



*C.M.A.No.2905 of 2017
and CMP.No.11595 of 2018*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE Mrs.JUSTICE **R.KALAIMATHI**

C.M.A.No.2905 of 2017
and CMP.No.11595 of 2018

C.Rajeshwari

... Appellant

Vs.

V.Venugopal

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 praying to set aside the judgment and decree dated 11.08.2017 in FCOP.No.87 of 2013 on the file of the Family Court, Salem.

For Appellant : Ms.B.S.Mitraneeshaa
for Mrs.V.Srimathi

For Respondent : Mr.G.Senthil Kumar
for Mr.S.Sethuraman



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JUDGMENT

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The wife is the appellant. Challenge is to the judgment and decree of the Family Court, Salem made in FCOP.No.87 of 2013, a petition filed by the husband seeking divorce on the ground of cruelty under Section 13(1) (i-a) of The Hindu Marriage Act.

2. The husband contended that the parties were married on 16.09.1996 at Salem Central Cooperative Bank Kalyana Mandapam. Through the said wedlock, two daughters were born and they were aged about 15 and 9 years at the time of presentation of the petition. According to the husband, the wife never discharged her duties as a wife and always wanted to be dominating the husband. She was also not doing the regular domestic work apart from not performing her marital obligations. She pretended to be a dutiful wife. Both the spouses were working in Qatar and the wife used to send her entire salary to her father and she also ensured that the husband also appointed her father as his power agent and sent



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monies to her father. It is the further claim of the husband that he was beaten up for several occasions and locked up inside the house. Whenever, the husband wanted to raise an issue, the wife would threaten him with dire consequences by lodging a complaint with the police authorities in Qatar. During August, 2012, the brother and the father of the wife abducted the husband and forcefully took settlement deeds from him, which led to the father of the husband lodging a complaint with the police. Unable to bear the conduct of the wife, the husband finally returned to India on 09.12.2012 and thereafter, did not go back. According to the husband, this conduct of the wife in totally neglecting him, beaten him up, locking him up in a house would amount to cruelty entailing him for a divorce under Section 13(1) (i-a) of The Hindu Marriage Act.

3. The petition was resisted by the wife denying all the allegations contained therein. It was also contended that the claim of the petitioner that the respondent did not involve herself in family matters is absolutely false. It is also pointed out that such allegations are made nearly 17 years after marriage and after having two children. It is also claimed that the father of



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the wife did not misuse the power of the attorney, but he purchased property only in the name of the husband. She would also contend that the properties were purchased out of the monies earned by both of the spouses. As regards the purchase of properties, it is claimed that the properties were purchased by the father-in-law of the petitioner only upon his instructions and it is not the case of the petitioner that the father-in-law purchased the properties in his name out of the monies sent by the petitioner. It was also contended that there was no cruelty meted out to the petitioner by the respondent.

4. On the above contentions, the learned Family Judge, Salem framed an issue as to whether divorce could be granted under Section 13(1) (i-a) of The Hindu Marriage Act.

5. At Trial, the petitioner was examined as PW1 and Exs.P1 to P13 were marked. The respondent was examined as RW1 and Exs.R1 to R16 were marked.



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WEB COPY 6. The learned Family Court Judge, having considered the evidence concluded that the petitioner has established that the respondent is guilty of cruelty. He took into account the conduct of the respondent, her father and brother to reach the said conclusion. The learned Family Judge also found that the conduct of the respondent would amount to cruelty on the circumstantial evidence that was placed before him, particularly the filing of criminal cases in criminal complaints by the petitioner as well as his father. The Family Court also took into account the fact that the wife has admitted the fact that she has filed a petition under Domestic Violence Act before the Mahila Court at Salem even during the pendency of OP for divorce and her claim that she always wanted to live with the husband as a dutiful wife is only a myth. On the above conclusion, the learned Family Judge allowed the OP and granted divorce. Aggrieved, the wife is before us with this appeal.

7. We have heard Ms.Mitraneshaa, learned counsel appearing for the appellant and Mr.G.Senthil Kumar, learned counsel appearing for the respondent.



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WEB COPY 8. Ms.Mitraneshaa, learned counsel appearing for the appellant would vehemently contend that the Family Court has gone by conjectures and surmises to grant a divorce. She would also point out that the Family Court has drawn inferences from the existing affairs without any basis of the pleadings to arrive at the conclusion regarding cruelty. Pointing out to the fact that the Family Court had examined the conduct of the wife on the basis of the averments made in the complaint filed by the father of the husband at Salem. She would also point out that there is total lack of evidence with reference to the claim of the husband that she had treated him cruelly and that she cannot continue to live with him.

9. Contending contra, Mr.G.Senthil Kumar, learned counsel for the respondent/husband would submit that the parties have been living apart from more than 11 years and despite several attempts for rapprochement, the parties were unable to gain common ground. He would also point out that the act of cruelty cannot be proved by direct evidence. He would also submit that mental cruelty would also amount to cruelty, which would offer a ground of divorce under Section 13(1)(i-a) of The Hindu Marriage Act.



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10. We have considered the rival submissions.

11. The husband has approached the Court with a petition for divorce on the ground of cruelty. The sum and substance of the allegations in the petition filed by the husband is to the effect that the wife has not been discharging matrimonial obligations and she was intolerant. She had siphoned off her salary by giving it to her father. She would also force the husband to execute a power of attorney in favour of her father and her father had misused the said power of attorney in dealing with the funds. All this coupled with the fact that the husband was forced to leave Qatar even when his work permit was alive.

12. The wife resisted the petition denying all those allegations and contending that even now she is ready to live with the husband. Fortunately one of the daughters have got married and the other daughter is pursuing her education in a private university. They have not been affected by the trivials of the fight between their parents.



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WEB COPY 13. From the evidence available, we are able to gather that the husband was made dependent of the wife's family right from the date of marriage. He had executed the power of attorney in favour of his father-in-law authorising him to purchase properties and the father-in-law had also purchased property in the name of the husband. Though it is the claim of the husband that the father-in-law had squandered his money, there is no evidence to substantiate the contention. However, we will have to examine only the conduct of the wife, when it comes to cruelty. The evidence available shows that there had been some disputes between the parties and the husband was forced to leave Qatar over night on 19.12.2012. It is also seen that police complaints have been lodged by the father of the husband complaining that his son has been abducted by his in-laws and seeking action against him. A criminal case has also been registered against them and the same is pending as of today. It is also seen that the Family Court has also considered the fact that the settlement deeds executed by the husband have been executed nominating the wife as the guardian. It has rightly observed that there was no necessity for execution of the said documents when even according to the wife, the family has been residing in



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Qatar. The Family Court has also taken note of the contents of the complaint filed by the father of the husband to the police authorities claiming that the son has been kidnapped and detained illegally in order to take property documents from him. Exs.P10 & 11 settlement deeds have been executed in the same day by the husband in favour of the wife and daughters. These would show that there will be some kind of a mutual distrust between the parties and the wife wanted to secure the financial interest than the interest of the family.

14. The wife has also admitted that she had executed a power of attorney in favour of her father without knowledge of the husband and he has purchased nearly 2 to 4 acres of land in Salem and 2 residential plots in Chennai, which are yet to be registered at the time when she deposed. The Family Court has rightly concluded that the wife had not been a dutiful wife. Finally, the Family Court concluded that the wife by her conduct has caused severe mental cruelty to the husband, which entails him for a divorce. The evidence that has been placed before the Family Court by the husband in the form of various documents would show that there were



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disputes between the parties on purchase and sale of properties and we find that both of them were more interested in material assets than well being of the family. It is also seen that the wife has filed a suit for partition of the properties that was settled of her daughter and a decree has been passed in her favour. It is stated that the husband has preferred an appeal against the said decree. We are not going into merits of the rival claims therein. We are only taking into account the said circumstance to weigh the nature of the relationship between the parties and whether we should interfere with the decree for divorce granted at this stage, when the parties about 50 years old. Even though the wife would express her willingness to live with her husband, the husband, who is present in Court has flatly refused any such offer. We find that the Family Court has taken into account the preponderance of probabilities and the nature of the relationship between the parties and has come to the conclusion that the marriage needs to be dissolved on the ground of cruelty. It is now well settled that mental cruelty alone can afford a ground for divorce. The fact that the husband was subjected to mental cruelty would be borne out by the records that has been produced as Exs.P3, P4, P10 and P11. While Exs.P3 & P4 are the



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complaints given by the father of the husband and husband himself, Ex.P8

is the charge sheet laid against them. The Family Court has also taken note of the fact that the brother of the respondent/wife had created the records like ration card and other Government records as if the husband was residing in India at the relevant time. These facts would definitely be a factor in the marital relationship. We should also consider the age of the parties. The husband is now aged about 50 years and the wife is aged about 49 years. The children born out of the marriage have also attained majority. As we had already pointed out even though the wife would say that she is willing to live with the husband, she resides in Qatar and she is working there, the husband is in Salem since his return from Qatar on 09-12-2012. We also find that the marriage has irretrievably broken down because of the attitude of the wife, which would definitely constitute a ground for grant of divorce on the ground of cruelty. The Family Court, which had the benefit of observing the witnesses had made some observations on the demeanor of the witnesses and we do not think we can tinker with those observations since we do not have the advantage of observing witnesses. We are therefore of the considered opinion that no ground has been made to



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interfere with the judgment and decree of the Family Court. This appeal fails and it is accordingly dismissed. We however make no order as to costs. Consequently, connected CMP is closed.

**(R.S.M.J.) (R.K.M.J.)
28.07.2023**

Index : No

Internet : Yes

Speaking order: No

Neutral Citation Case : No

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To

1. The Family Court,
Salem.

2. The Section Officer,
VR Section High Court,
Madras.



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