



C.M.A.(MD).No.1178 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2023

Delivered on: 14.12.2023

CORAM:

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

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Srinivasan

... Appellant / Petitioner

Vs.

Meenakshi @ Meena

... Respondent / Respondent

Prayer:- Appeal filed under Section 19 (1) of the Family Courts Act, against the judgment and decree dated 25.10.2016 passed in H.M.O.P.No. 743 of 2014 on the file of the Family court, Tiruchirappalli, Tiruchirappalli District, wherein the petition filed by the appellant herein, seeking divorce under Section 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act, was dismissed.

For Appellant : Mr.N.Subramani

For Respondent : Mr.K.Mahendran



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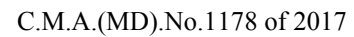
JUDGMENT

WEB C **P.B.BALAJI,J.**

The unsuccessful husband is the appellant herein. He filed H.M.O.P. before the Sub Court, Trichy and subsequently on formation of family Court at Trichy, the case was transferred and renumbered as H.M.O.P No.743 of 2014. The said petition has been filed on the grounds of cruelty and desertion.

2. The brief facts that are necessary to decide the above Civil Miscellaneous Appeal are as follows:-

The appellant and the respondent were married on 03.02.2002, they were blessed with a male child on 26.05.2003. It is the case of the appellant / husband that the respondent /wife never informed the appellant about the naming ceremony of the baby and that the respondent never behaved as comfortable wife and wilfully deserted the appellant without any reasonable cause. It is also stated that the appellant filed a petition in H.M.O.P.No.117 of 2003 and the same was dismissed for default. However, in the *interregnum* period, the respondent wife came and joined the appellant, after mediation. However, unfortunately, on 30.05.2004, she



3. The respondent filed a counter denying the allegations made by the appellant. On the contrary, it is stated by the respondent that it is the appellant and his family members who ill-treated the respondent and her parents. The respondent filed a petition to claim litigation expenses and maintenance in I.A.Nos.214 and 215 of 2004 in H.M.O.P.No. 1003 filed by the appellant husband. It is also stated that in order to get the benefit of the same, the said H.M.O.P was allowed to be dismissed. The respondent and the allegation of the desertion was also denied and even in response to the lawyer's notice, the respondent has clearly stated that she will not join the appellant after the birth of the child, the respondent, however, prayed for dismissal of the divorce petition.

4. Before the Tribunal, the appellant examined himself as P.W.1 and Rajendran and Venkatesh were examined as P.W.2 and P.W.3 and 8



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documents were marked as Ex.P1 to Ex.P8, on the side of the appellant / husband. On the side of the respondent /wife, she examined herself as R.W.1 and two other witnesses viz, Sekar and Govindaraman were examined as R.W.2 and R.W.3 and 11 documents were marked as Ex.R1 to Ex.R11.

5. The Family Court, on appreciating the oral and documentary evidence adduced by the appellant and the respondent, found that the allegations of cruelty as well as desertion have not been proved as required by law and statute and proceeded to dismiss the H.M.O.P.No.743 of 2014.

6. Aggrieved by the said dismissal of the divorce petition, the appellant has preferred the Civil Miscellaneous Appeal challenging the order of the Family Court on the ground that the Family Court had not appreciated the evidence on P.W.1; the Family Court failed to see that the respondent left the appellant on 30.05.2004 and never choose to return; the respondent had lodged police complaint against the appellant and proceeded to give several complaints, which clearly establish the mental cruelty; the Family Court failed to see through the high handed behaviour



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and attitude of the respondent in lodging false complaints and that the findings of the Family court were illegal and perverse.

7. We have heard Mr.N.Subramani, learned counsel for the appellant / husband and Mr.K.Mahendran, learned counsel for the respondent / wife. We have gone through the oral and documentary evidence adduced by the respective spouse before the Family Court. We have also independently gone through the order of the Family Court, dismissing the divorce petition both on the grounds of cruelty as well as the desertion.

8. It is an admitted fact that after the marriage between the appellant and the respondent on 03.02.2002, they were blessed with a male child on 26.05.2003 at which point of time, she had gone to her parent's house for delivery. Even at that time, the appellant has chosen to issue notice making allegations against his wife. The wife, on receipt of the said lawyer's notice, has categorically replied stating that after the delivery of the child, she would be the position to rejoin the appellant. Despite the



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said notice, it is the case of the appellant that she has not rejoined him and on the contrary, she voluntarily and wilfully deserted him without justifiable cause. The other reason alleged by the appellant is that the respondent lodged frivolous and false complaints against him and therefore, such acts would also constitute mental cruelty, warranting a decree for dissolution of marriage.

9. It is an admitted case of both the parties that on and from 30.05.2004, the parties were living apart and the complaints that have been lodged by the respondent / wife are all pertaining to the year 2016, 12 years after the separation. Refuting the claim of the appellant that he was not informed about the birth of the child and the naming ceremony, to a specific question put to him in cross examination that messages and also telegrams were sent regarding the same, the appellant has not denied the said suggestion and has merely stated that he does not remember about the same. Further, he also stated that he did not come and visit the baby and the information regarding the birth of the male child may have been informed to his mother. Though it is the specific case of the appellant that his wife had a medical issue with regard to her uterus and that she was



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taken to a Doctor, in order to establish the same, the appellant has not chosen to take any steps to examine the said Doctor in support of the contention, especially, even after the respondent has categorically denied the such allegation even in the counter statement.

10. Insofar as the allegations made by the appellant that the wife has repeatedly lodged false complaints and filed frivolous cases, it is seen that despite the separation in 2004, the cases came to be filed only in the year 2016 and none of the alleged acts of cruelty set out in the petition have been proved by the appellant / husband by adducing evidence either in the form of satisfactory and believable oral evidence or by any clinching documentary evidence.

11. The Family Court had rightly appreciated the evidence of the parties and the witnesses and come to the conclusion that the acts of cruelty alleged by the appellant were not proved, as required under the Law.

12. Insofar as desertion, there is contradiction with regard to the



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date of separation alleged by the appellant in the evidence. At one place, he states that the respondent / wife deserted in the year 2007, which is denied by the respondent / wife, as even in the counter, it is stated that in the year 2004, the respondent / wife was driven away from the house and never rejoined the husband thereafter.

13. In such circumstances, it is the duty of the appellant to prove the correct date of separation in order to establish the ground of desertion. The burden on the appellant to establish the correct date of separation and also continuous separation which was also without any justifiable cause. Here, admittedly, the evidence of the appellant – P.W.1 bristles with contradiction even with regard to the date of separation in the first place, leave alone the factum of having proved the further requirement under law that the desertion was wilful and without any reasonable cause. From the reading of the evidence of P.W.1 and R.W.1, we are unable to characterise the separation as one amounting to desertion, warranting dissolution of marriage under the Hindu Marriage Act.

14. Therefore, even on the ground of desertion, we do not find



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any reasons to interfere with the order of the trial Court. In fine, the Civil Miscellaneous Appeal is dismissed and the judgment and decree of the Family court is hereby confirmed. There shall be no order as to costs in the present appeal.

(T.K.R.J.) & (P.B.B.J)
14.12.2023

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

- 1.The Family Court,
Tiruchirappalli,
Tiruchirappalli 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

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Pre-delivery judgment in
C.M.A.(MD).No.1178 of 2017

14.12.2023