



C.M.S.A.(MD)No.11 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 01.08.2022

Delivered On : 25.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.S.A.(MD)No.11 of 2022

M.Subramaniyan

.. Appellant /Appellant/ Petitioner

Vs.

S.Latha

.. Respondent / Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 29 of the Hindu Marriage Act r/w. Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 15.03.2021, made in H.M.C.M.A. No.20 of 2020, on the file of the Principal District Judge, Theni, by confirming the judgment and decree, dated 29.07.2020, made in H.M.O.P.No.5 of 2018, on the file of the Sub Court, Theni.

For Appellant : Mr.K.Hema Karthikeyan

For Respondent : Mr.K.Renganathan

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed against the judgment and decree, dated 15.03.2021, made in H.M.C.M.A. No.20 of 2020, on the file of the Principal District Judge, Theni by confirming the judgment and



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decree, dated 29.07.2020, made in H.M.O.P.No.5 of 2018, on the file of the Sub Court, Theni. The appellant herein is the petitioner - husband and the respondent herein is the respondent-wife.

2. Brief substance of the petition in H.M.O.P.No.5 of 2018, is as follows:

2.1. The petitioner is an Ex-service man. The marriage between the petitioner and the respondent was solemnized on 11.06.1993 at Sethumaravar marriage hall at Bodinayakanur, Theni District. The respondent was not gifted with any jewels, at the time of marriage. After five years of marriage, the parents of the respondent gave 6 ½ sovereigns to the respondent and they gifted Sridhana articles worth about Rs.25,000/-. The jewels and the articles are in the custody of the respondent. They lived in Gwalior, Mathyapradesh. When ever the petitioner used to converse in Hindi language, the respondent used to suspect him and used to quarrel with him. She failed to do her matrimonial obligations. They were blessed with one son on 15.06.1994, viz., Muneeswaran. The petitioner was then transferred to Mumbai and they lived there from the year 1996. The respondent suspect every word and deed of the petitioner. They were blessed with the second son viz., Ramkumar, on 25.05.1999. Then the petitioner was transferred to Gahauti, Assam and they lived there from the year 2001 till 2003.



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WEB COPY 2.2. The respondent suspect the petitioner and obstructed him from doing his duty and because of the attitude of the respondent, the petitioner was not able to concentrate on his work and he got Voluntary Retirement from the military service. Due to the harassment of the respondent, the petitioner was made to work as a watchman instead of serving in the military. After retirement, they lived in a rental premises in Bodinayakanur. Due to the nature of the respondent, the landlord asked them to vacate the premises. Later in the year 2006, the petitioner purchased a plot with the help of Bank loan and constructed a house in the year 2013. When the petitioner was struggling with the repayment of loan, the respondent continued to fight with him for one reason or the other.

2.3. She demanded to transfer the ownership of the house to her name. Considering the welfare of the children, the petitioner transferred the house property in her name. In order to repay the bank loan, the respondent disposed of the house property without the knowledge of the petitioner and she closed the Bank loan. Once again, they were made to reside in a rental premises. The respondent used to remove and throw away the sacred Thali and she used to go out of the matrimonial home. The petitioner had to trace out and bring her back



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to the matrimonial home. The respondent used to threaten the petitioner that she would consume poison. On 11.05.2014, she consumed poison and she was admitted in Ragavan Hospital for treatment. The brothers of the respondent threatened the petitioner that they will burn him, if something happened to their sister. The elder son got married in the year 2013 and due to the attitude of the respondent, the daughter-in-law left the house. From December – 2016 onwards, the respondent is living separately, there is no possibility of the petitioner to live jointly with the respondent.

3. Brief substance of the counter filed by the respondent, in H.M.O.P.No.5 of 2018, is as follows:

3.1. The marriage between the petitioner and the respondent took place, on 11.06.1993. At the time of marriage, the respondent was gifted with 15 sovereigns of gold and 5 sovereigns of gold was given to the petitioner. Sreedhana articles worth Rs.1,00,000/- was given on demand. The respondent acted as a dutiful wife, and went along with the petitioner, wherever he was transferred. The petitioner lead a wayward life, he used to consume alcohol and he developed illegal intimacy with one Rathinavalli and spent all his earnings on her. When the same was questioned by the respondent, he used to beat her and harass her.



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3.2. On 28.08.2014, the petitioner eloped with the said Rathnavalli and he was not traceable. The respondent lodged a complaint and in the station, he agreed to settle a sum of Rs.2,00,000/- to Rathnavalli, Rs.35,000/- to redeem her jewels and Rs.45,000/- towards the education of her son. The petitioner accordingly settle the amount, out of the fund given by the respondent. The petitioner often used to leave the home without the knowledge of anybody and hence, the house property was settled in the name of the respondent. The petitioner used to compel the respondent to obtain loan on the house property and the amount was spent only by the petitioner. Since the petitioner failed to maintain the respondent and the family, she was constrained to dispose of the house property. The petitioner has signed the documents as one of the witnesses in both the sale agreement and in the sale deed.

3.3. The petitioner is now working as Security in Koodangulam Nuclear Reactor and he is living with the said Rathnavalli. The petitioner is earning Rs.25,000/- per month and he is getting Rs.18,000/- as monthly pension for his military service, but, the respondent is struggling to live with her children. When the petitioner was living in Bodinayakanur, he used to collect fund from the public, by giving false promise that he will repay double the



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amount of the stake holders. All the stakeholders are approaching the respondent to settle their amount and she prayed the petition is to be dismissed.

4. On the side of the petitioner, 1 witness was examined and 4 documents were marked. On the side of the respondent, no witness was examined and no document was marked. The trial Court framed the following issues:

1. Whether the petitioner was subject to cruelty?
2. Whether the petitioner is entitled to a relief of divorce?

5. After considering both sides, the Trial Court dismissed the petition filed by the petitioner. Against the same, the petitioner - husband filed an appeal, in H.M.C.M.A.No.20 of 2020, on the file of the Principal District Judge, Theni, on the following grounds:-

The trial Court failed to note the date of Ex.R1 and failed to consider that the document was executed by the petitioner- husband in favour of the respondent - wife on coercion. Ex.R2 was jointly executed by the petitioner and the respondent in favour of one Malarkodi, based on the harassment of the respondent. The trial Court failed to note that the respondent-wife did not take any steps for re-union, she failed to adduce any evidence. The trial Court failed to consider that the husband proved the cruelty through oral and documentary



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evidence, mere pleadings are not sufficient. The Trial Court failed to consider that there is no evidence on the side of the wife.

6. The first appellate Court has framed the following issues:-

1. Whether the appellant/petitioner is not entitled for divorce on the ground of cruelty?
2. Whether the trial Court is right in dismissing the original petition filed by the appellant / petitioner?
3. Whether the order, dated 29.07.2020, passed by the learned Subordinate Judge, Theni, is sustainable or not?
4. To What are the other relief?

7. After considering both sides, the first appellate Court has dismissed the appeal and confirmed the orders of the trial Court. Against that order, the appellant/ husband has filed this C.M.S.A on the following grounds:-

The first appellate Court failed to note that the respondent has not taken any steps for re-union and the appellant and the respondent were living separately from 2016 onwards. The trial Court and the first appellate Court failed to draw adverse inference against the respondent, who did not adduce any evidence. The first appellate Court failed to consider that Ex.R1 was



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executed by the appellant out of coercion. The appellant proved the case by adducing oral and documentary evidence and proved cruelty. The Courts below ought to have drawn presumption against the respondent, under Section 114 of the Indian Evidence Act. Mere pleading is not sufficient evidence, under Order -2, Rule -1 of C.P.C..

8. The Appeal was admitted on the following substantial question of law:-

Whether the appellant / petitioner is entitled for divorce on the ground of cruelty, when the appellant / petitioner has proved his case as per Section 101 of the Evidence Act.

9. On the side of the appellant, it is stated that a matrimonial affairs between the husband and wife can be proved only when the wife was cross examined. But, without taking adverse inference on the wife, who failed to enter the box, both the Courts below, have decided that the husband failed to prove the cruelty. On the side of the appellant, it is stated that an adverse interference has to be taken against the respondent, who failed to enter the box.



10. To substantiate this claim, a judgment of the Hon'ble Supreme Court of India, reported in **1999 – AIR – SCW-1039 (Iswar Bhai C.Patel @ Bachu Bhai Patel V. Harihar Behera and another)** is cited on the side of the appellant, wherein, it is stated as follows:-

“23.Applying the principles stated above to the instant case, it would be found that in the instant case also the appellant had abstained from the witness box and had not made any statement on oath in support of his pleading set out in the written statement. An adverse inference has, therefore, to be drawn against him. Since it was specifically stated by respondent No.2 in his statement on oath that it was at the instance of the appellant that he had issued the cheque on the account of respondent No.1 in the Central Bank of India Ltd., Sambalpur Branch, and the appellant, admittedly, had encashed that cheque, an inference has to be drawn against the appellant that what he stated in the written statement was not correct. In these circumstances, the High Court was fully justified in decreeing the suit of respondent No.1 in its entirety and passing a decree against the appellant also.”

11. On the side of the appellant, it is stated that throwing away Thali itself amounts to cruelty. On the side of the appellant, a judgment of the Division Bench of this Court in **C.M.A.No.3249 of 2017 (C.Sivakumar V. A.Srividhya)** is cited, wherein, it is stated as follows:-



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“20. The removal of thali chain is often treated as an unceremonious act. We don-t say for a moment that removal of thali chain per se sufficient to put an end to the marital knot, but the said act of respondent is a piece of evidence in drawing an inference about the intentions of the parties. The act of respondent in removal of thali chain at the time of separation coupled with various other evidences available on record, compel us to come to a definite conclusion that the parties have no intention to reconcile and continue the marital knot.”

12. On the side of the appellant, it is stated both the appellant and the respondent were living separately from the year 2016, the wife has not taken any steps for re-union and there is no chance of re-union and that the marriage is irretrievably broken.

13. On the side of the respondent, it is stated that there is no question of law is involved in this appeal. The motive of the appellant is to change the name of the spouse in the pension proposal papers. He want to include the name of his Mistress in the pension papers. The appellant has signed Ex.R1, sale deed. The contention of the appellant that they are living separately from 2016 is wrong and the same is proved by Ex.R1. There is no necessity for the respondent to enter into the box. She has filed her pleadings, even, the appellant



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has admitted that his wife was good. The appellant is living with a lady, by name, Rathinavalli and the same was not specifically denied by the appellant, only an evasive answer was given by him, there was no cruelty on the part of the respondent. The Appeal is to be dismissed.

14. In the gift deed executed by him, on 22.09.2014, the appellant has admitted that he has executed the deed only on the basis of love and affection. The appellant has stated that the property was sold, without his knowledge. It is seen that both the respondent and the appellant have signed in Ex.R1, dated 19.06.2017. It is clear that there is suppression of facts on the side of the appellant.

15. It is true that an adverse inference can be taken against the respondent, who failed to enter the box. On the side of the respondent, it is pointed out that in the evidence of the appellant, he has admitted that except suspecting the appellant, the respondent was a good wife. A perusal of the deposition of the appellant reveals that except suspecting the fidelity of the appellant, the respondent was a good wife, to him. From Ex.R1, it is clear that the contention of the appellant that the property was sold, without his knowledge is wrong. Ex.R1 reveals that the contention of the appellant that they were living



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separately from 2016 is also wrong. It is the duty of the appellant to prove the case. From the evidence of the appellant and from Ex.R1, it is clear that the appellant failed to prove cruelty. Except the oral testimony of the appellant, there is no oral or documentary evidence to prove that the wife removed the Thali and there is no evidence regarding the cruelty committed by the wife. The appellant failed to prove the case and there is suppression of facts on the side of the appellant.

16. For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Court. Hence, this Appeal is dismissed. The order, dated 15.03.2021, made in H.M.C.M.A. No.20 of 2020, on the file of the Principal District Judge, Theni, by confirming the order, dated 29.07.2020, made in H.M.O.P.No.5 of 2018, on the file of the Sub Court, Theni, is hereby confirmed. No Costs.

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Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Judge,
Theni.
- 2.The Sub Court,
Theni.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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