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C.M.A. Nos.1629/2020 – 6/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS. 1629 OF 2020 & 6 OF 2021

AND

C.M.P. NOS. 11993 OF 2020 & 56 OF 2021

S.Sagayaraj @ Alphonse Joseph
Antony Sagayaraj

..Appellant in both appeals

- Vs -

A.Nirmala

.. Respondent in both appeals

Civil Miscellaneous Appeals filed under Section 55 of the Indian Divorce Act, 1869, against the common fair and decretal orders of the Prl. District Judge, Tiruvallur, dated 19.6.2020 made in I.D.O.P. Nos.190/2014 and 171/2015.

For Appellant : Mr. A.Saravanan

For Respondent : No Appearance

COMMON JUDGMENT



C.M.A. Nos.1629/2020 – 6/2021

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The two civil miscellaneous appeals have been directed against the judgment and decree made in I.D.O.P. Nos.190/2014 and 171/2015 vide order dated 19.06.2020, by the learned Principal District Judge, Tiruvallur, in and by which the plea of the appellant herein for restitution of conjugal rights was negatived while granting a decree of divorce to the respondent herein.

2. For the sake of convenience, the appellant and respondent in both the appeals would be referred to as husband and wife.

3. The facts, as has been narrated by the appellant, which are culled out in a nutshell are as under :-

The marriage between the husband and wife was solemnised as per Christian rites and customs on 16.2.1990 and out of the said wedlock, two children were born in the years 1991 and 1996. Misunderstanding arose between the husband and wife in the year 2007 after which, according to the husband, the wife started living separately, as she wanted to lead a luxurious life, which was mooted out by the brothers and relatives of his wife, to which the husband was not yielding and, therefore, the marriage life between the



WEB COPY

husband and wife started to become strained. It is the further case of the husband that even though there was bitterness on the side of the wife to live together, yet the husband wanted all along to reunite with his wife and children and to live a happy life. In spite of the efforts of elders to make the couples stay united, the wife was never willing to cohabit with the husband and had deserted the husband, in spite of the fact that the husband wanted to live with the wife and children. However, to his dismay, the wife filed the petition for divorce in IDOP No.190/2014 against which the husband filed the petition in IDOP No.171/2015 seeking restitution of conjugal rights.

4. Before the trial court, the wife examined herself as P.W.1 and marked Exs.P-1 to P-5, while on the side of the husband, he examined himself as R.W.1 and marked Exs.R-1 to R-11. The court below, considering the oral and documentary evidence, while dismissed the petition for restitution of conjugal rights filed by the husband, however, allowed the petition filed by the wife by granting a decree of divorce. Aggrieved by the said common order, the present appeals have been preferred by the appellant/husband.



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5. Learned counsel appearing for the appellant/husband submits that the trial court has misconstrued all the documents filed by the husband and had granted divorce to the wife though all along the husband was intent on reuniting with his wife and children. It is the further submission of the learned counsel that the husband had substantiated the desertion by the wife and inspite of all the efforts by the husband, the wife was not ready and willing to reunite and, therefore, the restitution of conjugal rights sought for by the husband ought to have been allowed.

6. It is the further submission of the learned counsel that the wife had not produced even an iota of evidence to substantiate her case that inspite of the various efforts taken by her to get herself united with the husband the appellant was not willing to unite and in the absence of any materials with regard to the above, the finding rendered by the trial court that it was the husband who was not inclined to unite is grossly perverse. It is the further submission of the learned counsel that when the wife had clearly spoken in cross examination that she was not inclined to unite and live with her husband, which clearly shows desertion of her husband, the finding rendered



C.M.A. Nos.1629/2020 – 6/2021

WEB COPY

by the trial court that it was the husband, who had deserted his wife and children is wholly fallacious.

7. It is the further submission of the learned counsel that the desertion of the wife is clearly cruelty of the highest order and merely because the husband had filed the petition for restitution of conjugal rights belatedly would not amount to desertion and cruelty, as only on the divorce petition being filed by the wife, the husband had taken steps to file petition for restitution of conjugal rights, as prior to the said petition for divorce, the husband was under the fond hope that his wife would get herself united with him. The findings rendered in this aspect by the trial court is wholly on the basis of misconceived facts and, therefore, the decree of divorce deserves to be set aside and the order dismissing the petition of the husband for restitution of conjugal rights, against which appeal has been filed, deserves to be allowed.

8. Though notice has been issued, however, there is no representation on behalf of the wife. The appeals are of the year 2020 and 2021 and inspite



C.M.A. Nos.1629/2020 – 6/2021

of service of notice, none appears for the respondent/wife. Therefore, this Court is inclined to consider the case on the materials available on record and the submissions advanced by the learned counsel for the appellant.

9. The whole case hinges upon desertion and cruelty and the warring parties points finger with regard to desertion on the other party, thereby, contending that desertion has resulted in cruelty. However, on the ground of desertion, while the wife claims divorce, the husband wants restitution of conjugal rights, which are contrasting reliefs and, therefore, it becomes necessary for this Court to peruse the documentary evidence to find out whether desertion is on the part of the husband or wife and weigh the decision of the trial court on the basis of the said materials.

10. Insofar as the documents submitted by the wife, they have no relevance to either establishing cruelty or desertion. The trial court has dissected the documents filed by the husband coupled with the deposition of the husband as R.W.1 to arrive at the finding that desertion was at the hands of the husband and not of the wife.



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11. The case for divorce filed by the wife is premised on desertion meted out by the husband, while the husband, while claiming desertion at the hands of his wife, still claims that he wants to reunite with his wife and children and to that end, the petition for restitution of conjugal rights has been filed.

12. There is no quarrel that the husband and wife are living separately since the year 2007 and the petition for divorce had come to be filed in the year 2014 and subsequent to the filing of the petition for divorce, the petition for restitution of conjugal rights has been filed by the husband.

13. To arrive at the said finding that desertion was at the hands of the husband, the trial court had relied on the deposition of R.W.1 in cross, where R.W.1 has stated in unequivocal terms that even in the chief examination he had stated that since the year 2007 the husband and wife were not in talking terms. The husband has further gone on to depose that since 2008, there was no physical relationship between him and his wife. Therefore, it is the



WEB COPY

categorical admission of the husband that since 2007, the husband and wife were not leading a conducive life and were at loggerheads.

14. The only ground on which the husband claims that he had not deserted the wife and children and had wanted to unite with them all along and it was desertion only at the hands of the wife is on the basis of Exs.R-1, R-7 and R-8.

15. Ex.R-1 relates to the purchase of a steam cooker in the year 2010, which according to the husband he had given to his wife. However, the said exhibit is against the very deposition of the husband, as stated above, as even according to his very own deposition, he was not in talking terms with his wife and, therefore, the purchase of steam cooker would not be of any relevance and it could not be said that it was purchased only for the purpose of his wife. Even according to the husband, he was living separately since 2007 and the purchase of the steam cooker could not be inferred to be for the purpose of his wife alone.



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16. Turning back to the other exhibits, viz., Exs.R-7 and R-8, the said exhibits relates to bank deposit challans in the name of his son and health insurance certificate. It is based on the above documents, it is claimed that the husband was all along inclined to unite with his wife and children but his wife alone is not inclined to unite.

17. Though such a plea is taken by the husband, the trial court had negatived the said contention on the ground that the said documents are subsequent to the date of filing of the divorce petition and the said documents have been created for the purpose of bolstering the case of the husband.

18. Ex.R-7 series, containing three challans, is dated 5.1.2015, 10.06.2015 and 2.9.2015, while Ex.R-8, the health insurance certificate is dated 23.3.2017. It is to be remembered that the petition for divorce filed by the wife is anterior in point of time to the petition for restitution of conjugal rights filed by the petitioner. The petition for divorce is of the year 2014 and the petition for restitution of conjugal rights is of the year 2015. There is no



WEB COPY

material filed on behalf of the husband to show that he had intention of uniting with his wife and children and to that end, had taken the necessary steps to keep them in close proximity with him, though they were staying apart. No material whatsoever is filed by the husband prior to 2014, barring Ex.R-1, the bill for the purchase of steam cooker to show that he had intention in uniting with his wife. The husband had taken all steps to fabricate materials to support his plea for restitution of conjugal rights and, therefore, had made the deposit in the name of his son, Ex.R-7 series in the year 2015 and taken the health insurance in the year 2017.

19. It would be the endeavour of every parent to see that their children lead happy and peaceful matrimonial life. It is the case of both the parties that elders took steps to bring about their reunion, but apparently failed.

19. Though the husband was staying away from his wife since 2007 and were not in talking terms since then and had no physical relationship since 2008, yet the husband wants this Court to believe that he is desirous of reuniting with his wife and children and to lead a happy life. The husband is



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blowing hot and cold by claiming desertion and yet wants reunion, but there is no material which drives this Court to come to the said conclusion. The contentions advanced by the husband on the basis of Exs.R-1, R-7 and R-8 to plead that he was deserted by his wife though he is inclined at reuniting even as on date is nothing but a case woven for the purpose of filing the petition for restitution of conjugal rights. Had the husband really been intent in reuniting with his wife, on the failure of the steps taken by the elders to unite them, the husband would have taken necessary steps to file the petition for restitution of conjugal rights. But the husband kept silent for more than seven years and only after the wife filed a petition for divorce, for reasons best known to him, including payment of maintenance, the petition for restitution of conjugal rights have been filed by the husband. However, curiously, the wife had not even claimed maintenance for herself and her children at the hands of her husband, which shows the acrimony, which she nurtures against her husband. The act of the wife in not even asking for maintenance from her husband speaks volumes about the conduct of the husband towards his wife and coupled with the delay in filing the petition for restitution of conjugal rights and in the absence of any substantive material to show that the husband was



C.M.A. Nos.1629/2020 – 6/2021

all along inclined to unite with his wife, appreciating all the materials in proper perspective, the trial court has rightly allowed the petition for divorce, while rejecting the petition of the husband for restitution of conjugal rights, which order, in the considered view of this Court is just and reasonable and there is no perversity in the said order warranting interference.

20. For the reasons aforesaid, both the civil miscellaneous appeals are dismissed confirming the order and decree passed in IDOP Nos.190/2014 and 171/2015 by the Principal District Court, Vellore, vide order dated 19.6.2020. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

14.12.2023

Index : Yes / No

GLN

To

The Principal District Judge
Tiruvallur.



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C.M.A. Nos.1629/2020 – 6/2021

M.DHANDAPANI, J.

GLN

**C.M.A. NO.1629 OF 2020
AND
C.M.A. NO. 6 OF 2021**

14.12.2023



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C.M.A. Nos.1629/2020 – 6/2021