



C.M.S.A.No.73 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.S.A.No.73 of 2021

M.Anbarasu @ Anbarasan

... Appellant

Vs.

B.Eswari

... Respondent

Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure r/w Section 28(1) of Hindu Marriage Act to set aside Judgment and decree dated 16.03.2021 in CMA. No.04 of 2020 on the file of the learned Family Court, Krishnagiri upheld (confirming) the judgment and order dated 30.01.2017 in HMOP.No.74 of 2013 on the file of the Additional Special Court, Krishnagiri.

For Appellant : Ms.D.E.Anisree Sangam
For Ms.S.Harshitha

For Respondent : Service awaited



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J U D G M E N T

This CMSA has been filed seeking to quash the Judgment and decree dated 16.03.2021 in CMA. No.04 of 2020 on the file of the learned Family Court, Krishnagiri upheld (confirming) the judgment and order dated 30.01.2017 in HMOP.No.74 of 2013 on the file of the Additional Special Court, Krishnagiri.

2. The case of the appellant is that the respondent is the legally wedded wife and their marriage took place on 24.05.2002 in Chinna Thirupathi. Immediately, after the marriage, the respondent lived in her matrimonial home at Ittikkal Agraharam Village, Krishnagiri. There is no issues to the couple. In the year 2003, the respondent gave birth to a male child and within one month, the child died due sudden illness. After one year, the respondent started to behave in different manner. In the year 2004, once against the respondent got pregnancy and without knowledge of the appellant, the respondent aborted the the child. Due to her indifferent attitude, the appellant suffered mental agony/mental worries. Hence, the appellant filed the petition in OP. No.74 of 2013 before the learned



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Additional Special Judge, Krishnagiri seeking divorce on the ground of cruelty and the same was dismissed vide order dated 30.01.2017.

Challenging the same, the appellant has filed CMA.No.04/2020 before the Family Court, Krishnagiri. The said CMA has also dismissed vide order dated 16.03.2021 and order of the OP is confirmed. Aggrieved by the same, the present appeal has been filed.

3. The learned counsel for the appellant submitted that the appellant is working as a Driver in the Collector office, Krishnagiri. Due to work, the appellant is not able to come to house in time. But without understanding the nature of the work, the respondent often getting doubt in his activities and started quarrel with the appellant unnecessarily and threatened that she is going to give a complaint before the Women Police Station and threatened that she will commit suicide. In the year 2013, the respondent left the matrimonial home without the knowledge of the appellant and took away some house hold article, jewels and cash, which was kept by the appellant. Before the lower court, during trial, in order to prove the case, the appellant has examined as many as two witnesses viz., P.W.1 and P.W.2



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and marked as many as four documents viz., Ex.P1 to Ex.P4. On the side of the respondent, she examined two witnesses viz., D.W.1 and D.W.2 and no documents was marked. Both the Courts below have failed to consider all these aspects, dismissed the case, which warrants interference of this Court.

4. Heard the learned counsel for the appellant and perused the materials available on record. Though notice has sent to the respondent, no one appeared on behalf of her. Considering the pendency of the case, this Court is inclined to dispose of the case based on the available records.

5. The marriage and the relationship of the appellant and the respondent is not in dispute. It is seen that due to some misunderstanding, the basic problem arose between the parties. According to the appellant/husband that the respondent has quarreled with the appellant. The respondent left the matrimonial home without any valid reason. Due to the cruelty, the appellant has filed a divorce case.

6. The point that arises for consideration is whether the Courts below were right in dismissed the case or not. The grievance of the appellant



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seeking divorce against the respondent is that she always quarreled with her husband stating that he had iillegal relationship with the other women and she left the matrimonial home without any valid reason and she is not cooperating with him on each and every trivial issues and has caused mental agony, which constitutes mental cruelty to the appellant.

7. On perusal of the cross examination of the appellant, it is seen that initially, the husband and wife were lived the native town and subsequently, they moved to Krishnagiri. Thereafter, the respondent secured a job in the government department. In view of the death of the first child and abortion of the second child, the appellant has taken steps to perform second marriage, for which, the appellant decided to divorce the appellant. Further, before the lower court, the appellant has not proved the allegation of the cruelty against his wife and desertion.

8. It is settled that mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-today life in all families would not be enough for grant of divorce on the ground of cruelty and desertion. Only



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sustained unjustified and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty.

9. In the present case, based on the oral testimony of the appellant that lower court found that there is no ground to divorce the respondent and cannot be said to be an issue to cause mental or physical cruelty to the appellant.

10. On the other hand, it is seen from the deposition of the respondent that she is always ready and willing to live with the appellant. According to the respondent, the appellant has not taken any steps to rejoin with her.

11. In view of the above discussion, no particulars have been given by the appellant and only vague and general allegations have been made by him. These, in my view, are not sufficient to prove that the respondent deserted him and treated him with cruelty. Therefore, this Court is of the view that no fault could be attributed on the respondent/wife.



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12. The allegations that the respondent/wife was spreading rumors about the appellant/husband's character and due to which, there was a mental agony, was not proved by letting in any evidence. When there is no specific evidence stating that these acts created and caused mental agony, cruelty against the person, the divorce cannot be granted on that ground. The mere small trivial issues arising between the husband and wife regarding their expectations for future life, cannot be termed as a 'cruelty' caused by the wife.

13. Parties to the marriage, tying nuptial knot, are supposed to bring about the union of two souls. It creates a new relationship of love, affection, care and concern between the husband and wife and that it brings two families together. Such ties cannot be allowed to be severed on the grounds which are ordinary wear and tear of matrimonial life.

14. As rightly argued by the learned counsel for the respondent, there will be some problem in everybody's family and such a issue cannot be treated as cruelty to anyone of the spouses to file petition for divorce.



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According to the respondent, she is willing to continue the life with the appellant, but the appellant was refusing to take back the respondent. Even during this extended period of separation, none of the parties have taken steps for reunion or restitution of conjugal rights.

15. In this regard, the first Appellant Court has rightly observed that the appellant has not stated any specific averments to prove that he was subjected to cruelty by the respondent. The appellant has also not proved that the respondent voluntarily deserted him. Before the lower Court, the respondent has admitted that she is always ready and willing to live with the appellant. So, there are no sufficient ground for divorce. The appellant has not proved the cruelty activities of the respondent. The lower Appellate Court rightly observed the evidence and judgment of the trial Court, dismissed the appeal. Aggrieved by the said judgment, the appellant has preferred the present appeal.

16. It would clearly shows that the appellant is not willing to take the respondent and lead the matrimonial life. Thus, the plea of the appellant that



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the act of the respondent caused mental cruelty is totally unsustainable and only for the purpose of maintaining petition for divorce, the appellant has taken the said ground and having found the reality of the appellant. Both the Courts below rightly dismissed the petition for divorce filed by the appellant/husband.

17. For all the above stated reasons, the present Civil Miscellaneous Second Appeal is dismissed and the Judgment and Decree Judgment and decree dated 16.03.2021 in CMA. No.04 of 2020 on the file of the learned Family Court, Krishnagiri is hereby confirmed. No costs.

04.10.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment
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To



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M.DHANDAPANI, J.,

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1. The Family Court, Krishnagiri.
2. The Additional Special Court, Krishnagiri.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai

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