



C.M.A.No.17 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.08.2024

Pronounced on : 05.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.17 of 2023

Dr.P.Seethalakshmi

...Appellant

vs.

G.Vediyappan

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the fair and decretal order dated 29.09.2022 passed in O.P.No.71 of 2020 on the file of Family Court, Dharmapuri.

For Appellant : Mr.R.Thamaraiselvan

For Respondent : Mr.A.Arun

JUDGMENT

(The order of the Court was made by Mrs.R.Kalaimathi, J.)

This Civil Miscellaneous Appeal has been preferred by the respondent/wife against the order passed in O.P.No.71 of 2020 on the file



C.M.A.No.17 of 2023

of the Family Court, Dharmapuri against the order dated 29.09.2022 in
O.P.

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2. The petitioner G.Vediyappan filed the above said O.P under Section 13(1) (i) (ia) of the Hindu Marriage Act, 1955 for an order of divorce. The O.P was allowed by annulling the marriage that took place between the parties on 25.06.2007 at Dharmapuri. Aggrieved, the wife has preferred this appeal.

3. Facts leading to the filing of the petition is set out hereunder in brief:

Marriage between the petitioner and the respondent was solemnized on 25.06.2007 at Sengunthar Thirumana Mandapam, Annasagaram, Dharmapuri in the presence of elder persons. The marriage is still subsisting. Expenses for the marriage were borne out by the parents of the petitioner (husband). In the year 2007, the petitioner was working in Indian Army. After marriage, both lived happily at the residence of the petitioner. The respondent was admitted at the National Institute of Open Schooling by the petitioner, and she completed her 12th standard. Thereafter, the petitioner admitted his wife to the B.S.M.S. Course in RVS Siddha Medical College and Hospital, Coimbatore. The respondent



C.M.A.No.17 of 2023

applied for an educational loan for her studies. The loan was repaid by the petitioner and his father. A girl child by name Dhanusha was born to them on 30.03.2008 and on 15.01.2012, a boy child by name Pughal Krishnan was born to them. Upto the year 2012, the married life went on peacefully. The respondent after returning from Coimbatore to Dharmapuri, did not come to the matrimonial home and went to her parents house. She completed her studies in the year 2016. Upon the request of the respondent, the petitioner made arrangements to start a clinic at Indur, Dharmapuri District by renting one shop at Indur. The petitioner got retired from Army Service in the year 2016 and both lived at the petitioner's house. The respondent refused to live in the village atmosphere and was compelling her husband to set up a separate house at Dharmapuri town. The respondent did not heed to the request of the petitioner and his parents, and refused to live in the matrimonial home. Therefore, the petitioner was forced to take the respondent along with their children and started to reside in a rented house at Pidamanery, Dharmapuri. After a few days, she did not return to the matrimonial home some times for months together. When this was questioned by the petitioner, the respondent/wife told him that she was staying along with her maternal aunt. But, the enquiry revealed that the respondent was not staying at her maternal aunt house. The respondent quarreled with the petitioner on the



C.M.A.No.17 of 2023

ground that, as the petitioner was doing hotel and milk business, she does not like the same as she is a doctor and it affects her status. The respondent often quarreled with the petitioner and failed to take care of the children. Meanwhile, they shifted to another rented house at Gandhi Nagar, thereafter to Kandasamy Vathiyar Street at Dharmapuri. The respondent did not change her attitude. The respondent compelled the petitioner not to talk with his parents and told him not to visit his native village. She threatened him that if the petitioner does so, she would commit suicide along with the children. She would scold him in filthy language and it was recorded by the petitioner (Ex.P.10) and she deserted the petitioner. The respondent also took her jewels and articles. When the petitioner contacted the respondent through phone as to the said details, she stated that she was not willing to live with the petitioner and disconnected the phone. These details are acts of cruelty. The petitioner by taking care of the children has been running the family with great difficulties. There is no chance of reunion. Hence, the petition for divorce on the grounds of cruelty and desertion.

4. Counter details given in brief.

Marriage between the parties is admitted. The petitioner promised to the respondent to support her studies. At the time of marriage, the



C.M.A.No.17 of 2023

parents of the respondent gave 15 sovereigns of jewels to her, two sovereigns to the petitioner, two wheeler and household articles. After one week of marriage, the petitioner pledged the jewels of the respondent to clear the housing loan. While the first children was 1 1/2 years, the petitioner went to Army. The mother in law of the respondent did not support her, and hence she was staying at her parents home. It is by the efforts of the respondent father, she joined in the Siddha Medical College and studied BSMS. She completed her course in the year 2016 and the petitioner also returned to Dharmapuri after retirement. Both the petitioner and respondent were staying at the petitioner's residence at Alivayan Kottai. With the retirement benefit funds, the petitioner started an online business in the name and style of Viha Exports. As there was no proper internet connection in the village, they decided to shift residence to Dharmapuri. The petitioner owns 5 acres of land and 15 cows. The petitioner owned a four wheeler to distribute milk and running three hotels in Dharmapuri. She got a loan of Rs.15 lakhs and completed her studies in the year 2016 and started a clinic at Indur. The petitioner did not repay the educational loan of the respondent and the petitioner quarreled with the respondent. During corona lock down period, due to lack of transport, she found it difficult in reaching her clinic and took a rented house at Indur and stayed along with her father. Frequently, she used to go to Aalivayan



C.M.A.No.17 of 2023

Kottai to see her children. This petition was filed with false allegations, the respondent is ready to live with the petitioner and hence sought for dismissal of the petition.

5. At trial, the petitioner examined himself as P.W.1. Three witnesses were examined and 13 documents were marked. On the respondent side, the respondent/wife has examined herself as R.W.1.

6. Mr.T.Thamaraiselvan, learned counsel for the appellant/wife would vehemently contend that the allegations raised in the petition are false. The respondent is a dutiful wife and she obtained educational loan and completed her BSMS course. The petitioner did not take any steps to repay the educational loan. He would further contend that her mother in law never supported her and her maternal aunt having obtained loan from her is in inimical terms, therefore their evidence and her daughter Dhanusha, who is in the custody of the petitioner were made to support the false contentions of the petitioner. It was further contended that due to the corona lock down, she was made to stay with her father in order to attend clinic at Indur.

7. Per contra, Mr.A. Arun, learned counsel for the



C.M.A.No.17 of 2023

respondent/husband would strenuously argue that it was the petitioner who took efforts to settle the issues between the spouses and due to the acts of cruelty committed by the respondent, the husband has filed the petition and prayed to confirm the order of the trial Court.

8. The main allegations raised in the petition are acts of cruelty and desertion to the effect that the respondent/wife was not affectionate either to her husband or to the children. The respondent would straightaway go to her parents house from Coimbatore College. She was not visiting the petitioner or the children or her parents in laws. When she was contacted through phone, she did not show any interest to talk to the members of the petitioner's family. It is the further contention of the petitioner that the respondent did not like the village life and wanted to shift to town, and she was often quarreling with the petitioner. Thereafter also, she did not take care of the family and refused to come to the matrimonial home. Therefore, if these allegations are correct, and if yes, whether it amounts to acts of cruelty is the moot question.

9. P.W.1 has spoken in line with the details of the petition. P.W.2 to P.W.4 are the mother of respondent Seethalakshmi, maternal aunt of the respondent and daughter of the petitioner and respondent. P.W.2/Mother



of the respondent has supported the case of the petitioner. During the cross examination of P.W.2-mother of the respondent, she would state that college expenses were borne out by the petitioner. For the past two years, her daughter was not residing along with the petitioner. Her son in law/petitioner told her that her daughter often quarreled with him and she was not taking care of the children. She would further state that the respondent would never consider her as her mother and hence, she never gave any advise to her. She has lastly stated that she does not understand the attitude of her daughter.

10. The relative of both petitioner and respondent, R.Meena, (P.W.3) cousin sister of respondent father has stated that the respondent Seethalakshmi set up a clinic at Indur and thereafter, there was a complete change in her attitude and as she failed to take care of the husband and children, the daughter of the petitioner and respondent Dhanusha (P.W.4) would depose that it was her father who took care of them. Her mother would not be affectionate either towards her father or to them. Her mother would shout at her mother in law in filthy language. It has come on record through the evidence of P.W.4 that after quarrel, her mother would go out during night time and she would not return back to her residence for about a week.



C.M.A.No.17 of 2023

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11. Per contra, the respondent denied the allegations made in the petition and she stated that she was taking care of the children and her husband.

12. The respondent has completed ANM Nursing Course, Social Community Medicine Course, Diploma in Alternative Medicine, Food and Nutrition Course. She obtained loan of Rs.2 lakhs from the Indian Bank, Ellakiampatti and the expenses were met by her husband and her father in law.

13. The petitioner has completed 10th standard and he was working in the Indian Army till 2016. Whereas, the respondent has completed very many para medical courses and thereafter, she did her BSMS in a private medical college and hospital, Coimbatore and completed her studies in the year 2016. The details of marriage and they have two children out of the wedlock are admitted facts.

14. In the matrimonial cases, burden of proof lies on the petitioner. As regards the degree of probability, it is not beyond reasonable doubt,



but, based on preponderance of probabilities.

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15. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times.

16. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.

17. Useful reference may be made as to the observations of the Apex Court in the matters of granting of divorce on the ground of cruelty in



Dr.N.G.Dastane Vs. Mrs.S.Dastane reported in 1975 (2) SCC 326, the

Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a “matrimonial offence”. Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.”

18. It is relevant to refer the observations made by the Hon'ble Supreme Court in *V.Bhagat Vs. D. Bhagat reported in (1994) 1 SCC 337:*

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to



WEB COPY



C.M.A.No.17 of 2023

put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

19. *In Samar Ghosh vs Jaya Ghosh reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:*

“101. (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”



20. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. “free scientific research”...”.

21. It is pellucid that the petitioner has been living along with his children and his parents. At the relevant point of time, he was doing agriculture and he was running his hotel business. On the other hand, the respondent did set up a clinic at Indur and naturally, she has to travel from village to the clinic. The respondent is a siddha doctor by profession. Naturally, she would be interested to practice as a siddha doctor. For which, she needs to spend more time in her clinic. This cannot be taken as a ground for cruelty. On the other hand, the petitioner stoutly contends that she would often quarrel with him and with his mother. This has been spoken out by the petitioner. P.W.2 is the mother of the respondent, living in separation from her husband, has spoken in support of her son in law. As an educated person, she is expected to have tackled the simple issues effectively.

22. The petitioner and the respondent have developed



C.M.A.No.17 of 2023

incompatibility as the respondent/wife is qualified as a siddha doctor besides completed very many para medical courses. It is so unfortunate that the minor daughter of the petitioner and respondent has been dragged to the Court. Most of the times, the children are the sufferers in broken families, the marriage has become unworkable and long before ceased to be effective. Especially for the wife, marriage has turned to be a source of greater misery.

23. The commissions and omissions complained of may not be cruelty in the eyes of respondent who is a siddha doctor. But in the view of the petitioner/husband who has completed 10th standard and looking after his agriculture, hotel business, and milk vending business, the commission and omission on the part of the respondent have to be categorized as acts of mental cruelty, which the petitioner does not condone.

24. We have no hesitation to observe that, based on the both sides evidence, the matrimonial bond between the petitioner and the respondent has been ruptured to the maximum extent, especially, the respondent does have less emotions towards her husband and children.



C.M.A.No.17 of 2023

25. We have taken note of the above said situations, especially after 2016. We have also strongly impressed by the consideration that marriage has become unworkable and it is clearly broken down. In the interest of both sides in order to do complete justice to the parties, as the marriage has become fiction, it is better to permit them to live apart. Of course, we are conscious of the fact that Hindu Marriage as per Vedic Philosophy, it is sanskar. Hindu Marriage is a sacrament, in such a view of the matter and to shorten agony of the parties, we deem it fit that dissolution of marriage is the inevitable conclusion and the respondent is entitled for decree of divorce, and we order that this Civil Miscellaneous Appeal stands dismissed by confirming the order of decree dated 29.09.2022 passed by the trial Court in O.P.No.71 of 2020. There is no order as to costs.

(J.N.B.,J.) (R.K.M.,J.)

05.09.2024

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C.M.A.No.17 of 2023

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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To

The Family Court, Dharmapuri.

Pre-Delivery Judgment made in

C.M.A.No.17 of 2023

05.09.2024