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C.M.A.No.1212 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1212 of 2023

S. Logeswari @ Kavitha

W/o. v. Manikandan

D/o. A. Srinivasan

... Appellant / Petitioner

vs.

V. Manikandan S/o. Mr. Velayutham Udayar

... Respondent

PRAYER: The **Civil Miscellaneous Appeal** is filed under Section 19 of Family Court Act to set aside the judgment and decretal order dated 20.07.2022 in F.C.O.P. No.230 of 2019 on the file of Family Court, Chengalpet.

For Appellant : Ms. S.A. Mahisha Kirthika

For Respondent : No appearance.

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

The Civil Miscellaneous appeal has been preferred as against the fair



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and decretal order passed in F.C.O.P. No.230 of 2019 on the file of Family Court, Chengalpet dated 20.07.2022 wherein the appellant herein has filed a petition before the Trial Court for dissolving the marriage between the appellant and the respondent on the grounds of 'cruelty' and 'desertion'. The Trial Court dismissed the petition, against which the present appeal is filed.

2. The case of the appellant is as follows:-

The marriage between the appellant and the respondent was solemnized on 03.03.2006 as per the Hindu rites and customs at Villupuram. Out of the wedlock, a male child was born to them and he was 6 years at the time of filing of petition. The appellant was almost engaged in household work only and kept her under house arrest without permitting her to go out. The petitioner was not allowed to take her food in time and she had no rest at the matrimonial home. The respondent used to beat the appellant. Earlier the appellant was conceived and got aborted due to her poor health condition and heavy work. The respondent did not take care of the child and the appellant and he also had adulterous relationship with her aunt. The respondent used to cause threat very often



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by promising that he will commit suicide by implicating her in the suicide note and also he threatened to take pills and attempted to burn his hands through stove. Therefore, the appellant felt that it is quite unsafe to live with the respondent and she shifted to her residence to her parents' house on the guise of helping to her parents. Though the appellant and the respondent were residing in the same roof, there was no conjugal relationship and no talking terms for more than 4 years. The appellant has only admitted her child in the school and maintaining her child on her own with her funds. Therefore, the appellant filed a petition before the trial Court for seeking divorce on the grounds of 'cruelty' and 'desertion'.

3. The *case of the respondent* is that he admitted the marriage between the parties and a male child born to them. The averments made in the petition all are denied as false. The averment that the respondent is having illicit intimacy with his aunt is stoutly denied. The petition was not filed on the ground of 'adultery' and the name of the 'adulteror' has also not been mentioned. Therefore, the appellant filed a petition with false allegations. The respondent is a Teetotaler and if divorce is granted, life of the minor child will get affected and the father of the appellant is a



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policeman and hence due to his ill advice, she filed this petition. There are no grounds to attract 'cruelty' as well as 'desertion'. Therefore, the petition is liable to be dismissed.

4. Before the Trial Court, on the side of appellant, she was examined as PW1 and Ex.P.1 to Ex.P.7 were marked. On the side of respondent, RW1 and RW2 were examined and Ex.R.1 was marked. The Trial Court after hearing both sides and analysing the evidence adduced on either side, dismissed the petition. Aggrieved by the said dismissal order, the present appeal is filed on various grounds.

5. The learned counsel appearing for the appellant would contend that the marriage between the appellant and the respondent was solemnized on 03.03.2006 and thereafter, a male child was born to them and now he is aged about 10 years. The respondent very often ill treated the appellant in front of all the relatives and neighbours. The appellant also witnessed that the respondent had illicit relationship with her aunt and thereafter they shifted the house of the appellant and there also they were living separately and no any conjugal relationship between them and not even having verbal



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communication to each other since 2012. The Trial Court failed to consider the evidence of PW 1 and only considered the evidence of respondent's side and dismissed the petition. The evidence of PW1 amply proved the ground of 'cruelty' caused by the respondent. Therefore, the order passed by the trial Court by dismissing the petition is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that there is no dispute that the appellant is the wife of the respondent and a male child was born to them and now the male child is under the care and custody of the appellant. The appellant levelled false allegations as against the respondent alleging that he had illicit intimacy with his aunt and no evidence is adduced by her to prove the same and also there is no any evidence to prove the 'cruelty' said to be caused by the respondent. Per contra, the respondent examined RW1 and RW2 and they categorically deposed about the case of the respondent and no any grounds to grant divorce. Therefore, the Trial Court has correctly dismissed the petition. Hence the present appeal is liable to be dismissed.



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7. This Court heard both sides. Perused all the materials available on record.

8. Upon hearing both sides and perusing all the materials, the **point for determination in this appeal is whether the appellant is entitled to get decree of divorce on the grounds of 'cruelty' as well as 'desertion'.**

9. In this case, there is no dispute in respect of the relationship between the parties as husband and wife and a male child was born to them and the child is now under the custody of the appellant. The appellant wife has filed a petition before the Trial Court for granting divorce on the ground of 'cruelty' as well as 'desertion'. According to the appellant, the respondent after marriage engaged her in the household work and not permitted her to go out and not allowed her take food in time. Very often, the respondent had beaten the appellant. Further, he had adulterous illicit intimacy with another lady and the same was witnessed by the appellant. Thereafter, she shifted her house to the house of her parents. There also, there was no talking terms and they were living separately and without any



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cohabitation for the past 4 years. Moreover, she stated that she was tortured by the appellant and the aunt, as she witnessed their adulterous activities and she was threatened to commit suicide and also attempted to commit suicide by taking pills. Therefore, there is an endanger to her life to live with the respondent. Due to the activities of the respondent, her child also got affected. Therefore, the above said acts, caused cruelty to her and the respondent neglected and deserted the appellant. But the appellant either in her pleadings or in her evidence did not state about the name of the adulterer. The reason stated by the appellant is that since she is close relative, she did not disclose the name of adulteror. The petition is not filed on the ground of 'adultery'. The illicit intimacy with any woman certainly would cause mental cruelty. It is quite nature not to disclose the name of the adulterer considering her future and it will affect the life of the adulterer also. Therefore, merely because not mentioning the name of the adulterer will not affect the case of the appellant.

10. Though the respondent has cross examined the witness PW1, nothing elicited in favour of the respondent and the evidence of appellant PW1 clearly shows the cruelty caused by the respondent. Though PW1 has



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stated that they were living under the same roof without any talking terms and without any cohabitation and the respondent had illicit intimacy with another lady, the Trial Court disbelieved the version of PW1 and dismissed the petition. The evidence of PW1 is cogent and it clearly proved the grounds of 'cruelty' as well as 'desertion'. According to the evidence of PW1, though they were living under the same roof, they were separated for more than 4 year and there was no relationship between them. Thereby, the evidence of PW1 clearly proved the grounds of 'cruelty' as well as 'desertion' for granting divorce. But the Trial Court failed to consider the entire evidence of PW1 and the respondent has not filed any petition for restitution of conjugal rights. Therefore, the order passed by the Trial Court is unsustainable and the same is liable to be set aside and the appellant is entitled to decree of divorce on the grounds of 'cruelty' as well as 'desertion'.

11. In view of the above discussions, this Court is of the opinion that this appeal is liable to be allowed by setting aside the order passed by the Trial Court and the appellant is entitled for divorce. Thus, the point is answered.

12. In the result, the Civil Miscellaneous Appeal is allowed and the



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fair and decretal order passed by the Trial Court in F.C.O.P. No.230 of 2019 on the file of Family Court, Chengalpet dated 20.07.2022 is set aside and the petition in F.C.O.P. No.230 of 2019 is allowed and the marriage between the appellant and the respondent solemnized on 03.03.2006 is dissolved. No costs. The connected miscellaneous petition is closed.

(J.N.B.J.) & (P.D.B.J)

25.07.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

The Family Court, Chengalpet.



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J.NISHA BANU,J
and
P.DHANABAL,J

(mjs)

Common Judgment in
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