



CMA.No.4762 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2023

PRONOUNCED ON : .07.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.4762 of 2019
CMP.No.27414 of 2019

Priyamarry

Appellant

Vs

M.Sekar

Respondent

Prayer:- This Civil Miscellaneous Appeal has been filed, against the order and decretal order dated, 17.09.2019, passed in IDOP.No.170 of 2017, by the Principal District Court, Villupuram.

For Appellant : Mr.NA.Malaisaravanan

For Respondent : No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the wife, against the order and decretal order dated, 17.09.2019, passed in IDOP.No.170 of 2017, by the Principal District Court, Villupuram.
2. The facts giving rise to filing of this appeal, in a nutshell, are that the marriage between the Respondent/husband and the Appellant/wife was performed on 16.05.2013, according to religious rites of the Christian community, in a Church and the marriage was also registered in the concerned Office of the Sub Registrar. Thereafter, due to matrimonial dispute arose between them, in 2017, the Respondent/ husband has filed the



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above petition, under Section 10(ix) and (x) of the Divorce Act, seeking divorce, against the Appellant/ wife on the ground that the wife has failed to discharge her matrimonial duties and obligations, as a dutiful wife and on further grounds of matrimonial cruelty, both mental and physical and desertion. The petition was resisted by the Appellant/wife, by filing a counter, stating that she is ready and willing to live with the husband peacefully. On the side of the husband, the Respondent examined himself as PW.1 and marked Ex.P1 to Ex.P5. On the side of the wife, the Appellant herself examined as RW.1.

3. After trial, the Trial Court has held that the husband has proved the grounds of cruelty and desertion and also proved that the wife had left the matrimonial home and lived with her parents separately, without any reasonable grounds, by valid evidence and thereby, she caused mental agony and cruelty to the husband, thereby warranting a decree of divorce. Holding so, the Trial Court, declaring the marriage of the Respondent/husband with the Appellant/wife as null and void, has granted a decree of divorce, by the impugned order. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the wife.
4. This Court heard the submissions of the learned counsel for the Appellant and considered the materials placed on record.
5. According to the learned counsel for the Appellant, the wife never insisted the Respondent to get separated from his family and she lived in the matrimonial home even at the time when the Respondent was in abroad, but,



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without considering the same, the Trial Court erred in granting a decree of divorce, without assigning any valid reasons, but merely stating that the wife left the matrimonial home and resided in the parental home and denied to come to the matrimonial home and live with her husband, which would amount to cruelty. The wife left the matrimonial home only because of the humiliation caused by the sisters in law and mother in law of the Appellant, which averment is not considered by the court below and hence, the impugned order, granting a decree of divorce, is not sustainable.

6. The factum of marriage performed on 16.05.2013, according to religious rites of the Christian community, in a Church, between the Respondent/husband and the Appellant/wife is not in dispute. The Respondent possessed of ITI Qualification and worked in abroad and came back to India and the wife, having possessed B.A., B.Ed Degrees, is working as a Teacher.

7. It is the case of the Respondent that within a few months after the marriage, his wife often insulted him, by pointing out his educational qualification and by comparing with his brothers, who are having higher educational qualifications and earning higher income than him and she also failed to discharge her duties and obligations, as a dutiful wife and she left the matrimonial home and lived with her parent for more than four years, without any reason. Even after several attempts, by way of complaint to the police concerned on 22.08.2015 and panchayat held in the presence of the villagers, demanding her to come and live him, she denied to come to the



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matrimonial home and live with him. When on 26.03.2017, the Respondent along with his parents went to her parental house and called her to come and live with them, she insulted and threatened them and he has also given oral evidence on the above averments. This Court finds no contra evidence let in by the Appellant to falsify the case of the Respondent.

8. One of the grounds raised by the Appellant is that no where the Respondent has alleged that she insisted for separate family. But, in this regard, on a perusal of the materials, it came to light that in the counter filed by the wife, she herself has stated that she would live with him separately only when her husband forms a separate house at a different place other than the matrimonial home. Even in the oral evidence, the wife, who was examined as RW.1 has stated that only when a separate family is formed at a different place other than the place where the family of the Respondent is residing, she would live with him separately.
9. In normal circumstances, a wife is expected to be with the family of her husband after the marriage and the wife becomes an integral part of the family of the husband and normally, without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her.
10. It is admitted by the Appellant that the Respondent has made several attempts to live together, by way of complaints and panchayat. Ex.P4 is one of such complaints. Admittedly, the Respondent did not appear for any enquiry or panchayat, as seen from the cross examination of the Appellant.



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It is also admitted by the Appellant that she had been living with her parents for more than four years. However, it is not known for what reasons she lived with her parents, leaving the matrimonial home. Several attempts made by the Respondent to live with the Appellant are also admitted by the Appellant and it is also admitted by the Appellant that there is no dispute, much less a matrimonial dispute between them.

11.Further, the Appellant has made mere allegations of humiliation and torture against her sisters in law and mother in law and as they are flimsy and vague, they cannot be accepted. The Appellant had left the matrimonial home and lived with her parents, on her own, without any valid reasons.

12.It is also pertinent to note that though it is claimed by the Appellant that she is ready and willing to live with her husband, no petition is filed by her for restitution of conjugal rights. Upon appreciation of the evidence, the Trial Court came to the right conclusion that mere for flimsy reasons, the Appellant wanted to get her husband separated from his family and rightly rejected the reasons given by the Appellant, as the grievance of the Appellant is unjustified. In spite of several attempts and efforts put forth by the Respondent to live with his wife, the persistent effort of the Appellant wife to insist the Respondent to be separated from the family would be tortuous for the Respondent.

13.All above instances and acts of the Appellant do really substantiate the acts of mental cruelty and lay a firm foundation for grant of decree of divorce.

A.A.NAKKIRAN, J.



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Hence, in the opinion of this Court, it is established from the instances pleaded and proved by evidence, both oral and documentary, in support of the Respondent that the Trial Court has rightly looked into these evidence based on the legal propositions and the established rule of law. The Trial Court, after carefully and thoroughly analysing the decision of the Honourable Supreme Court reported in **2016 9 SCC 455 (Narendra Vs. K.Meena)** and applying the ratio laid down therein, has rightly come to the conclusion that the acts of the Appellant would constitute an act of 'cruelty' and accordingly, granted a decree of divorce in favour of the Respondent, by the impugned judgement, which in the opinion of this Court, does not warrant any interference by this Court and as such, there is no need for this Court to take a different view than the one taken by the Trial Court.

14. In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

Consequently, the connected MP is closed.

.07.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Principal District Court, Villupuram
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.4762 of 2019