



C.M.A.Nos.4533 & 4535 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

&

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.Nos.4533 & 4535 of 2019 &

CMP.No.25702 of 2019

Mrs. Pavaleswari

...

Appellant in
both appeals

Vs.

P. Ramesh Kumar

...

Respondent
in both appeals

Civil Miscellaneous Appeals filed under section 19 of Family Courts Act against the order dated 05.07.2019 in O.P.No.51 of 2016 on the file of the VI Additional Family Court, Chennai.

For Appellant in both appeals : Mr. C. Venkatesan

For Respondent in both appeals : Mr.N.P.Kumar



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COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the Appellant/wife challenging the common order dated 05.07.2019 passed in O.P.Nos.51 and 1460 of 2016 by the learned VI Additional Family Court, Chennai.

2. The respondent/husband filed O.P.No.51 of 2016 under section 13(1)(i-a) of the Hindu Marriage Act, 1955 for dissolving the marriage on the ground of matrimonial mental cruelty and desertion. The petition was resisted by the Respondent/ wife on various grounds, by filing a counter, stating that she is ready and willing to live with her husband peacefully.

2.1. The wife/appellant has also filed O.P.No.1460 of 2016 under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights on the ground that respondent's mother harassed the appellant and she is ready for re-union with husband in a separate house.

2.2 On the side of the wife, PW.1 was examined and Ex.P1 to Ex.P4



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were marked. On the side of the husband, RW.1 was examined and Ex.R1 to Ex.R9 were marked.

2.3. After trial, by the impugned order, the Family Court allowed the petition filed by the husband, seeking divorce, on the ground that the Appellant/ wife left the matrimonial home without reasons and she denied the respondent's right to have cohabitation with her, by adducing valid evidence and also dismissed the Petition filed by the wife, seeking restitution of conjugal rights on the ground of desertion of matrimonial home without reason.

2.4. Aggrieved by the same, these Civil Miscellaneous Appeals have been filed by the appellant/wife.

3. The learned counsel appearing for the appellant/wife submitted that the dismissal of the petition filed by the appellant/wife under section 9 of the Hindu Marriage Act is unjust and illegal. Even the appellant expressed her willingness to resume cohabitation in the counter filed in OP.No.51 of 2016



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and filed O.P.No.1460 of 2016 for restitution of conjugal rights. The learned Family Judge, granted divorce to the respondent/husband on the ground of cruelty without examining the family members and friends to prove such cruelty. The marriage is a consummated one and the appellant/wife is always ready and willing to live with the respondent/husband and even otherwise, she has not filed any petition seeking maintenance from the appellant. Therefore, he prayed for set aside the decree of divorce granted in O.P.No.51 of 2016.

4. The learned counsel for the respondent/husband submitted the marriage between the appellant and respondent solemnized on 23.01.2014 and the appellant/wife entered into marital life with an intention of leading independent marital house without the aged mother of the respondent and when her intention was refused, she started picking up quarrels with him. On the pretext of taking rest, she left her matrimonial house on 23.04.2014 and thereafter, lodged a police complaint on 10.06.2014 against him. She



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did not like the respondent or his family members and has used all sorts of verbal and gesture violence against him. Without any reason, she deserted the respondent during October 2015, thereby deprived the respondent of his marital bliss. The appellant/wife has also made physical assault on the respondent/husband and the same was admitted in her evidence and the abovesaid act leads to physical cruelty. Considering the above facts, the learned Family Court Judge passed an order granting divorce on the ground of cruelty and dismissed the petition seeking restitution of conjugal rights. Therefore, he prayed for dismissal of these Civil Miscellaneous Appeals.

5. Heard both sides and perused the materials available on record.

6. Admittedly, the marriage between the appellant and respondent took place on 23.01.2014 and on 23.04.2014 in the guise of taking rest, she left her matrimonial home and she never came back to her matrimonial home. The jewels presented for her at the time of marriage were later taken away



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by her with the aid of the police in pursuance of a complaint lodged by the petitioner on 09.06.2014. The appellant insisted the respondent for independent marital house without her mother in law and with the above intention, she started to pick up quarrels with the respondent and subsequently left her matrimonial home and never came back, thereafter, she lodged a complaint. In her petition seeking restoration of conjugal rights, she has made allegations against her mother in law that she was tortured and harassed and also wants independent marital house. On a perusal of her cross examination, it is her admission that she seek to establish separate house for her and the respondent to live in. Perusal of O.P.No.1460 of 2016, she seeks for a separate house for re-union.

7. In normal circumstances, a wife is expected to be with the family of her husband after the marriage and the wife becomes an integral part of the family of the husband and normally, without any justifiable strong reason, she would never insist that her husband should get separated from the



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family and live only with her. In the case on hand, since the appellant compelled the respondent to have a nuclear family set up leaving his mother and all other blood relatives of the respondent, the trial court came to the conclusion that, it constitutes cruelty against the respondent. The Family Court, after analysing the evidence let in by the appellant/wife in her own words regarding the indifferent attitude she had shown towards the nephew of the respondent, who is a minor child, has rightly construed that it amounts to cruelty. Further in her evidence, it was admitted by the appellant/wife that she has slapped his husband thrice and the above act would precisely tantamount to physical cruelty against the respondent/husband. Further, at this distance period of time, i.e. about more than 10 years from the date of marriage, it cannot be construed that there will be any possibility for reunion of the parties. The wife had left the matrimonial home and lived separately, on her own, without any valid reasons and it would amount to deliberate desertion and mental cruelty.



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8. Further, it is the admitted fact that both parties are residing separately from 2014 onwards for more than 10 years. Therefore, their long separation, absence of cohabitation and complete breakdown of all meaningful bond existing between the two, has to be read as 'cruelty' under section 13(1)(ia) of the Hindu Marriage Act, 1955.

9. Taking into consideration the above aspects and also the fact that the appellant and the respondent are living separately for the past 10 years, one can infer that there is irretrievable break down of marriage and there would be no useful purpose in keeping the marriage alive.

10. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Rakesh Raman Vs. Kavita reported in AIR 2023 SCC 2144***, wherein, the Honourable Supreme Court also in paragraph 18 has held as follows;



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“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the two, has to be read as cruelty Under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a marriage would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.’

In the case on hand also, there is a long separation, absence of co-habitation and complete break down of all meaningful bonds, thereby it has to be read as 'cruelty'. On the abovesaid ground also the appellant is entitled to



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divorce.

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11.In the light of the above judgment, we are inclined to dismiss these appeals. Accordingly, the Civil Miscellaneous Appeals are dismissed. The judgment and decree passed in O.P.No.51 of 2016 granting divorce and dismissal of O.P.No.1460 of 2016 is confirmed. No costs. Consequently connected miscellaneous petition is closed.

[J.N.B.,J.] [R.K.M.,J]
20.08.2024

Index: yes/no
Internet:yes/no
msr

To
The VI Addl. Family Judge, Chennai.



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R. KALAIMATHI, J.**

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