



C.M.A(MD)Nos.712 and 713 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	09.10.2023
Pronounced on	16.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)Nos.712 and 713 of 2023
and
C.M.P.(MD)Nos.9756 and 9758 of 2023

Sampath @ Sampathkumar

... Appellant / Petitioner in C.M.A.No.712 of 2023
& Appellant/Respondent in C.M.A.No.713 of 2023

-vs-

Kantha Ruby @ Manjula @ Sumathy

... Respondent / Respondent in C.M.A.(MD)No.712 of 2023
& Respondent / Petitioner in C.M.A.(MD)No.713 of 2023

COMMON PRAYER : Civil Miscellaneous Appeals have been filed under Section 19 of Family Courts Act against the Common Judgment and Decree dated 14.11.2022 passed by the Family Court, Karur in H.M.O.P.Nos.6 of 2022 and 259 of 2018.



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WEB COPY **In both petitions:**

For Appellant : Mr.S.Sugumar

For Respondent : Mr.K.Arunraj

COMMON JUDGMENT

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

For the sake of convenience, the parties are referred to as per their ranking in H.M.O.P.NO.259 of 2018, viz, the petitioner/wife and the respondent/husband.

2. By a common judgment made in H.M.O.P.No.259 of 2018 and 6 of 2022, the above Civil Miscellaneous Appeals are filed and hence, by consent of parties, the case is taken up for joint hearing and final disposal and disposed of by a common judgment.

3. The short facts which are necessary for determination of these appeals are as under:

3.1. The marriage between the parties are said to have solemnized on



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06.09.1995 as per the Hindu Rites and Customs. Out of wedlock, they begotten one boy and one girl, by name, Prithviraj and Devadharsini respectively. It is alleged that from September 2009, the husband is not living with the wife and children and he has left to his parental house. In the year 2018, the wife has filed H.M.O.P.No.259 of 2018 on the ground of desertion and cruelty. During the pendency of the above case, the husband has filed H.M.O.P.No.6 of 2022 for restitution of conjugal rights. During joint trial, the wife examined herself as P.W. 1 and marked Ex.P.1 to Ex.P.10 and the husband examined himself as R.W.1 and marked Ex.R.1 to Ex.R.25. Considering the both oral and documentary evidence adduced before the Family Court, the Family Court after observing that the husband had committed cruelty and also deserted her and kids without reasonable cause and accordingly, allowed the H.M.O.P.No.259 of 2018 and dismissed the H.M.O.P.No.6 of 2022. Hence, these appeals.

4. Heard the learned counsel appearing for the appellant/husband.

5. The contentions of the appellant/husband are summarized as under:

5.1. The husband has admitted the solemnization of marriage with the lady



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examined as P.W.1. However, he disputed that he has married only the girl by name Manjula @ Sumathi and not Kantha Ruby and it is a plea that no marriage was solemnized with a lady having the name Kantha Ruby and hence, the petition filed by the wife under the name of Kantha Ruby has to be rejected.

5.2. He has filed O.S.No.2 of 2021 for declaration of marriage of the defendant with the name of Manjula @ Sumathi on 06.09.1995 is valid under law. When the case is pending, he has filed an application for joint trial and the same was dismissed and the revision petition is said to have been pending before this Court. The learned counsel for the appellant/husband could state that when the marriage was solemnized in the name of Manjula @ Sumathi and the divorce petition is filed in the name of Manjula @ Sumathi unless the name change has been mentioned in the divorce petition and filed a marital proof to that effect, the wife ought to have filed a divorce petition in the name of Manjula @ Sumathi only and not in the name of Kantha Ruby, since no marriage has been solemnized between the husband Sampathkumar with the lady by name Kantha Ruby.



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5.3. The wife has not produced any evidence to prove that the marriage has been solemnized with respect to Kantha Ruby @ Manjula @ Sumathi.

6. The learned counsel for the respondent/wife made submissions in support of the judgment of the trial Court.

7. Heard and perused the materials available on record.

8. At the out set, after perusing the evidence of P.W.1 and the cross examination, this Court finds that the stand of the husband being that he was married to P.W.1., when it was mentioned as Manjula @ Sumathi. According to the husband, he has never married a girl, who is, by name Kantha Ruby.

9. The lower court record reveals that initially H.M.O.P.No.259 of 2018 was filed as Kantha Ruby and hence such a stand has been taken. In the meanwhile, the husband has filed I.A.No.4 of 2020 to raise a preliminary objection with regard to the name, viz., Kantha Ruby and the same was allowed on 23.10.2020. In the meantime, it appears that the wife has filed I.A.No.7 of



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2021 to amend her name in the main H.M.O.P.259 of 2018 as Kantha Ruby @ Manjula @ Sumathi. In the said application, she has filed copy of Aadhaar Card, Voter ID, Family Card and the birth certificates of the son and daughter. It appears that her husband has admitted that he was married to Manjula @ Sumathi and the name and the persons are the same. However, he would contend that he has not married his wife under the name of Kantha Ruby. In the said application, it is specifically pleaded that it is the house name and they also filed education certificate from the Annamalai University and birth certificates of the son and daughter, wherein, the name of the wife is mentioned as Kantha Ruby @ Manjula. Accordingly, the said application in I.A.No.7 of 2021 was allowed.

10. Aggrieved against the order of lower Court in I.A.No.7 of 2021 in H.M.O.P.No.259 of 2018 dated 30.09.2021, he has preferred C.R.P.(MD)No.357 of 2022 by an order dated 28.02.2022, this Court has held that the person is one and the same. The marriage with the said person by the husband is not disputed. In the marriage invitation, it is mentioned as Manjula @ Sumathi, the name in the educational certificate is Kantha Ruby. Since her family is Astrologer family, they printed the family name and even as per the family card issued by the



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Government of Tamil Nadu based on the application given by the husband, it is mentioned as Kantha Ruby and accordingly, dismissed the Civil Revision Petition and thereafter, the matter was taken up for final disposal.

11. During the trial, the petitioner adduced oral and documentary evidence and the respondent also adduced oral and documentary evidence as stated *supra*.

12. The learned counsel for the appellant/husband would contend that the name is an issue. Admittedly, the person, who has been examined as P.W.1 by calling herself as Kantha Ruby @ Manjula @ Sumathi. He has not disputed the person that is P.W.1 to be his wife and hence, the submissions of the learned counsel for the respondent/wife that the husband is fighting this case of divorce for the purpose of fighting and there is no substance in the said plea appears to have force. As referred to in the preceding paragraphs, I.A.No.7 of 2021 filed for amendment of the name in the cause title of the divorce petition filed by the wife was allowed and the same was confirmed in C.R.P(MD).No.257 of 2022 and the same has become final and hence, we find that the contention of the appellant/husband has only been reiterated to unsettle a settled issue.



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13. After perusing the copy of the Aadhaar Card, Family Card, Voter ID, Transfer Certificate issued by the Annamalai University and the birth certificates of the son and daughter and various letters returned by the very same appellant/husband, Ex.P.2 to Ex.P.10, we find that for the sake of an appeal, this plea has been raised. In all these documents, the name of the wife is referred to as Kantha Ruby @ Manjula @ Sumathi and the name Manjula to be his wife is admitted by the appellant/husband and hence, we have no hesitation to hold that for the sake of a plea in the grounds of appeals, such a plea has been raised and the same has to be summarily thrown out of the Court at the threshold.

14(a). On the point of desertion, the husband would state that he has been remitting various amounts to the wife and his children and on a combined reading of the oral evidence of P.W.1 (wife), documentary evidence of Ex.P.1 to Ex.P.10, especially Ex.P.7 to Ex.P.10, namely, the letters written by the husband and addressed in his wife's name as Kantha Ruby @ Manjula @ Sumathi and contents thereof, we find that the husband has committed cruelty upon the wife. After the birth of the male child in the year 1997, he has not rendered any financial



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assistance and started borrowing amounts for interest from the neighbors and failed to repay the amount and thereby caused innumerable sufferings and inquiries from the surroundings from whom the person has borrowed the amount and failed to repay the debt.

14(b). The evidence of P.W.1, chief and cross examination indicates that during the second pregnancy, she was subjected to cruelty and after the birth of the second female child, her husband has not maintained the family and she got her employment through TNPSC in the year 2009, which caused some amount of psychological factor of inferiority complex of the husband, resulting in his, leaving the family and he proceeded to Madurai to live in his parental home.

14(c). At the time of recording of evidence, the first son has already graduated in Engineering and aged 21 years and the second child, namely, the daughter was studying a Bachelor degree and the Court has rendered a specific finding that after nine years, he has not looked after the family and deserted the family and for name sake he has sent small amounts by money orders. The learned counsel for the appellant/husband drew our attention to various money



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orders sent by the appellant which according to us are not sufficient enough to run the family.

14(d). Hence, we find that the factual finding rendered by the Family Court touching upon the cruelty and desertion is well considered and well merited and does not warrant any interference from this Court at the appellate stage as the same does not suffer from any irregularity or illegality, warranting interference in these appeals.

15. Accordingly, the finding of the Family Court that the husband had treated the wife with cruelty and also deserted her and the two children, both of them then school going and now one has completed the college and the another girl is studying College, has not rendered any financial assistance of reasonable limit, has deserted the family and hence, we find no reason to interfere with the well considered order on evidence. Accordingly, all the points raised by the appellant/husband stand rejected and the order of dissolution passed by the Family Court and the order of dismissal of the petition for restitution of conjugal rights filed by the husband are hereby confirmed.



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16. In the result, these Civil Miscellaneous Appeals are dismissed with costs of Rs.1,000/- (Rupees One Thousand only) each payable by the appellant to the respondent. Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [P.B.B., J.]

16.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

The Family Court, Karur.



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and
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