



C.M.A(MD)Nos.527 and 528 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 16.11.2023

Delivered on: 21.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A(MD)Nos.527 and 528 of 2021

G.Raja Naganathan

... Appellant
in both appeals

Vs.

K.Kowsalya

... Respondent
in both appeals

Prayer in both petitions:- Civil Miscellaneous Appeal filed under Section 28(1) of the Hindu Marriage Act, 1955 against the order dated 25.02.2021 made in H.M.O.P.No.106 of 2019 and 232 of 2019, on the file of the Family Court, Sivagangai District.

For Appellant : Mr.S.Jeyakumaran

For Respondent : Mr.S.Poorna Chandran



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COMMON JUDGMENT

RMT.TEEKAA RAMAN,J.

The unsuccessful husband is the appellant herein.

2. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court as husband and wife.

3. The husband filed H.M.O.P.No.106 of 2019 before the Family Court, Sivagangai for dissolution of marriage on the ground of cruelty, desertion and adultery and the wife filed H.M.O.P.No.232 of 2019 for restitution of conjugal rights. Joint trial was conducted and the evidence was recorded in H.M.O.P.No.106 of 2019.

4. Considering the oral and documentary evidence, the Family Court Judge, Sivagangai allowed the petition filed by the wife for restitution of conjugal rights, however, dismissed the petition filed by the husband for the relief of divorce and hence, these appeals were filed.



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5. C.M.A(MD)No.527 of 2021 has been filed by the husband challenging the findings of the Family Court regarding the cruelty, desertion and adultery. The learned counsel for the appellant / husband would draw our attention to the specific plea raised in the divorce petition that on 29.12.2014 wife was found in the company of one Ganesan, who is working as BT teacher where their children are studying and thereafter attempted to consume poison and she was retrieved and therefore, both are living separately since 2014 and she was continuing in chat with the said Ganesan and hence, the appellant / husband was affected by mental cruelty and it amounts to cruelty and besides she committed adultery.

6(a). The learned counsel for the respondent / wife based upon the counter statement filed before the Family Court would contend that two children namely Sivasabaris (Date of Birth 13.07.2007) and Gowthamsharma (Date of Birth 31.05.2009). The children are with the mother and because of the transfer effected by the husband at Padamathur and they are living separately only from 2014 and hence pre-condition for “desertion” namely “separation for two years” is not complied.



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6(b) Three incidents were referred to, in the petition viz., (i) in the marriage function, name of the brother of the husband and sister-in-law were not printed in the marriage invitation; (ii) secondly, for 'ear piercing ceremony' for the appellant's elder brother's children, the respondent name was not printed in the invitation and hence, the appellant and the respondent were went to Tiruchendur and hence, not attending the ear piercing ceremony; and (iii) thirdly, there was a dispute between the father of the husband/apellant and his younger brother in connection with attending the funeral of the Salugai in which the appellant / husband could not participated, however the wife and her family members have participated in the funeral [since the wife is related to the husband even before the marriage (Aunt's daughter)] and all the three incidents have been blown out of proposition and hence, the Family Court Judge dismissed the divorce petition.

7. After hearing the both sides and perused the records.

8. We find that the marriage between the parties was solemnized on 06.09.2006. The first son was born on 13.07.2007 and the second son was born on 31.05.2009.



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9. It is alleged that on 29.12.2014 the appellant / husband saw the wife in the compromising position with one Ganesan, who is working as BT Teacher in the St.Joseph School, thereafter, it is further alleged that the wife attempted to commit suicide. Thereafter, as she failed to mend her ways and was in the habit of keeping in touch and chat with the said Ganesan and further the wife withdrew from the matrimonial home without reasonable cause and hence, the husband filed the present HMOP.

10. The learned counsel for the appellant/husband further contended that the wife has filed a petition for restitution of conjugal rights and she has not stated any justifiable reasons for living separately and the grounds with regard to the desertion, it is alleged that the date of desertion in the year 2014 and HMOP was filed in the year 2019 and hence the 'statutory period' required for maintaining the petition for desertion and the desertion is made out and the trial Court has committed an error in rejecting the same.

11. In this case, the learned counsel for the appellant would contend that in-spite of the warning given by the husband, the wife has not mended her ways and by keeping in touch with the said Ganesan, it amounts to



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mental cruelty and the appellant seeks divorce atleast on the ground of cruelty.

12. The respondent made submission in support of the Family Court judgment.

13. After hearing both the parties and the documents filed, we find that H.M.O.P.No.106/2019 was filed by the husband for divorce, while H.M.O.P.No.232 of 2019 was filed by the wife for restitution of conjugal rights. Pending H.M.O.P.No.106/2019, the wife also filed I.A.No.3 of 2019 seeking for interim maintenance for herself and for the children and the same was allowed to an extend that the husband has to pay an interim maintenance of Rs.10,000/- from the date of petition till the date of disposal of the case and Rs.10,000/- towards litigation expenses.

14. Civil Miscellaneous Appeal in C.M.A(MD)No.527 of 2021 is filed against the order of rejection of the relief for the divorce passed in H.M.O.P.No.106 of 2019 and C.M.A.(MD)No.528 of 2021 is filed against the grant of decree for restitution of conjugal rights filed by the wife in H.M.O.P.No.232 of 2019 and no appeal has been filed challenging the interim maintenance.



15. The Points for consideration are:

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“(i) Whether non-printing of the name of the brother and sister-in-law of the husband, in the marriage invitation in the family of brother of the wife, amounts to cruelty and as defamation in the social eye.

(ii) Non-adherence to the instruction of the son-in-law by the mother-in-law in attending funeral of the father of the mother-in-law amounts to cruelty.”

16. The marriage between the parties was solemnized on 06.09.2006 as per the Hindu Customs and Rights. Out of the wedlock, two children by name Sivasabaris and Gowthamsharma were born on 13.07.2007 and 31.05.2009. The appellant/ husband and the respondent/wife are related to each other even before the marriage. Wife’s mother and husband’s father are brother and sister. The husband is the son of the maternal uncle of the wife and the wife is the Aunt's daughter. The father of the petitioner/husband is Gowri and his paternal grand father is Salugai. The said Salugai is also the maternal grand father for the wife. On perusal of the document filed before the lower Court, we find that there is no pre-suit notice before the institution of HMOP.



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17. Initially, husband filed HMOP for dissolution of marriage on the ground of cruelty, desertion, substantial allegation of adultery. The said adulter was not added as co-respondent in the main divorce petition. As per the pleadings, the wife alleged to have deserted the husband since 2014. It is further alleged that on the date of filing of the petition, the wife alleged to have deserted the husband without reasonable cause for 4 years.

18. For the relief of dissolution of marriage on the ground of cruelty, three incidents have been referred to:-

(i) The name of the husband's brother and his wife was omitted in the wife's relatives marriage invitation card. Hence, the husband picked up quarrel with the wife and asked the wife not to attend the marriage function.

(ii) In the 'ear piercing ceremony' for the appellant/ husband's elder brother's children, the respondent / wife name was not printed in the invitation and hence, the appellant and the respondent were went to Tiruchendur and hence, not attended the ear piercing ceremony.



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(iii) In connection with attending of funeral of Salugai [grand father of the both the parties (through father and mother like)] inspite of the instruction given by the husband and his family members not to participate, however, the wife and her family members have participated in the funeral on the ground that wife is related to the deceased as a grand-daughter.

19. The allegation in general that she is not looked after the husband as a dutiful wife and she has not looked after the children. In the counter statement, it is specifically stated that minor issues have been blown out of proposition and with regard to the lodging of the complaint, FIR in Cr.No. 39 of 2018 Sivagangai Taluk Police Station, by the paternal uncle (பெரியப்பா) of the husband indicates that she was living with her husband till 2018.

20. The appellant was examined as P.W.1 and during his cross-examination, he has admitted various averments made by the wife in the counter statement. He has also admitted that as per Ex.R4-FIR given by the paternal uncle of the husband (பெரியப்பா) there was a dispute between



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P.W.2 (father of the P.W.1) and his elder brother in attending the funeral of their father and hence, the husband and father, viz., P.W.1 and P.W.2 have not attended the funeral of the said Salugai. Since the respondent/wife and her mother are grand-daughter and daughter (respectively) of the deceased, they have attended the funeral, resulted in filing of the petition.

21. P.W.1 in the cross-examination has admitted that in the police enquiry in connection with Ex.R4-FIR, the mother of the wife has not supported the P.W.2 (father of the husband) in connection with the funeral of the said Salugai. The deceased Salugai is a grand-father of the husband as well as the wife. After going through the evidence of P.W.1 and R.W.1, we find that the husband is picking up quarrel for the petty issues. The major allegations levelled against the wife as cruelty are, in the marriage invitation of the wife's brother family, the name of the elder brother of the husband as well as sister-in-law were not printed and thus, he complained that he was subjected to cruelty.

22(a). The next allegation is, in the ear piercing ceremony of husband's brother's son, the wife has not attended, however, during the cross- examination, the P.W.1-husband has admitted that he also went



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along with the wife to Tiruchendur since their name was not printed and hence, he cannot be allowed to take advantage of his own action and turn around to say the wife has not attended the ear piercing ceremony of the brother's son.

22(b). Yet another point is that, after perusing Ex.R4-FIR, we find that the petitioner's mother-in-law is the daughter of the Salugai and the petitioner's father is the elder brother of his own mother-in-law and the allegation is that the petitioner's mother-in-law has attended the funeral in the house of the elder brother of his father, viz., paternal uncle of the P.W.1. At no stretch of imagination, it cannot be stated that the Mother-in-law has acted against the interest of the son-in-law because the person died is none other than the father of the mother-in-law and the said Salugai is related to both the husband and wife as grand-father.

22(c). Merely because, the husband and his father had some rift with the paternal uncle (பெரியப்பா) and the said person viz., Salugai (grand-father) died in the house of the paternal uncle of the petitioner, the instructions of the husband not to attend the funeral could not be accepted as a valid ground for causing cruelty. It appears that the petitioner as the



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son-in-law is stretching the relationship, too far, and it is natural for a daughter to see the last glimpse of the face of the deceased father and hence, this Court is of the considered view that the husband is wanted to make mountain out of a molehill.

22(d). On perusal of the evidence of P.W.1 on the ground of cruelty, he would state that the wife used to pick up petty quarrels, but he has not even narrated what is the nature of the quarrel when it has happened. So as to give an opportunity to the wife to counter the statement. In the absence of any specific incidents being narrated either with the date or with the incident, the Family Court has rightly negated the said vague and balled allegations made against the wife.

23. The yet another allegation is that the wife used to chat with the friends for long time, and thereby, he was ignored. However, on behalf of the husband he has not placed even cell phone number of the wife or any details or any call details to show that she was always on the cell phone and thereby, she has not made an attention to the matrimonial life. Furthermore, it remains to be stated that HMOP filed by the wife for restitution of conjugal rights has been granted on the ground that the husband alone is



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living away from the wife without any reasonable cause.

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24(a). On perusal of the answer elucidated in the cross-examination of R.W.1, it is demonstrated by the wife that on 19.02.2018 the grand-father of appellant and respondent, had passed away and a scuffle arose between the appellant's family and the family of his paternal uncle. In connection thereto and in consequence thereof, a criminal complaint appears to have been filed by the father of the appellant's and FIR came to be registered in Cr.No.39 of 2018 before the Sivagangai Taluk Police Station. In the police enquiry, it is alleged that the family of the respondent has not supported the appellant-husband family and hence, the appellant has sent the respondent to her parental home. In these incidents, it is to be stated at the risk of reputation, however, for the sake of charity at both of them are related as stated supra.

24(b). Yet another allegation in support of the cruelty is in the nature of adultery. The husband-P.W.1 averred that the wife had an affair with one Ganesan in the year 2014 and subsequently, the same was censored by the husband even thereafter, the wife used to talk with the said Ganesan through mobile phone and therefore, it is alleged in the petition that the



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respondent has deserted him from 2014. The said allegation is specifically denied in the counter statement.

25(a). Further, it is specifically stated in the counter as well as in the evidence of R.W.1 that there is no such incident. It is the further evidence of P.W.1 that when he accidentally went to the home, he found that the wife is in a compromising position with the said Ganesan at home. She was caught red-handed and subsequently, reprimanded. On 29.04.2014 he found that the wife is speaking with the very same Ganesan and thereafter, the wife consumed poison and attempted to commit suicide and taken treatment in the Aathiparasakthi hospital at Sivagangai.

25(b).As stated supra, the said Ganesan is not added as a co-respondent in support of the allegation of adultery. Had there been, if any suicide attempt, they could have been informed the police and FIR could have been registered, especially, even P.W.2 father of the husband is working in the police department and further more, no evidence of medical documents from the said Aathiparasakthi hospital of Sivagangai was filed before the Court to substantiate the allegation said to have happened on 29.12.2014, assumes significance.



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26. Further more, the said incident has taken place in the year 2014.

As per FIR-Ex.R4 the allegation is in the year 2018 had there been any such incident, he could not have lived with the wife nor the wife could have lived with him. Though the petition has been filed on the ground that the parties are living separately since 2014, the same was demonstrated through Ex.R4, wherein, it is categorically stated that the wife and two children were with the appellant-husband and in the said FIR, it is an allegation that the dispute between the petitioner's father and petitioner's paternal uncle. Therefore, the Family Court has rightly come to the conclusion that till 2018, the wife lived with the husband and further held that only after the registration of the FIR in connection with the funeral of Salugai [grand-father of both parties] she was driven out of the home by the husband and therefore, the plea of desertion taken by the husband that they are living separately for more than 4 years is disbelieved and computing from the year 2018 as the case was filed in the year 2019, the statutory period of 2 years for invoking the plea of desertion for divorce being not satisfied, the Family Court has rightly rejected the said ground. On re-appreciation of the both oral and documentary evidence as discussed supra, answer elucidated from the P.W.1 in the cross-examination



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coupled with Ex.R4-FIR, we find that the plea of desertion has no legs to stand and it has to be thrown out of the Court at the thresh-hold itself for want of completion of statutory period.

27. Coming to the point of cruelty, on the ground of alleged adulterous act of the wife, the appellant without any iota of reason has thrown the stone on the respondent's fidelity and if the plea taken by the appellant is true, the appellant could have added the said Ganesan as co-respondent in the divorce petition. It is the further evidence of the husband that there was a phone conversation with the alleged adulter Ganesan, however, he has not filed any CDR report from the Telephone Authorities before the Family Court to substantiate the said incident and hence, we find that the allegation against the adulterous act of the respondent/wife is only invited for the purpose of the case and the allegation is not proved in the manner known to law.

28. The further averment made by the husband with regard to the conducting of various panchayat, three incidents as referred to, however, no details of the panchayat, person who have conducted the panchayat and place and time of said panchayat are not at all spoken to either in the



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pleadings or in the evidence and hence, the Family Court has rightly rejected the said plea that there was a panchayat after the three incidents that was referred to and hence, on consideration of entirety of the circumstances and for the reasons stated supra, the plea of desertion falls for want of statutory period and none of the action alleged to have been done by the respondent amounts to cruelty as defined in section 13(i-a) of the Hindu Marriage Act and it does not even fall under any one of the class as per the ***Samar Ghosh vs. Jaya Ghosh reported in (2007) 4 Supreme Court Cases 511*** case. Further more, non-printing of the name of the brother and brother's wife in the marriage invitation, non printing of the name of the wife in the ear piercing ceremony invitation and attending of the funeral of the grand-father cannot be termed as a cruelty caused by the wife on the husband and hence, we find, all the incidents cannot be termed as cruelty. The allegation adultery by the husband against the wife is not proved in the manner known to law.

29. The Interim maintenance of Rs.10,000/- granted by the Family Court for the wife and children is in consonance with the earning capacity of the husband, who has admitted that he is earning Rs.40,000/- and his



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father was also admitted that he has 5 independent houses and received the rent and hence, it does not warrant any interference.

30. Accordingly, the finding rendered by the Family Court are just and reasonable and they are well considered and well merited, does not warrant any interference at the appellate stage.

31. In the result, these Civil Miscellaneous Appeals are dismissed. No costs.

(T.K.R.J.) & (P.B.B.J)
21.12.2023

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Neutral Citation: Yes/No
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To

1. The Family Court,
Sivagangai District.

2. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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**RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J**

am

judgment in
C.M.A(MD)Nos.527 and 528 of 2021

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