



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA(MD)No.981 of 2008
and M.P.No.1 of 2008

WEB COPY

Vanitha Arockiyam

... Appellant/Respondent

vs.

Immanuvel Thomas

... Respondent/Petitioner

Appeal filed under Section 55 of the Indian Divorce Act, 1869, against the fair and decreetal order dated 25.03.2008 in I.D.O.P.No.87 of 2004 on the file of the 1st Additional District Judge, Tirunelveli.

For Appellant
For Respondent

: Mr.G.Prabhu Rajadurai
: Mr.S.Mani

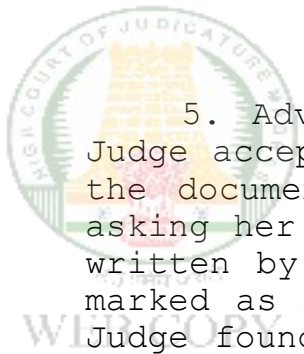
JUDGMENT

Challenge in this appeal is to the decree for divorce granted by the learned District Judge, Tirunelveli in I.D.O.P.No.87/2004 on the ground that the appellant had deserted her husband in terms of Section 10(ix) of the Divorce Act, 1869.

2. According to the husband, the spouses were married on 02.07.1999 and a male child was born out of the said wedlock on 08.05.2000. Though the wife was behaving indifferently, she went for delivery to her parents' house and did not return thereafter. All his efforts to bring her back were in vain. The husband would also claim that she apart from deserting him wilfully, without any reasonable excuse, the wife also committed cruelty by refusing to live with his parents.

3. The wife resisted the claim of the husband contending that she was forced to live away on account of her employment and there is no wilful desertion. She would also deny the allegations of cruelty. She would further contend that her in-laws wanted more money by way of dowry and other properties.

4. In order to prove the claim, the husband examined himself as P.W.1 and produced Exs.P1 to P19. He also examined four independent witnesses in support of his claim. The respondent wife examined herself as R.W.1 and filed Exs.R1 to R3. The learned District Judge, on the basis of the available evidence, concluded that the husband has not made out a case of cruelty as alleged by him within the meaning of Section 10(x) of the Divorce Act, 1869.



5. Adverting to the question of desertion, the learned trial Judge accepted the evidence of P.Ws.2, 3 and 4 and also considering the documents, mainly letters written by the husband to the wife asking her to resume co-habitation under Exs.P12 and P18 and letter written by the Parish Priest, namely, P.W.3 to the respondent wife marked as Ex.P5. Upon scanning the evidence, the learned District Judge found the wife had left the matrimonial home and without any just cause repelled all attempts made by the husband for reunion. In fact, P.W.2, who is a Nun and P.W.3, who is a Parish Priest, deposed about the attempts made by them to unite the parties and the reluctance of the wife for reunion. Ex.P5 is a letter written by P.W.3, the Parish Priest requiring the wife of the appellant to resume family life and P.W.3 in his evidence would state that the wife had called him and informed him that she is not willing for reunion. Same is the evidence of P.W.2, who is a Nun. P.W.4, who has also acted as a intermediary between the parties, has spoken about the unwillingness of the wife to resume matrimonial life.

6. The learned District Judge has accepted the evidence of the above witnesses, particularly, Parish Priest and Nun, who were examined as P.W.3 and P.W.2 respectively, to conclude that the wife is guilty of desertion within the meaning of Section 10 (ix) of the Divorce Act.

7. Despite his best efforts, the learned counsel for the appellant is unable to pick holes in the conclusion of the learned District Judge and the finding reached by him regarding the factum of desertion. Though a faint attempt is made by the learned counsel to contend that it is because of her employment, the wife was living away at Kumarapalayam, the same was not accepted by the learned District Judge, as the wife was earlier working in the husband's place at Murasampatti and she quit the job and joined the job at Kumarapalayam.

8. In the above backdrop, I do not find any infirmity in the decree passed by the learned trial Judge and the civil miscellaneous appeal fails and it is accordingly, dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



To

The 1st Additional District Judge,
Tirunelveli.

Copy to

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The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.S.MANI, Advocate (SR-12650[F] dated 17/03/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-12876[F] dated 18/03/2022)

CMA(MD)No.981 of 2008

DATED : 16.03.2022

SS(CO)

KB(01.04.2022) 3P 6C