



C.M.A(MD)No.1459 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2022

Pronounced on : 14.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1459 of 2011

M.Selvaraj

...Appellant / Petitioner

Vs

A.T.Viji Delphine Rose

... Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, 1869 to set aside the Judgment and Decree dated 19.08.2011 made in IDOP No.134 of 2003 on the file of District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Kishore

For Respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in I.D.O.P.No.134 of 2003 on the file of the District Judge, Kanniyakumari at



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Nagercoil. The appellant is the petitioner and the respondent is the respondent in the original petition.

2.Brief substance of the petition in I.D.O.P.No.134 of 2002 is as follows:

The marriage between the petitioner and the respondent was solemnized as per the Christian rites and customs. They gave birth to a male child. The respondent used to go to her parents house neglecting the advice of the petitioner, his family members and on 05.07.1999, she went away from the matrimonial home and she refused to return back and she deserted the petitioner since 05.07.1999. During January, 2000 and on 14.08.2003, some efforts were taken for their reunion, but that ended in failure. The wife caused mental cruelty and desertion.

3.Brief substance of the counter of the second respondent is as follows:

The petitioner was having illicit intimacy with a girl namely Revathi who was a neighbour. Only on compulsion of the husband and in-laws, the respondent went to her parents have to get money. 115 sovereigns of gold jewels that belongs to the respondent was already sold by the petitioner. After



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the marriage, the respondent was not even able to have a glance at her ornaments. There was some conciliation talk arranged by the Panchayat President, Mullanginvavilai Panchayat. The respondent was living separately only from July 2003. Even afterwards she used to go there and stay there for some days. Only because of the cruel treatment and immoral behaviour of the petitioner, the respondent could not stay there continuously and peacefully. It was the petitioner who prevented the respondent to reside in the matrimonial home. The respondent is willing to live with the petitioner in a separate house and place.

4. One witness was examined and nine(9) documents were marked on the side of the appellant. One witness was examined and five(5) documents were marked on the side of the respondent. The trial Court dismissed the petition.

5. Against the dismissal of the IDOP petition, the appellant preferred this appeal on the following grounds:

The trial Court failed to consider that after the birth of the child, the respondent abstained from her duty as a wife. She used to go to her parents



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house and stay there for a long period. The trial Court failed to consider that on 05.07.1999, the respondent, without intimating the appellant, went to her parents house and failed to return back to her matrimonial home. During January, 2000, there was a panchayat by the elders for re-union and again on 14.08.2003, a panchayat was done. But only due to the adamant nature of the respondent, all the efforts for reunion ended in vain. The trial Court failed to consider that Ex.P1 to Ex.P9 reveals that there was misunderstanding between the parties and a case for dowry harassment was filed and the respondent filed a complaint before the College, in which the petitioner is working to remove him from service and which amounts to desertion coupled with cruelty. The trial Court failed to consider that the marriage is irretrievably broken and pray the order to be set aside.

6.On the side of the appellant, it is stated that from 05.07.1999, the respondent deserted the appellant and that she keep on writing complaints to his department and that in all the complaints, after enquiry, he was acquitted. The wife filed a complaint under Section 498 of IPC in C.C.No.171 of 2005 and the criminal case ended in acquittal. She filed a case for maintenance under Section 125 of Cr.P.C and she filed a revision in Crl.R.C.No.576 of



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2012 and that the revision case was dismissed for default. The respondent used to file various complaints before various forum and she is causing mental cruelty. The complaint of the respondent is that the appellant has committed adultery and there is no evidence on the side of the respondent to prove that the petitioner committed adultery. The petitioner has taken all the efforts for reunion. In the evidence of the respondent, she has admitted that a panchayat was held. The claim of adultery stated in the counter affidavit itself, amounts to cruelty. The desertion was not denied in the counter. Almost for the past 20 years, the couple lived separately and there is no chance of reunion.

7.On the side of the appellant, a judgment of this Court reported in **2021 (5) CTC 870**, in the case of **P.Maheswari vs R.Manikandan**, is cited, wherein this Court has held that when the couple were living separately for more than 7 years, reunion is not possible.

8.Another judgment of this Court reported in **2021 5 CTC 524** in the case of **Anandakrishnan Vs Pushpalatha** is cited, wherein, this Court has held as follows:



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"Divorce on ground of Desertion and non-restitution of Conjugal Rights - Ground for Desertion at relevant point of time was 1 1/2 years - parties not living together for 15 years - No intention to live together - Restitution of Conjugal Rights ordered by Court non honoured by parties - Held, marriage irretrievably broken down with no scope of resumption - Divorce granted on ground of Desertion."

9. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in **2012 (4) CTC 839** in the case of **Vishwanath vs. Sau.Sarla Vishwanath Agrawal**, is cited, wherein, it is held that,

"35. Another aspect needs to be taken note of. She had made allegation about the demand of dowry. RCC No.133 of 95 was instituted under Section 498-A of the Indian Penal Code against the Husband, father-in-law and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum. Hence, the allegation on this count was incorrect and untruthful and it can unhesitatingly be stated that such an act creates mental trauma in the mind of the Husband as no one would like to face a Criminal proceeding of this nature on baseless and untruthful allegations."

10. None appeared on behalf of the respondent.



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11.Ex.P1 to Ex.P9 are copies of various proceedings initiated against the appellant by the respondent. The allegation of the appellant is that the respondent deserted the petitioner and by lodging various complaints before the various forum, she has committed mental cruelty. It is seen that admittedly both the appellant and the respondent are living separately from the year 2003. The appellant is claiming that they are living separately from the year 1999. Admittedly, they are living separately for the past 19 years. It is admitted that steps taken for the reunion by the village elders ended in vain. There is no possibility of reunion of the couple after a lapse of 19 years.

12.In the above circumstances, it is decided that the marriage is irretrievably broken and this appeal is allowed and the order of the learned District Judge, Kanyakumari at Nagercoil. made in IDOP No.134 of 2003 is set aside. No costs.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The District Judge, Kanniyakumari, Nagercoil.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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