



C.M.A(MD).No.244 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2023

PRONOUNCED ON : 19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR
C.M.A(MD)No.244 of 2010

Esabella Mary @ Esabella Rani

... Appellant

vs.

Joseph Siril

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, 1869 as Amended against the order dated 11.11.2009 made in I.D.O.P.No.64 of 2007 on the file of the Principal District Judge, Dindigul.

For Appellant : Mr.S.Rajasekar

For Respondent : No appearance

JUDGMENT

The wife is the appellant challenging the order of dismissal of IDOP.No.64 of 2007 on the file of the Principal District Court, Dindigul which was filed by her seeking divorce on the ground of mental cruelty.



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2. According to the wife, she got married to one Joseph namely the respondent herein on 30.08.1991 following the Christian ceremonies and a male child was born to them on 16.03.1993. Though the respondent was treating the wife properly, after birth of the son, he started doubting the character of the wife.

3. The following incidents are pointed out by the wife in her petition for divorce to support her case of mental cruelty.

(i). The husband used to behave like a mentally challenged person and he used to doubt her character and abused the wife in public places.

(ii). The husband used to beat the wife in public places. Those who had come to the support of the wife were also abused by the husband stating that those persons were also having some illicit relationship with the wife.

(iii). When the wife was working as a teacher in a Teacher Training Institute, the husband had barged into the working place and in front of her students, the husband had beaten and abused the wife.

(iv). On 08.01.2005, the husband had abused the wife in front of the son alleging that she is having illicit relationship with the third



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parties. When her son questioned the same, both were driven out of the home and he threatened and abused them before the general public.

(v).The wife is put to great mental agony in view of the conduct of the husband by disturbing her teaching work.

4.Based upon the above said allegations, the wife had contended that she is a victim of mental cruelty and she cannot any more continue to have the status of the wife of the respondent and she had prayed for divorce.

5.The respondent/husband had filed a counter contending that he had never abused or beaten the wife in the public places. These allegations are being made only to separate him from his parents. He had further disputed that he never barged into the school premises or abused or beaten his wife. He had further contended that he is always willing to live with his wife.

6.The District Judge after considering the oral and documentary evidence had arrived at a finding that PW2 who is the guardian of the



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wife has not supported the case of the wife. In fact, he had specifically deposed that he is not personally aware of the allegations. The trial Judge further found that in case if the husband had abused and beaten the wife in general public or within the school premises, the wife would have certainly lodged a police complaint. However, no such complaint has been lodged by the wife. Therefore, the trial Court found that the wife has not established any one of the ingredients of the mental cruelty and proceeded to dismiss the divorce petition. Challenging the same, the present appeal has been filed by the wife.

7.The learned counsel for the appellant had contended that the wife is now a Government School Teacher and the son is 29 years old. Due to the mental and physical harassment on the part of the husband, the wife wants to get separated from the husband.

8.The learned counsel had further contended that the wife had examined herself as PW1 and her guardian as PW2 to establish the fact that the wife was continuously abused by the husband and she was beaten up in front of her students in the educational institution in which



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she was working. He had further contended that the husband had not taken any steps for restitution of conjugal rights for so many years and therefore, it is clear that he is also not interested in living with the wife. He had further contended that the trial Court has not properly appreciated the oral evidence let in on the side of the wife wherein she has narrated all the physical and verbal abuses of her husband. Hence, he prayed for allowing the appeal and to grant a decree for divorce in favour of the wife/appellant.

9. Though the respondent/ husband has been served and his name is printed in the cause list, he has not chosen to appear either in person or through counsel. Therefore, this Court proceeds to decide the appeal based on the submissions made on the side of the appellant/wife.

10. The wife had filed a divorce petition on the ground that the husband had caused mental cruelty to the wife during the matrimonial life. The wife had listed out certain incidents in her application for divorce alleging that these incidents would clearly establish that the husband has indulged in verbal and physical abuse as against the wife.



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11.A perusal of the oral evidence would clearly establish that the wife has not chosen to examine any one who is connected with the incidents placed on record by the wife in the petition. If really the wife was abused, physically threatened and thrown out of the house, she would have immediately lodged a police complaint. In fact, if the wife had been abused and beaten by the husband in the school premises, the wife or school management would have certainly filed a police complaint. The wife has not explained why no complaint was lodged against her husband for the said incidents.

12.Though the wife had alleged that she was verbally and physically abused by her husband, no other independent witness has been examined to prove the same. PW2 who has been examined as the guardian of the wife, has categorically admitted that he is not having personal knowledge about the allegations made in the petition. Therefore, it is clear that the wife has not produced any oral or documentary evidence before the trial Court to arrive at a finding that she was subjected to verbal and physical cruelty by her husband.



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13.The learned counsel for the appellant had contended that both the parties are living separately for so many years and the divorce could be granted on the ground of irretrievable breakdown of marriage. The said ground is not one of the grounds available under Divorce Act. Therefore, this Court is not inclined to go into the issue whether there is an irretrievable breakdown of marriage or not.

14.The trial Court has categorically found that the wife has not established any one of the incidents of mental cruelty and she has utterly failed to establish her case of verbal and physical abuse by the husband in public places during the matrimonial life.

15.In view of the above said deliberations, the order of the trial Court dismissing the divorce petition is hereby confirmed. There is no merit in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs.

19.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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- 1.The Principal District Judge,
Dindigul.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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