



WEB COPY



C.M.A.No.1989 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.1989 of 2016

and

C.M.P.No.14352 of 2016

Dhanalakshmi

...Appellant

Vs.

1.A.Thangarasu

2.V.Palanisamy

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the fair and final order dated 14.12.2015 passed in H.M.O.P.No.133 of 2014 on the file of the Family Court, Erode.

For Appellant : Mr.M.Karthik
for Mr.I.C.Vasudevan

For Respondents : Mr.M.Guruprasad for R1
R2 - No appearance



C.M.A.No.1989 of 2016

J U D G M E N T

WEB COPY (Judgment of the Court was made by R.SUBRAMANIAN, J.)

The wife is on appeal. Challenge is to the decree for divorce granted by the Family Court, Erode in HMOP.No.133 of 2014 (HMOP.No.36 of 2013 on the file of the Sub-Court, Erode).

2. The husband sought for divorce on the ground of adultery as well as cruelty under Section 13(1)(i) and 13(1)(ia) of the Hindu Marriage Act. The marriage was solemnized on 23.05.1996. Two male children were born from the marriage. The first son born in 1997 was studying in plus one and the second son born in 1998 was studying IX Standard, at the time when the divorce was sought for. The husband would allege that the wife entertained a superiority feeling and was continuously ill-treating him and his family members. He would further plead that on her compulsion he had to establish a separate residence for himself, thereby forcing him to ignore his parents.



C.M.A.No.1989 of 2016

3. It is his further case that the wife also had extra marital relationship with the 2nd respondent in the original petition and when she was caught while being with the 2nd respondent in a temple, she left the matrimonial house on 27.03.2012 and did not choose to come back. Not stopping there, she brought her brother Nesamani and her cousin Chinnasamy and they beat up the husband. The husband would also allege that the wife had in fact threatened to kill him after her brothers marriage takes place. Claiming that the actions of the respondent/ wife amounted to adultery as well as cruelty the husband sought for divorce.

4. This petition was resisted by the wife contending that the claim made in the divorce petition is false. According to her, the husband did not have proper income and he was addicted to alcohol. His father was also addicted to alcohol and he misbehaved with her. It was because of such misbehaviour by the father that they started living in the house belonging to the mother of the husband. It is also her contention that the house was repaired, to make it fit for living, by the father of the wife. The wife would further plead that her father has gifted her 25 sovereigns of jewels and had



C.M.A.No.1989 of 2016

paid a dowry of Rs.1,00,000/- apart from buying a TVS-50 Moped for the husband. She would also contend that the husband did not have any separate income and he was only doing agriculture in his father's lands. She would also contend that the husband was doubting her character and was ill-treating her because of the said doubt. It is also her contention that the husband had taken away jewels and pledged them in the cooperative bank and since he could not redeem the jewels, her father had redeemed the jewels and he is in possession of those receipt for redemption also.

5. The 2nd respondent filed a counter denying all the allegations. He had said that he is related to the husband and he is doing agriculture and it is out of political ill-will the petition has been filed by the husband. He has also stated that the plea of adultery was only made to strengthen the case for divorce.

6. On the above pleadings the Family Court framed the following issue:

Whether the petitioner is entitled to divorce.



C.M.A.No.1989 of 2016

WEB COPY

7. At trial, the petitioner husband examined himself as PW1 and produced Exs.P1 to P4. The wife was examined as RW1 and her father was examined as RW2. Though the 2nd respondent cross-examined the petitioner, he did not let in evidence on his side.

8. On an assessment of the evidence that was placed before the learned Family Judge, he came to the conclusion that the husband has proved adultery and has failed to prove cruelty and had granted divorce on the ground of adultery alone. In coming to the said conclusion the learned Family Judge had observed that there cannot be direct evidence of adultery and had taken note of the circumstances particularly the in-action on the part of the wife and her father after the incident that took place on 27.03.2012.

9. The learned Family Judge took note of the fact that both the appellant and father of the appellant who had deposed as RW1 and RW2 had claimed that the respondent husband attempted to kill her on



C.M.A.No.1989 of 2016

27.03.2012. Despite such evidence, they have in cross-examination admitted that not even a police complaint was lodged. The Family Judge also took note of the fact that the father of the appellant who was examined as RW2 had specifically deposed, in cross-examination, that he had not taken any steps to reunite the couple. The fact that the father had deposed that he did not interfere in the marital affairs led the Family Judge to conclude that the case of adultery has been proved.

10. We have heard Mr.M.Karthik, learned counsel appearing for the appellant and Mr.M.Guruprasad, learned counsel appearing for the respondent.

11. Mr.M.Karthik, learned counsel appearing for the appellant would vehemently contend that the divorce on the ground of adultery is wholly unsustainable. According to the learned counsel, the evidence on record is completely insufficient to prove adultery. He will also point out to the fact that PW1 in his evidence has deposed that he came to know that the appellant and 2nd respondent in the original petition have been moving about



C.M.A.No.1989 of 2016

very closely and the 2nd respondent is the paramour of the appellant only from the other villagers. His only evidence is that he saw the appellant bringing food and feeding the 2nd respondent in a temple nearby and when he took objections to such behaviour, the appellant left the house. The learned counsel would also fault the learned Family Judge for having taken this evidence coupled with the evidence of the father that he did not attempt a reproachment as proof of adultery.

12. Though Mr.M.Guruprasad, learned counsel appearing for the respondent would take all pains to sustain the finding of the Family Court, we are unable to countenance his submission fundamentally because the evidence on record which constitutes only the interested testimony, in our opinion, is insufficient to conclude that the wife lived in adultery.

13. Section 13(1)(i) of the Hindu Marriage Act reads as follows:

*(i) has, after the solemnisation of the marriage,
had voluntary sexual intercourse with any person
other than his or her spouse;*



C.M.A.No.1989 of 2016

WEB COPY

14. There is no direct proof or even circumstantial evidence to establish the essential ingredient of the section viz., had voluntary sexual intercourse with any person other than his or her spouse.

15. Mr.M.Guruprasad, learned counsel appearing for the respondent would however contend that the evidence available is sufficient to sustain the decree on the ground of cruelty. He would also point out that even though he is not on appeal, he would be entitled to sustain the divorce if the evidence on record is shown to be sufficient. The learned counsel would highlight the following features which would enable him to get a divorce on the ground of cruelty

i) The fact that the wife had insisted upon establishment of a separate residence.

ii) The fact that the wife had made reckless allegations against the father-in-law.

iii) The fact that RW2 has admitted that the family of the husband is a very reputed and respectable family in the village.



C.M.A.No.1989 of 2016

iv) The fact that neither the wife nor the father had taken any steps for reunion after she had left the matrimonial home on 27.03.2012.

v) The fact that the wife had not chosen to deny the involvement of her brother and cousin in the matrimonial relationship between her and her husband.

vi) He would also draw our attention to the evidence of RW1 and RW2 in support of his submission. When both of them make a very serious allegation against the husband to the effect that he almost attempted to murder the wife on 27.03.2012, the fact that they have not even chosen to lodge a police complaint and the fact that they have not attempted a reunion till the petition for divorce was filed by the husband would show that the wife has not cared for the relationship, according to the learned counsel this would amount to cruelty.

vii) The fact that the allegations have been made to the effect that the husband is having extra marital affairs and he is a drunkard coupled with the fact that in the evidence that such a claim is given up.



C.M.A.No.1989 of 2016

16. Mr.M.Karthik, learned counsel appearing for the appellant

would submit that the Family Court has analysed the evidence and come to the conclusion that the ground of cruelty has not been established and therefore it will not be open to us to interfere.

17. We have considered the submissions of the learned counsel on either side. If we are to look on the evidence on the ground of cruelty in the manner projected by the learned counsel for the respondent husband, we find the following features:

1) The fact that the couple were forced to set up a separate residence at the insistence of the wife in 1997 has been established.

2) The wife had made reckless allegations against her father-in-law which have been proved to be false even by the evidence of her own father as RW2.

3) The wife had made reckless allegations against the respondent husband to the effect that he is a womaniser and a drunkard but in the evidence she has retracted from both the allegations.



C.M.A.No.1989 of 2016

4) Both the wife and her father have admitted to the fact that they

have not made any attempt for reunion after 27.03.2012. While the wife has claimed that the husband had pledged her jewels and spent that money and the father had redeemed the jewels, the father who was examined as RW2 has given up the said case and had said that he has not done so. This kind of behaviour on the part of the wife, definitely amounts to cruelty.

18. The learned Family Judge has overlooked the effect of the evidence completely while deciding on the question of cruelty. We find force in the contention of the learned counsel for the respondent husband when he submits that the Family Judge should have granted divorce on the ground of cruelty but the Court has mis-directed itself in granting divorce on the ground of adultery. He would also point out that the wife had admitted in her evidence that she had made those allegations against the husband due to anger.

19. The cumulative effect of the evidence which we had pointed out would definitely justify the claim for divorce on the ground of cruelty.



C.M.A.No.1989 of 2016

We are unable to sustain the conclusion of the Family Court to the effect that the husband has not established the ground of cruelty. The action of the wife in making reckless and very serious allegations against the father-in-law and as well as against the husband which are proved to be false would definitely amount to cruelty. We are therefore of the considered opinion that while sustaining the decree of the Family Court granting divorce, it should have been under 13(1)(ia) and not under 13(1)(i).

20. In the light of the above conclusion, the appeal is **dismissed**, however the decree for divorce granted by the Family Court is confirmed on the ground of cruelty and not on the ground of adultery. The findings of the Family Court regarding adultery are vacated. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

(R.S.M.,J.) (R.K.M.,J.)
15.09.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



C.M.A.No.1989 of 2016

To

WEB.COM The Family Court Judge, Erode.



WEB COPY



C.M.A.No.1989 of 2016

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

dsa

C.M.A.No.1989 of 2016
and
C.M.P.No.14352 of 2016

15.09.2023