



C.M.A(MD)No.1038 of 2016

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 08.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

C.M.A(MD)No.1038 of 2016

P.Balaji

... Appellant/Petitioner

.Vs.

Iswarya

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, to set aside the judgment and decree in H.M.O.P.No.161 of 2015, dated 29.01.2016 on the file of the Family Court, Trichy and allow the appeal.

For Appellant : Mr.S.Anandchandrasekaran
for Mr.L.Siva

For Respondent : Mr.M.A.M.Raja



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

2. The appellant being aggrieved by the dismissal of the divorce petition is before this Court stating that his wife, the respondent herein, has caused cruelty and desertion and further suppressed the incurable hirsutism which is caused due to harmonic imbalance and hence, he is entitled to dissolve the marriage.

3. However, the trial Court after considering the evidence has dismissed the divorce petition stating that the petitioner/appellant herein has failed to prove the wilful desertion and the alleged cruelty.

4. In the grounds of appeal, it is contended that the trial Court erred in appreciating the medical records produced by the appellant to prove that the



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respondent has been suffering from disease of Hirsutism which have the effect of change in the gender character of a person. Due to this disease, the respondent has started developing male character. While so, suppressing the said disease, she was given in marriage to him and on noticing that, she voluntarily withdrew the matrimonial company and deserted him.

5. However, the learned counsel for the respondent would submit that the respondent had undergone cosmetic surgery at Devadoss Multi Speciality Hospital and the excessive hair growth over the chin has been treated with laser for permanent hair removal and she is not suffering with hirsutism. This medical certificate was marked as Ex.R4. Furthermore, the counsel for the respondent also relied upon the photographs marked as Ex.R1 and Ex.R2 taken during baby shower ceremony, in which, the mother and sister of the appellant had participated and therefore, submitted that the trial Court has rightly considered the evidence and dismissed the divorce petition filed by the appellant and there is no error in the said judgment to interfere.



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6. The evidence indicates that the appellant and the respondent married on 29.10.2007. Her son was born to them on 27.01.2009. Even prior to the birth of the son, the respondent has gone to her parental house for delivery and since 20.08.2008 spouse have not reunited due to the escalation of misunderstanding between them.

7. From the averments made by the respective counsel and through the records, this Court finds that the respondent has filed a petition for maintenance before the Family Court, Trichy and receiving maintenance for herself and her minor son. A Domestic Violence proceedings has also been initiated against the appellant and the same is pending since 2019. Pursuant to the protective order in the Domestic Violence proceedings, the respondent is occupying a portion of the residential house owned by the appellant.

8. This Court, after considering the material and the long separation for more than 14 years, though the spouses are living in same building, finds that there is no possibility of reunion. Allegation of retaining the jewels by the appellant and counter allegation saying that the appellant has developed extra matrial relationship makes the possibility of reunion remote.



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9. In the said circumstances, this Court weighed the balance of convenience and the merit on either side though it appears that granting divorce may tantamount to the giving premium for the husband, who suffers decree of restitution of conjugal rights and also lost his petition for divorce.

10. However, taking into view of the overall social perspective and the welfare of the minor boy who is living with her and have no interest in his father except to receive the maintenance, the prolonged separation even though there was every opportunity to reunite not been explored or attempt by either of the parties renders their marriage broken irretrievably and reached no point of return. Allowing the spouses without severing their matrimonial relationship will only cause certain extramarital relationship and lead to immoral and illegal consequences. At least to put an end to such consequences, taking note of the prolonged separation for more than 14 years, this Court dissolve the marriage.

11. All other remedy available under the law for the respondent can be resorted to in accordance with law. Dissolving the marriage by decree shall not stand in the way of the respondent to get necessary legal protection under the law.



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12. Accordingly, the marriage between the appellant and the respondent solemnised on 29.10.2007 is hereby dissolved. This Civil Miscellaneous Appeal is allowed. No costs.

[G.J.,J.] [S.M.,J.]
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Index : Yes / No
Internet : Yes / No
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To

The Family Court,
Trichy.



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and
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JUDGMENT MADE IN
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