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CMA.No.75 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

CMA.No.75 of 2023

V.Adaikkammai @ Gomathi

... Appellant

Vs.

K.K.A.Alaguappan

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, to set aside the order and decreetal order dated 06.09.2022 passed OP.No.589 of 2019 on the file of the Principal Family Court, Chennai.

For Appellant : Mr.P.B.Ramanujam

For Respondent : Mr.Sai Vinoth

JUDGMENT



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

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This Civil Miscellaneous Appeal has been preferred as against the fair and decreetal order dated 06.09.2022 passed in OP.No.589 of 2019 on the file of the Principal Family Court, Chennai, wherein the appellant herein has filed the petition before the trial Court for dissolving the marriage between the appellant and the respondent dated 21.08.1997 on the ground of cruelty. The trial Court dismissed the petition against which the present appeal is filed.

2. The case of the appellant is that the respondent is the husband and the marriage between the appellant and the respondent was solemnized on 21.08.1997 at Kamban Mani Mandapam, Karaikudi, as per Hindu rites and customs and out of the wedlock, a male and a female child were born to them. The respondent developed illegal relationship with a lady, who was already married and thereafter, his activities totally changed. The respondent also used to consume liquor and used to beaten up the appellant in front of their children.



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2.1. Due to the continuous cruelty caused by the respondent, the appellant left from the matrimonial home and came back to Chennai. Already the respondent filed a petition seeking divorce in OP.No.46 of 2003 before the Sub-Court, Devakottai and the same was ended with compromise and dismissed as withdrawn.

2.2. The respondent assured in the previous case that he should stop the drinking habit and treat the appellant due respect. But he has not honoured the promise as assured. The respondent is the Head of Kongu Arts College, Erode and a highly influential person. The appellant was driven to a point where her life would be at danger, if she continues to live with the respondent. As such having no other go, she left the matrimonial home and came back to Chennai with her children. Hence, she filed a petition seeking divorce on the ground of cruelty.

3. The case of the respondent is that he denied the allegations made in the petition. He admitted the marriage between the parties and the children born to them. It is his case that the allegations in respect of illegal



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relationship and drunkenness have not been mentioned in the reply notice dated 30.08.2003 issued by the appellant. The respondent admitted that he filed a petition for divorce before the Sub-Court, Devakottai, in OP.No.46 of 2003 as the appellant was not willing to live with the respondent. Thereafter, the compromise entered between the parties and the appellant promised to live with the respondent and thereby, compromise memo was filed and based on the compromise, the petition was disposed.

3.1. The appellant all of a sudden without any valid reasons left the matrimonial home along with her children on 10.09.2018. When the respondent called her over phone, the appellant said that her parents are not feeling well and as a case of emergency, she went to Chennai, but, it was not correct. The parents of the appellant wanted her with them and thereby, at their instigation, she filed this petition. The respondent had given full freedom to the petitioner in the matrimonial life and she joined AET Matric Hr. Sec. School, Erode, as KG Teacher and after some time she resigned. Thereafter, she worked in Vellalar Vidyalaya Hr. Sec. School, Erode, as KG Assistant and after some time, she resigned the said job. The appellant took a separate house



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(Durga Pattrai) in Erode for rent and also had a car. When it came to the respondent's knowledge, the appellant vacated the house and also moved the car to somewhere else. The appellant's parents frequently used to come to the house and sometimes they used to stay in Rajarajeswari Lodge in Erode and would ask the appellant to come to the lodge. The appellant misguided the children and they are spoiled because of her activities. The appellant has to be subjected for psychological counselling. Therefore, the petition filed by the appellant is liable to be dismissed.

4. Before the trial Court on the side of the appellant, she was examined as PW1 and marked Ex.P1 to Ex.P5. On the side of the respondent, he was examined as RW1 and marked Ex.P1. After hearing both sides, the trial Court dismissed the said petition. Aggrieved by the said fair and decreetal order, the present appeal is filed.

5. During the pendency of the appeal, both the parties entered into a compromise and filed compromise memo stating that they arrived compromise and mutually agreed for divorce and they already exchanged



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their valuables. Both the parties agreed not to initiate any similar proceedings and maintenance for the children, therefore, they prayed for dissolution of marriage by allowing this application.

6. This Court carefully perused the affidavit and the compromise memo filed to dissolve the marriage. It is well settled law that the Hon'ble Supreme Court in the case of *Sanjeeta Das Vs. Tapan Kumar Mohanty* reported in *(2010) 10 SCC 222*, held that no Court can assume jurisdiction to dissolve the Hindu Marriage simply on the basis of the consent of the parties *de hors* the grounds enumerated under Section 13 of the Act, unless of course, the contesting parties proceed under Section 13B of the Act. Therefore, this Court is inclined to pass orders on merits with available records.

7. The learned counsel for the appellant would contend that the respondent caused cruelty and beaten up her in the presence of her children in a drunken mood and used to come to the house with drunken mood every day and he had intimacy with another lady. Thereby, the wife filed a petition before the trial Court for granting divorce on the ground of cruelty. In order to



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prove the case of the appellant, she was examined as PW1 and she categorically deposed about the cruelty caused by the respondent/husband but the trial Court failed to consider the same and dismissed the petition. Therefore, the fair and decreetal order passed by the trial Court are liable to be set aside and the appellant is entitled to divorce on the ground of cruelty.

8. The learned counsel for the respondent would contend that the appellant herself left the matrimonial home along with the children without informing the same to the respondent and when the respondent called her over phone to come back to the matrimonial home, she refused and without any valid ground filed the petition by making false allegations. Before the trial Court both the parties were examined and marked documents. The trial Court based on the documents and evidence correctly dismissed the petition. However since the matter has been settled between the parties, he has no objection to grant divorce to the appellant.

9. This Court heard both sides and perused the records.



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10. Upon hearing both sides and perusing the records, the points for determination is whether the appellant wife is entitled to decree for divorce on the ground of cruelty.

11. In this case, there is no dispute in respect of the relationship of the parties as husband and wife, children born to them and the children are under the custody of the appellant. The appellant filed a petition before the trial Court for granting divorce on the ground of cruelty. In order to prove the case of the appellant, she was examined as PW1 and also marked Ex.P1 to Ex.P5. The respondent denied the allegations made in the petition and he also was examined as RW1 and marked Ex.R1. The evidence of PW1 would show that the respondent caused cruelty by assaulting the appellant in the presence of their children and very often he used to drink and assault the appellant. Thereby, she left from the matrimonial home. The respondent also admitted that he already filed a petition for granting divorce before the Sub-Court, Karaikudi and the same was entered into compromise between the parties and thereafter, they lived together and then the appellant left the matrimonial home. Therefore, filing of the earlier petition for divorce itself shows that the



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respondent has no intention to live with the appellant. However, as per the advice of the elders, the matter was compromised between the parties.

12. The trial Court in the order has stated that the appellant admitted that she left from the matrimonial home by sending false message. However, the evidence of PW1 has to be looked in its entirety and not by isolating a particular line and on careful perusal of the entire evidence of PW1 would show that the respondent caused cruelty and she established the ground for divorce on the ground of cruelty.

13. Therefore, this Court is of the opinion that the order passed by the trial Court by declining to grant divorce is unsustainable and the same is liable to be set aside by allowing this appeal.

14. In the result, this Civil Miscellaneous Appeal is allowed and the fair and decreetal order passed by the trial Court in O.P.No.589 of 2019 is set aside and the marriage solemnized between the appellant and the respondent dated 21.08.1997 is dissolved by granting divorce on the ground



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of cruelty. No costs.

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(J.N.B.,J) (P.D.B.J)
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dna

To

- 1.The Principal Family Court, Chennai.
2. The Sub-Court, Devakottai.



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and

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