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C.M.A.No.790 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.790 of 2021

and

D.O.P.No.161 of 2015

R.Rajendran

... Appellant

Vs.

P.Gunaselvi

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Divorce Act, 1869, to call for the records on the file of the Principal District Judge, Villupuram and set aside the Decretal order and judgement passed on 03.12.2020 in D.O.P.NO. 161 of 2015 and allow this appeal.

For Appellant : Mr. P.Kavitha Balakrishnan

For Respondent : Mr.K.Arunagiri

JUDGMENT

The appeal is filed by the husband aggrieved over the dismissal of his petition to dissolve the marriage with the respondent taken place on 13.09.1999 at Thuya Poulin Church, Kazhugumalai, Tuticorin. The ground on which he has sought for dissolution of his marriage is “Desertion and cruelty”



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2. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

3. The facts leading to filing of this appeal in brief as follows:

3.1 The petitioner and respondent married on 13.09.1999 and after setting up of matrimonial home at Vikaravandi, they have blessed with the male child namely Raghulji. Both are teachers. Beginning of the year 2000, they purchased four housing plots from their earnings. They decided to construct a house in one of the housing plots purchased at Vikaravandi. Accordingly in the month of February 2009, they have completed the building construction work and they were started residing in the constructed house. The respondent's brother namely Paulraj who was residing in Chengalpattu used to visit the house of the petitioner and stayed there during the weekends.

3.2. On 30.08.2015, the brother of the respondent Paulraj along with other persons trespassed into the house of the petitioner and threatened him with dire consequences and also attempted to murder him. This was aggravated the already disturbed relationship between the petitioner and the



respondent. Subsequently fearing of threat to his life, the petitioner has no other option except to file divorce petition and accordingly sent legal notice dated 04.09.2014 demanding divorce. Notice was also received and replied by the respondent/wife denying all the allegations and refusing to accept the demand. Thereafter, the petitioner is constrained to file petition for dissolution of marriage.

4. The respondent/wife filed a counter affidavit and contended that she has not committed any cruelty against the petitioner. She has stated that her husband is drunkard and harassed her several times. In the year 2006, quarrel was taken place in her house between petitioner and her brother and she prevented the fight between the petitioner and her brother. Taking advantage of this incident, the petitioner is now claiming that he has been forced to desert his wife and she further denied the allegation of purchasing property and other facts alleged by the husband.

5. After enquiry, the Principal District Judge, Villupuram as per order dated 03.12.2020 in D.O.P.No.161 of 2015 has dismissed the petition on the ground that the petitioner has failed to prove the cruelty against him.



Aggrieved over the order passed therein, this appeal has been filed by the appellant/husband.

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6. The learned counsel appearing for the appellant/husband submits that a dispute arose in the year 2006 between the parties regarding the purchase of the land, construction of the houses. A criminal complaint was also lodged against the respondent/wife by the workmen who have involved in the construction of the house and it was resolved by the husband. The wife used to disrespect her husband by comparing income earned between them since she was senior teacher than her husband. Whenever the respondent's brothers visits her house, husband forced to sleep outside the house and thereby he was ill treated. Apart from that he was undergone continuous harassment from the family members of the wife and this has resulted in occurrence dated 30.08.2015. Apart from that, the marriage is also irretrievably broken down between the parties. Hence, prays for allowing the appeal and to dissolve the marriage.

7. The learned counsel for the respondent would strenuously argued that there is no evidence produced to show that wife has committed cruelty



on her husband. The truth is that husband is the guilty of the desertion and he is trying to take advantage of its own fault claiming that there was separation for more than six years. Hence, the claim made by the petitioner/husband has to be dismissed.

8. The learned counsel for the respondent further submitted that the father in law of the petitioner was also examined to support the evidence of the wife and ample oral evidence placed on record which were not either denied or disputed by the husband in the cross examination which resulted in admission of the evidence of the respondent. The Trial Court has rightly dismissed the petition and prays to confirm the same. The learned counsel appearing for the respondent relied on the judgement of the High Court of Madras in the case of *Henry Johnson Vs.M. Grena Janet* reported in *MANU/TN/3598/2018*.

9. The marriage between parties leading matrimonial life at Vikaravandi and birth of child namely Raghulji was admitted by both sides. According to the petitioner/husband that the dispute arose due to indifferent attitude of the wife on the basis of the income earned by them. He admits



that she was employed much earlier to the petitioner/husband. Naturally she would have earned more income than her husband. But there must be some evidence to show that this has resulted in quarrel or caused any insult to the petitioner/husband.

10. On perusal of the oral evidence, in the cross examination of the R.W.1/wife, nowhere it is stated that she had indifferent behaviour with husband on the basis of salary or income earned by them. As stated by the learned counsel for the wife/respondent not even suggestion that there was harassment or ill treatment made to the husband made by the wife. Per contra, the wife/respondent has denied allegations of harassment in her evidence including ill treatment on the basis of the income earned and the fact that dispute raised regarding the arrival of Paulraj who is the brother of the respondent.

11. In the absence of any proof on the allegations made by the husband and in the absence of any cross examination with regard to the allegations made against the husband, only evidence available before the Trial Court is that the oral testimony of R.W.1/Wife.



12. While proving allegation of cruelty and desertion, the burden is heavily on the petitioner to prove his case to the extent of preponderance of probability. In this case, after adducing his oral evidence and husband's failure to cross examine the wife with regard to the counter allegations made by her, shows that the husband has not disputed the answers given by the wife for his allegation and it is also deemed to be an admission of the husband regarding allegation made against husband. In such circumstance, this Court is of the view the Trial Court has rightly concluded that there is no evidence on record to show the cruelty or desertion against his wife.

13. It is the admitted case of husband that he has left the matrimonial home from the year 2009 onwards but in the absence of any evidence to show that he has deserted on the ground of cruelty meted to him, the desertion itself could not be considered as a valid desertion. The petitioner abandoned the family and he cannot claim that he has been forced to leave the family life. As stated by the learned counsel for the respondent that the husband is not entitled to take advantage of his own mistakes or violation of withdrawal from the matrimonial life to his advantage.



14. Accordingly, the Trial Court has rightly dismissed the original petition and this Court finds no reason to interfere with the impugned order.

It is also contended by the learned counsel for the appellant/husband that the marriage irretrievably broken down from the year 2009 onwards and she relied on the judgment passed by the Apex Court in the case of **N.Rajendran Vs. S.Valli reported in 2022 (1) RCR (Civil) 847**, Wherein the Apex Court has invoked Powers under Article 142 of Constitution of India for dissolution of marriage. The above judgement of the Apex Court is not applicable to the case of the petitioner herein and Apex Court has exercised power under Article 142 of Constitution of India, to dissolve the marriage therein.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

23.02.2024

ns1

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The Principal District Court, Villupuram.

2.The Section Officer,
VR Section, High Court, Madras.



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