



C.M.A.No.2172 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

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Vimala

D/o Late Kasu

... Appellant

Vs.

K.M.Shanmugam,

S/o Late Murugesan

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree of the Additional Family Court, Coimbatore made in H.M.O.P.No.1186 of 2012 dated 16.03.2016.

For Appellant : Mr.M.R.Thangavel

For Respondent : Mr.K.Vasanthanaygam

JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J)

This Civil Miscellaneous Appeal has been filed by the



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appellant/wife against the judgment and decree of the Additional Family Court, Coimbatore made in H.M.O.P.No.1186 of 2012 dated 16.03.2016, in which, the petition filed by the respondent/husband seeking divorce was granted by the Family Court.

2. The averment in the petition before the Family Court is that the petitioner was working as Section Supervisor in BSNL at Coimbatore Division and that in the year 1987, he married one Bhavani and through her, he has two daughters namely, Devi Priya, and Saranya. On 17.11.1994, his wife Bhavani died due to ailment and he was striving hard along with his two daughters after the death of his wife. Therefore, he decided to marry a poor lady to look after him and his daughters to lead a peaceful life. He came across from his friends about the respondent who belonged to a poor family. She had six sisters and only two sisters had got married and others are going for cooli work and one of the sisters who got married was given in marriage to an auto driver as his 2nd wife. Although the respondent and the petitioner belonged to different community, only with the consent of the respondent and in the interest of well being of both the families, both of them got married on 03.12.1995. The marriage expenses were borne by the



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petitioner/husband. Subsequently, a girl baby was born to them on 02.10.1998 viz., Kumari Iswarya @ Bhavani.

ii) The petitioner and the respondent were leading a smooth and happy married life with their three daughters. Whiles, during the year 2000, one Mohan, the brother of the respondent sister's husband Duraisamy was said have been visiting the petitioner's home and the petitioner came to understand that the same ended with an illegal intimacy between the respondent and the said Mohan. Initially, the petitioner did not suspect the said relationship. During the year 2003, when the petitioner's cousin one Easwaran, who was working as a police constable happened to visit his home, found the respondent and the said Mohan in a compromising situation. He warned the respondent. The respondent expressed her apology and requested him not to reveal to anybody, accordingly, he did not reveal anything to the petitioner for the welfare of the petitioner's family. However, the said relationship stealthily continued which was noticed by the petitioner's sister who also warned the respondent. She also did not suppress anything to the petitioner in the interest of the family.

iii) During November, 2003, the elder daughter Devi Priya said to



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have noticed the illicit relationship between the respondent and the said Mohan and she also did not disclose the same to the petitioner. But on 06.12.2003, when the petitioner came home, his 2 daughters revealed the details of their witnessing the illegal intimacy of the respondent with the said Mohan. The petitioner was not in a position to belief and tolerate the same. Immediately, the respondent's sister and respondent's parents were informed about the same. Before the arrival of the respondent's parents, the respondent fled from the petitioner's house by taking all her belongings and reached her parent's house. After two months, she took her daughter who was with the petitioner without his knowledge and remained in her parents' house.

iv) She also filed a maintenance petition before the Judicial Magistrate Court, Alathur in M.C.No12/2004. During the pendency of the said case, the parties were compromised and both started to live together with three children.

v) During the year 2009, the petitioner once again felt some kind of difference in the respondent's activities. However, he consoled himself by saying that it may not be true. The eldest daughter was staying in hostel and studying BBM in a college and she used to come home



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during weekends. During the year 2011, she along with the third daughter Bhavani have noticed the respondent having illicit intimacy with one of the petitioner's relative namely Karthik who was residing nearby.

vi) When the petitioner came to know about the same, he was shocked and felt ashamed in front of his relatives, neighbours and his daughters. Once again, the respondent left the matrimonial home. Since the petitioner could not live with the respondent any more, he filed a petition for divorce and the same was granted by the Family Court. Against which, the wife has filed the present appeal.

3. Learned counsel for the appellant/wife would state that the entire allegations made by the respondent against the appellant is mere suspicion and only an out pour of age difference of 20 years between them. The alleged act of adultery is not based on positive evidence and the entire allegations are merely on suspicion. Learned counsel would further state that the Family Court failed to consider that the allegation of adultery should be on substantial piece of evidence that would inescapably nail the appellant on such allegation. Learned counsel



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would further state that the alleged adulterers were not made as party respondent in the original petition or had been called as a witness to substantiate the same. The appellant had categorically denied the allegations of adultery and not even a single suggestion was put to her in the course of cross examination by the respondent.

4. Learned counsel would further state that the Family Court erred in accepting the evidence of PW2 who happen to be an eye witness to the alleged adultery in 2003 and had divulged the same to the respondent after nine years in 2012. Further, P.W.2 is not certain about the date, time and place of such alleged act of adultery. The conduct of P.W.2 in making an allegation of adultery is highly artificial who happens to be a close relative of the respondent and he is not a credible witness and his non-disclosure of the act of alleged adultery for nine long years is unacceptable. He would further state that the allegation of adultery was made only for the purpose of the original petition and does not inspire the confidence of the Court. The appellant had lived with the respondent for seventeen years and only due to suspicion and due to difference in age between them, the respondent had sought for divorce. The appellant



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had sought for maintenance from the respondent before the learned Judicial Magistrate and she had withdrew the same on two occasions on the assurance of the respondent. The grant of divorce by the Family Court is unreasonable and need to be interfered by this Court.

5. Per contra, the learned counsel for the respondent would state that the respondent married the appellant after the death of his first wife as he was striving hard to take care of his two daughters and to look after him. The respondent was born with six sisters and at the time of marriage, only two sisters have got married, in which, one of them was given in marriage to an auto driver as his 2nd wife. The family of the respondent was very poor and the family members were doing coolie work. The appellant and the respondent got married on 03.12.1995. After marriage, the respondent helped the appellant's family financially at the times of need. A girl baby was born to them on 02.10.1998 and the delivery expenses was borne by the respondent and they were leading a happy married life.

6. Learned counsel would further state that the respondent was



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having illicit relationship from the year 2000. Initially, the respondent did not suspect the relationship between the appellant and one Mohan, who is the brother of her sister's husband. The respondent's cousin one Easwaran, a police constable happened to see the respondent and the said Mohan in a compromising position and he also warned her but he did not reveal the same to the respondent for the welfare of the respondent's family. Even the sister of the respondent also noticed the same and warned the appellant. She also did not say anything to the respondent in the interest of the family. Only the 2 daughters of the respondent revealed that they witnessed the illegal intimacy of the appellant with the said Mohan. The appellant left the matrimonial and filed a petition for maintenance and both the parties were compromised. Thereafter, they lived together with their daughters.

7. Learned counsel would further state that even thereafter, the appellant did not mend her activities. She had illicit relationship with one Karthik, a relative of the respondent, who is living nearby the respondent's house. When the respondent came to know about the same, he was shocked and felt ashamed in front of his relatives, neighbours and



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his daughters. The appellant left the matrimonial home. Since the respondent could not live with the appellant any more, he filed a petition for divorce. Only after considering the oral and documentary evidence, the Family Court has granted the decree of divorce and the same need not be interfered with.

8. Heard the learned counsel for the appellant, the learned counsel for the respondent and perused the materials available on record.

9. It is not in dispute that the appellant married the respondent knowing fully well that the respondent was already a married man and his wife died due to ailment and he is having two daughters and that there is 20 years of age difference between them. At the time of marriage i.e., on 03.12.1995, the first daughter of the respondent namely, Devipriya was studying 1st standard and the second daughter, Saranya was 1 ½ years old. Thereafter, a girl baby was born to the appellant and the respondent on 02.10.1998 namely Iswarya @ Bhavani. The appellant is a keralite. She used to celebrate Onam festival every year and was living happily along with her family.



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10. The main allegation made by the respondent against the appellant is adultery. It is alleged that the appellant had illicit intimacy with one Mohan, her brother-in-law's brother. It was alleged that the same was witnessed by one Easwaran, a close relative of the respondent when he went to the respondent's house. He was examined as P.W.2, who had given evidence that he saw the appellant and the said Mohan in a compromise position. Further, the respondent was examined as P.W.1 who had stated that his sister witnessed the illegal relationship of the appellant with the said Mohan but she did not inform the same to the respondent for the interest of the family but on 06.12.2003, his elder daughter Devipriya and third daughter Ishwarya @ Bhavani revealed that they witnessed the illegal intimacy of the appellant with the said Mohan.

11. The appellant was living separately for 1 ½ years during 2004 due to dispute between the appellant and the respondent. She also filed a petition for maintenance and after compromise, they both were living together with the children.



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12. Insofar as the contention of the appellant that the evidence of P.W.2 is highly artificial who happens to be a close relative of the respondent and his non-disclosure of the act of alleged adultery for nine long years is unacceptable is concerned, the same cannot be countenanced for the reason that the appellant did not examine any witness to give contra evidence against the oral evidence of P.W.1 and P.W.2.

13. Though the respondent had stated about the illegal intimacy of the appellant with the said Mohan, in the counter statement filed in the M.C. case, the parties were compromised and they were living together till May, 2012, which shows that the respondent was under the impression that the appellant would mend her activities and that they could live peacefully. However, in his evidence as P.W.1, he had stated that subsequently, when he came to know that the appellant had illicit relationship with one Karthik, who was their relative and neighbour, he was shocked and felt ashamed in front of his daughters, relatives and neighbours and thus, he filed a petition for divorce as he could not live



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with her any longer.

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14. Further, the appellant had stated that the respondent had mere suspicion on the appellant and it was only an out pour of age difference of 20 years between them and that he beat her and chased her out of the matrimonial home in May, 2012. However, in Ex.P7 reply notice of the appellant to the lawyer's notice for divorce sent by respondent, she did not state that the respondent beat her and chased her out of the matrimonial home instead she had stated that since she could not tolerate the torture of the respondent, she left the matrimonial home. Therefore, it is proved that the appellant was not beaten and chased out of matrimonial home in May, 2012 but she left the matrimonial home on her own accord.

15. Further, the said adultery was witnessed by the two daughters of the respondent. The first daughter, Devipriya is a physically challenged person and the other daughter, Ishwarya @ Bhavani, was born to the respondent and the appellant. The appellant's own daughter had stated about the adultery of her mother. Since both the daughters are



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minors, the trial Court has given a finding that their examination in this regard, would affect their mental condition and that the non-examination of these witness will not affect the case of the respondent.

16. From the records, it is seen that from May 2012, the appellant is living separately, leaving the matrimonial home without showing any love and affection towards her daughters and husband. The respondent was taking care of the three children. Further, the adultery of the appellant was revealed to the respondent by the respondent's daughter, Devilpriya and Bhavani, the daughter born to the appellant and the respondent and the respondent has also stated in his evidence that due to the act of the appellant, he could not even face his daughters. The above said act of the appellant itself amounts to cruelty. No contra evidence was examined on the side of the appellant to disprove the evidence of P.W.1 and P.W.2. Therefore, we are of the opinion that there is no infirmity or illegality in the findings of the trial Court and the judgment of the trial court does not warrant any interference by this Court.

17. In the result, the Civil Miscellaneous Appeal is dismissed. The



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judgment and decree dated 16.03.2016 passed by the learned Additional Family Court, Coimbatore made in HMOP.No.1186 of 2012, is confirmed. No costs.

(J.N.B, J.) (R.S.V., J.)
10.12.2024

vsi

To

The Additional Family Court,
Coimbatore.



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

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