



C.M.S.A.No.24 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A.No.24 of 2021

and

C.M.P.No.1975 of 2021

D.Gomathi

... Appellant

Vs.

T.Veerabahu

... Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 100 C.P.C to set aside the judgment and decree dated 05.08.2020 passed in H.M.C.M.A.No.1 of 2018 on the file of the I Additional District Judge, Tiruppur reversing the judgment and decree dated 07.07.2017 passed in H.M.O.P.No.54 of 2012 on the file of the Principal Sub Court, Tiruppur.

For Appellant : Mr.G.Saravanan

For Respondent : Mr.V.Krishnasamy



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J U D G M E N T

The present appeal has been filed against the judgment and decree dated 05.08.2020 passed in H.M.C.M.A.No.1 of 2018 on the file of the I Additional District Court, Tiruppur reversing the judgment and decree dated 07.07.2017 passed in H.M.O.P.No.54 of 2012 on the file of the Principal Sub Court, Tiruppur.

2. The appellant is the wife and the respondent is the husband. The marriage between herself and the respondent took place on 09.05.2010. After the pregnancy of the appellant, on 09.12.2010, the bangle function of the appellant/wife was celebrated in the respondent's house on 09.12.2010, and thereafter, she went to her parental home and thereafter, they were blessed with a male child on 03.02.2011. On 05.06.2011, the appellant came to her matrimonial home for attending the naming ceremony of the child and on that day, the respondent demanded dowry and due to some wordy quarrel, she left her matrimonial home. Thereafter, the appellant tried to live with the respondent, but he refused to live with her and hence, she gave a complaint against the respondent. During the enquiry, she came to know



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that the respondent has filed a petition seeking divorce on the ground of mental cruelty under Section 13(1)(a) of Hindu Marriage Act, 1955 on the file of the Principal Sub Court, Tiruppur in H.M.O.P.No.54 of 2012, which came to be dismissed on 07.07.2017. Challenging the said dismissal, the respondent/husband filed an appeal before the I Additional District Court, Tiruppur in H.M.C.M.A.No.1 of 2018. The first appellate Court allowed the appeal and dissolved the marriage solemnized between the appellant and the respondent. Aggrieved by the same, the appellant/wife has come forward with the present second appeal.

3. At the time of admission, this Court has formulated the following substantial questions of law on 10.02.2021 :

(i) Whether the First Appellate Court (I Additional District Court) has discretionary powers to overlook the facts recorded by based on evidence by the Principal Sub Court ? and

(ii) When there is no specific pleading in the petition substantiated by relevant evidence to corroborate averments stemming from after thoughts and when the



divorce petition has been dismissed by the Sub Court, how could the Appellate Court reverse the order of lower Court ? "

4. The learned counsel for the appellant submitted that the trial Court dismissed the divorce petition on the ground that there was no pleadings in the main petition in respect of cruelty and the evidence adduced by the husband is not supported by pleadings. However, the First Appellate Court, while allowing the appeal had taken into consideration the subsequent events pleaded by the respondent/husband, but actually there were no pleadings and substance in the divorce petition filed by the respondent/husband. He further submitted that, without pleadings, no amount of evidence can be let in and that evidence need not be looked into. Further, the grounds raised in the petition for divorce are not sufficient to grant divorce. In order to get divorce, the respondent has made certain bald allegations, however, the allegations levelled in the petition are not substantiated with the material evidence. Therefore, the impugned order of the First Appellate Court is perverse, which warrants interference by this Court.



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5.The learned counsel for the respondent submitted that the respondent/husband has specifically pleaded in the petition about the act of cruelty allegedly committed by her and that has been substantiated by him through oral and documentary evidence, however, the trial Court failed to appreciate the same and dismissed the petition. He further submitted that even after the petition was filed by the respondent, the appellant/wife gave a complaint before the All Women Police Station, for demand of dowry as well as domestic violence, not only against the respondent/husband, but also against his family members and relatives, which clearly shows that the appellant with ill-will, made false complaint against the respondent/husband. After investigation, the said complaint was closed as ‘mistake of fact’, which clearly shows that, without any iota of materials, the appellant made false allegations against the respondent and his family members and the relatives. Though the trial Court failed to appreciate the evidence, the divorce petition was dismissed, but the First Appellate Court rightly appreciated the allegations levelled in the complaint and also considered the subsequent events and the attitude of the appellant and the First Appellate



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Court had rightly dissolved the marriage between the appellant and the respondent. There is no merit in the appeal and the same is liable to be dismissed.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

7. Admittedly, the marriage between the parties was solemnised on 09.05.2010 and out of their wedlock, a male child was born on 03.02.2011. The respondent filed divorce petition on 23.02.2012 on the ground of mental cruelty and the same was dismissed by the trial Court, however, he succeeded in the appeal and got divorce.

8. The main allegations taken by the respondent is that soon after their marriage, the appellant/wife did not take care and show any respect to the respondent and his mother and other family members. The appellant frequently quarrelled with the respondent and his mother by using unparliamentary words for petty reasons and she used to run away to her



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parents house without informing the respondent and his mother. The appellant also demanded the respondent to come along with her to live at her parental home at Tiruppur and since the respondent refused to do so, she frequently fought with the respondent. On 09.12.2010, the bangle function of the wife was celebrated in the respondent's house and on that day also, she fought with the respondent and left the matrimonial home. Further, the appellant did not inform the birth of the child to the respondent and his parents. The respondent was informed about the child birth through a close relative and he went to the appellant's house to see the child, but she did not allow the respondent and his mother to touch the child. On 05.06.2011, the appellant came to her matrimonial home for attending the naming ceremony of the child and on that day also, without any valid reason, the appellant fought with the respondent and his mother by using unparliamentary words in front of his relatives and left her matrimonial home and thereafter, she did not return back to her matrimonial home. The respondent tried to pacify and take her back, but he could not succeed, and hence, he filed the divorce petition on the ground of mental cruelty. However, the appellant has denied all the allegations levelled by the respondent.



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9. The admitted fact is that both the parties are not residing under the same roof. The appellant is residing in her parental home along with her child. After filing of the divorce petition, she has filed a petition under Section 9 of Hindu Marriage Act, 1955, for restitution of conjugal rights in H.M.O.P.No.51 of 2016 and the same was dismissed, as against which, she filed an appeal and the same is pending for consideration. Further, after filing of the divorce petition, she filed a complaint against the respondent and his family members and relatives for demand of dowry and a complaint has also been preferred before the Protection Officer and the same is pending and she is also getting maintenance from the respondent in the domestic violence petition, which clearly shows that the marriage took place in the year 2010 and on 09.12.2010 onwards, both the parties are living separately.

10. It is settled principle of law that pleadings include petition and counter statement. Further, original facts have to be pleaded with evidence. In the case on hand, the respondent pleaded that the



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appellant/wife caused mental cruelty by scolding him and his mother with unparliamentary words and also left the matrimonial home without any valid reasons. Thereafter, he took various steps to bring her back to the matrimonial home, but he could not succeed and hence, he filed divorce petition, even though the birth of the child was also not informed to him and also she has not even allowed the respondent to touch his child. In the proof affidavit, all the above allegations are mentioned and that the proof affidavit is nothing but the averments made in the petition. P.W.2, the relative of the respondent, has also spoken about the behaviour of the appellant and how she scolded the respondent and his mother with unparliamentary words.

11. Though the trial Court has come to the conclusion that all the facts have not been pleaded, whereas, on a perusal of the main petition, it is seen that the respondent has pleaded mental cruelty caused by the appellant/wife and the First Appellate Court had rightly appreciated the entire evidence and also considered the subsequent events after filing of the main petition and allowed the appeal.



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12. The contention of the learned counsel for the appellant is that there were no pleadings in the main divorce petition and that without pleadings, the respondent had let in evidence. Without pleadings, if any, evidence is let in, then that can be taken into consideration. The First Appellate Court erroneously appreciated the evidence, without pleadings, and therefore, learned counsel for the appellant submitted that the substantial questions of law emerges.

13. As far as the substantial questions of laws are concerned, it is clear that the Appellate Court is the final Court of fact finding and it can re-appreciate the entire evidence and give independent findings, and it need or need not to endorse the same view taken by the trial Court. The First Appellate Court, while re-appreciating the entire evidence, found that the appellant/wife has substantiated the grounds in the main petition, however, the trial Court failed to look into all these factual findings and dismissed the divorce petition and hence, no substantial questions of law need be considered/answered in this appeal.



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14. This Court finds that the respondent-husband pleaded for divorce on the ground that the appellant/wife caused mental cruelty and scolded him and his mother even by using unparliamentary words in front of his relatives and other family members and without any valid reasons, she left the matrimonial home and she also did not inform them about the birth of the child and all these factual aspects were rightly substantiated by the respondent/husband. Therefore, there is no perversity in the findings given by the First Appellate Court. The fact remains that from 2010 till 2023, the appellant/wife is residing under the roof of her parents and that she has not proved as to what steps are taken by her to come back to her matrimonial home or that the respondent/husband refused to take her back.

15. Under those circumstances, this Court does not find any perversity in the findings given by the first appellate Court and no substantial questions of law are answered accordingly, and there is no merit in this appeal.



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16. This Civil Miscellaneous Second Appeal is dismissed, accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The I Additional District Judge,
Tiruppur.

2. The Principal Sub Court,
Tiruppur.

3. The Section Officer,
V.R. Section,
High Court, Madras.



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P.VELMURUGAN, J.

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