



C.M.A.(MD).No.47 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.11.2023

Delivered on:

.2023

CORAM:

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

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Anbukani

... Appellant / Respondent

Vs.

Rajalakshmi

... Respondent / Petitioner

Prayer:- Appeal filed under Section 19 of Family Courts Act, against the judgment and decree passed in H.M.O.P.No.99 of 2015, dated 06.06.2017, on the file of the Family Court, Srivilluputtur.

For Appellant : Mr.S.Muniyandi

For Respondent : Mr.R.Murali

JUDGMENT

P.B.BALAJI,J.

The unsuccessful husband, whose petition for restitution of conjugal rights was dismissed and his wife's petition, seeking divorce on the ground of cruelty being allowed, is the appellant before us.



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2. The pleadings of the respective parties in both these petitions, in brief, are as follows:

The appellant and the respondent were married on 25.03.2012 at Srivilliputhur. The respondent lived with the appellant at his house, when on 15.04.2012, a lady came there and stated that she was the first wife of the appellant and picked up a quarrel with the respondent and left. The respondent confronted the appellant about this and in response, the respondent was beaten up by the appellant and his parents and drove her out of the matrimonial home. The appellant also threatened the respondent with fear of death, if she refused to live with him. The respondent also lodged a complaint before the All Women Police Station, on 05.08.2012 and thereafter, the appellant returned all the belongings of the respondent and there was also a panchayat held on 05.08.2012, where a decision was taken, to dissolve the marriage. However, the appellant did not take steps to dissolve the marriage through the Court of law and therefore, the respondent filed a petition seeking to declare the marriage as null and void. Thereafter, the respondent chose to withdraw the said petition and came forward to file the present H.M.O.P. seeking divorce on the ground of cruelty.



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3. The appellant resisted the said petition on the ground that he never treated the respondent cruelly and the appellant did not beat or drive out the respondent on her enquiring about the visit of the lady, soon after the marriage. It was the respondent, who returned to her parental home voluntarily and after some days, she brought elders to the appellant's house for negotiating a settlement. The appellant never threatened his wife or threatened her with fear of death. The allegations of panchayat held on 05.08.2012 is also denied. Further the appellant has stated that he is ready and willing to live with the respondent.

4. The allegations and averments in the petition for divorce and the counter filed to the same are the same averments and allegations in the petition in seeking restitution of conjugal rights and the counter filed to it.

5. Before the Family Court both the H.M.O.P.Nos.99 of 2015 and 46 of 2016 were jointly tried and the wife examined herself as P.W.1 and one Angusamy - Panchayathar was examined as P.W.2 and 2 documents were marked as Ex.P1 and Ex.P2, on the side of the wife. On



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the side of the husband, he examined himself as R.W.1 and his father was examined as R.W.2 and no documents were marked.

6. The Family Court, after appreciating the oral and documentary evidence produced before it, allowed the divorce petition filed by the wife and dismissed the restitution of conjugal rights petition filed by the husband.

7. Aggrieved by the grant of decree of dissolution of marriage, the appellant had preferred the Civil Miscellaneous Appeal.

8. However, interestingly, the appellant has not chosen to challenge the dismissal order of restitution of conjugal rights in H.M.O.P.No.46 of 2016. The grounds of challenge to the said decree of divorce are that the Family Court failed to see that the respondent did not establish the allegations set out in the divorce petition; once earlier petition seeking decree that the marriage was null and void was dismissed, the 2nd application seeking divorce was not maintainable, when the allegations in both the petitions were the same; the Family court has failed to see that the



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respondent had not established any acts of cruelty warranting a decree for dissolution of marriage; the Family court failed to consider that the respondent voluntarily left the matrimonial home within 3 days after the marriage and on these grounds, the appellant / husband seeks to set aside the decree granting dissolution of marriage.

9. We have heard Mr.S.Muniyandi, learned counsel for the appellant / husband and Mr.R.Murali, learned counsel for the respondent / wife. We have also perused the documents produced on the side of the respondent and also the oral evidence adduced on the side of the appellant as well as the respondent. We have also gone through the impugned order of the Family Court.

10. Admittedly, H.M.O.P.No.99 of 2015, which was filed by the respondent / wife was tried jointly along with H.M.O.P.No.46 of 2016, which was filed by the appellant /husband, seeking a decree for restitution of conjugal rights. Common evidence was let in and, in and by a common order, the Family Court granted a decree of dissolution of marriage and dismissed the petition seeking restitution of conjugal rights. However,



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there is no appeal filed as against the dismissal of the petition seeking restitution of conjugal rights. In the absence of challenge to one of 2 cases, which have been decided in and by a common order, technically the present appeal is liable to fail on a limited ground that the order in the restitution petition has become final and failure to challenge the same renders the present Civil Miscellaneous Appeal liable to be dismissed *in limine*.

11. However, despite the legal bar against the appellant to prosecute the present appeal, we have also independently gone through the oral evidence adduced by the parties in order to prove their respective contentions in the divorce petition.

12. Admittedly, the parties lived together only for 3 days as husband and wife. The disputes arose because of a lady, by name, Rohini, who visited the matrimonial home soon after the marriage and claimed to be the first wife of the appellant.

13. The friction and quarrels between the appellant and the



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respondent started from that point of time. It is seen that admittedly on a complaint given by the respondent / wife, the appellant husband also returned all her Sridhana articles and there was no reunion at any point of time. The divorce petition came to be filed earlier and only thereafter, the appellant / husband has chosen to file a petition, seeking restitution of conjugal rights and from the pleadings and evidence, we are able to see that it is nothing but a counter blast to the wife's petition, seeking dissolution of marriage.

14. The main allegation of the respondent is that because of the intervention of the lady, by name, Rohini claiming to have already married the appellant, the respondent has been subjected to mental cruelty. It is also the case of the respondent that in a Panchayat, a decision was reduced to writing agreeing to dissolve the marriage. Even one of the Panchayatars was examined as P.W.2. It is trite Law that the Family Court cannot grant a decree for dissolution of marriage, solely on the basis of the decision of the panchayat, even if the same was proved by one of the parties to the document and here, at the instance of the respondent / wife.



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15. The Family Court has also rightly rejected the contention of the appellant that the divorce petition filed by the respondent was barred by principles of *res judicata*, by holding that the cause of action for the earlier petition and the present petition were not established to be one and the same.

16. (a.) As already stated the only ground which was alleged by the respondent / wife, which seeking dissolution of marriage with the appellant was that one Rohini intervened and claimed to be already married to the appellant, which has caused mental agony to the respondent. Though the appellant has denied the said allegation of having beaten up the respondent, on her questioning about the claims made by the said Rohini, the appellant has not specifically denied the incident itself.

16. (b). Further, he has also not denied the signature in Ex.B2, which is the decision of the panchayat. Even though the said document may not have any evidentiary value in a Court of law, especially, in a petition seeking dissolution of marriage where unless parties approaching the Court, have to make out one or more grounds available under Section



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13 of the Hindu Marriage Act, the party would not be entitled to the relief sought for in the petition, at the same time, for ascertaining the conduct of the parties, the said document can be looked into for collateral purpose viz., factum of separation and date of such separation.

16. (c). The fact that the appellant and the respondent have separated themselves at least from the said date of alleged panchayat cannot be ignored altogether.

17. (a). Further, in cross examination, the appellant has also stated that even though the petition filed by his wife seeking to annul the marriage was dismissed, he did not take any steps for 3 years to seek restitution of conjugal rights. It is also admitted by the appellant as well as his father, who was examined as R.W.2, that the appellant is closely related to the respondent and it was only on account of being related to each other that the proposal for marriage itself came about and resulted in the appellant and the respondent marrying each other.

17. (b). Unless the provocation was of such enormity, a newly wed wife who married her own uncle's son with whom she was very well acquainted, has to leave him, within a span of few days, which is neither



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probable nor expected from a prudent or a reasonable wife. The reasons set out by the respondent and the evidence with regard to the visit of the said lady Rohini to the matrimonial home and raking up the issue they are claiming that she had already married the appellant is cogent and there is nothing in cross examination to falsify the said evidence adduced by the respondent assumes significance.

18. The Family Court has also rightly gone into these factual aspects and came to the conclusion that the respondent was entitled to a decree for dissolution of the marriage with the appellant on the grounds of physical and mental cruelty. The order of the Family Court granting divorce and rejecting the petition for restitution of conjugal rights is well reasoned and on a proper appreciation of oral and documentary evidence available on record. We do not see any justifiable ground for intervening the same.

19. In fine, the Civil Miscellaneous Appeal is dismissed and the order passed in H.M.O.P.No.99 of 2015, dated 06.06.2017, on the file of the Family Court, Srivilluputtur, is hereby confirmed. There shall be no



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order as to costs.

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(T.K.R.J.) & (P.B.B.J)
.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

To

- 1.The Family Court,
Srivilluputtur.
- 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

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Pre-delivery judgment in
C.M.A.(MD).No.47 of 2018

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