivathilakar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the husband being aggrieved by the dismissal of his divorce petition filed under Section 10(1)(ix) of the Indian Divorce Act.



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2. The brief facts of the case is that the appellant married the respondent on 13.09.2000 at Thisayanvilai as per Christian Customary practices. The matrimonial home was set up at the husband's house. Alleging that his wife was not inclined to share the matrimonial life and withdrawn his companionship and used to live separately, there was discard between them and she left the matrimonial home to stay along with her parents and attended her job. All the attempts for re-union failed and therefore, waiting for more than three years without any cohabitation, the petition for divorce has been filed. The said Petition was contested by the respondent claiming that at the time of marriage, the appellant [husband] was employed in Tharangathara Chemicals, Arumuganeri, as Contractor. The respondent was working as a Teacher in R.C. Management Primary School, Anthoniyarpuram, Thisaiyanvilai. Since the matrimonial home at Adaikalapuram is nearly 90 Kilometers away from her work place, she and the elders decided to settle their matrimonial home at Thisayanvilai. Accordingly, a separate home was established at Thisayanvilai and she was happily living with the appellant. While so, in the month of May 2004, they purchased a house site at Thisayanvilai and planned to construct a house. There was a difference of



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opinion between the husband and wife regarding the mode of construction of the house. Hence, she got separated from her husband and started living with her parents. There was no issue to them from the wedlock, which also provoked her husband to make all sorts of allegations against her and led to file a frivolous petition for divorce on the instigation of his parents. Claiming that she never deserted her husband and always ready to live with him, she strongly opposed the divorce petition.

3. Before the trial Court, the parties entered the witness box and deposed. The Marriage Invitation was marked as appellant's side document, no other documents were relied by the parties. The respondent was examined in chief, but the appellant failed to cross-examine the respondent and took adjournment. The Court granted adjournment imposing cost, but the cost was not paid and therefore, the evidence of R.W.1 was closed and based on the available material, the trial Court dismissed the divorce petition on the ground that the appellant has failed to establish wilful desertion for more than two years.



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4. Aggrieved by the same, the present Civil Miscellaneous Appeal is filed.

Along with the appeal, an application to receive the additional document is also filed.

5. Heard the learned counsel for the appellant as well as the respondent and perused the material available on record.

6. The appellant herein as the petitioner before the trial Court has alleged that the respondent wilfully withdrawn from the conjugal relationship and living separately since May 2004. The fact is also admitted by the respondent in her counter. The petition for divorce is filed on 09.08.2004, re-presented on 07.01.2005 and taken on file subsequently, assigning I.D.O.P.No.10 of 2005.

7. From the material on record, this Court finds that though the separation is admitted, the cause for separation is disputed. Even after lapse of 18 years from the date of separation, there is no sign of re-union or mutual separation. The matter is pending before this Court since 2006. The attempt to reconcile the parties has also been made. Though the matter has been referred to Mediation and Conciliation Centre, this Court has received only a failure report.

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WEB COPY 8. The learned counsel for the respondent submitted that the respondent is always ready to join with the appellant, but the appellant is adamant in accepting her.

9. In the light of the above submissions, it is necessary to look into the Miscellaneous Petition filed by the appellant to receive the additional document, which indicates that pending appeal, some complaints have been given to the Police by the mother of the appellant and counter complaint by the respondent. Therefore, there is no scope for re-union and prolonged separation by the issueless couple itself constitutes a ground for divorce. In this case, going by the averments made in the counter filed by the respondent, it appears that there was a dispute between the spouses regarding the mode of construction of the house in Thisaiyanvilai, which has led to their separation. The respondent is adamant enough not to join with her husband reproaching the peace. Though the appellant has not come out with any specific date of separation and the respondent in her counter says from May 2004, they are living separately, and till date, they have not legally separated even after lapse of 18 years, it will be meaningless to retain the marital relationship on paper when both the appellant and the respondent are



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gainfully employed and there is no financial, physical or emotional dependency to each other and the spouses have mentally got separated and have chosen their independent life. In the said circumstances, it is futile to keep the marital relationship only on paper. Hence, this Civil Miscellaneous Appeal is allowed and the judgment and decree of the trial Court is set aside. The appellant is entitled to decree for divorce as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
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14.12.2022

To

- 1.The Additional District Judge,
Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.

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JUDGMENT MADE IN
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