



C.M.A.(MD)No.1635 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **19.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 1635 of 2010

N.Sankar Pandiyan

... Appellant/Petitioner

Vs.

Sree Jamol

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act to call for the records relating to the impugned order passed by the Principal District Judge. Thoothukudi, in I.D.O.P.No.327 of 2009 dated 03.09.2010 and set aside the same.

For Appellant : Mr.N.Dilip Kumar

For Respondent : No appearance

JUDGMENT

This appeal arises under the following circumstances:

- i) The appellant had filed a petition for restitution of conjugal rights before the learned Principal District Judge, Thoothukudi.
- ii) The respondent opposed the petition stating that the appellant



had caused cruelty and demanded dowry, due to which the respondent had left the matrimonial home and therefore, the petition is liable to be dismissed;

iii) The appellant examined himself as P.W.1 and another witness as P.W.2, besides marking Ex.P.1 to Ex.P.5 on his side. The respondent examined herself as R.W.1 and marked Ex.R.1.

iv) The trial court, after taking into consideration the oral and documentary evidence, held that the appellant and the respondent did not have a cordial relationship; that there is evidence to show that the respondent had given complaints against the appellant for dowry demand and cruelty and that the complaints filed by the respondents were registered as First Information Reports by the police and the investigation was under progress and that since the respondent had suffered cruelty at the hands of the appellant, the appellant would not be entitled to the prayer for restitution of conjugal rights.

2. The learned counsel for the appellant submitted that the complaints filed by the respondent were not true and that the appellant was always ready and willing to live with the respondent; that the respondent due to ill-advice given by certain family members, had left



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the matrimonial home and he is also willing to take back the respondent and live with her.

3. The learned counsel for the respondent, per contra, submitted that the trial court had rightly dismissed the petition based on the evidence on record to show that the appellant had subjected her to cruelty and therefore, she was forced to leave the matrimonial home.

4. The point for consideration in the appeal is as follows:

'Whether the appellant is entitled to an order of restitution of conjugal rights?'

5. This Court finds that the appellant married the respondent on 01.09.2004. Admittedly, the appellant and the respondent have been living separately since 09.11.2005. The respondent met with an accident and was treated as an inpatient in a hospital; and thereafter due to certain difference, she went to her parents house. In spite of best efforts taken by the family members, the appellant and the respondent were unable to reconcile their differences. At this stage, the appellant had filed a petition for restitution of conjugal rights in the year 2010. The evidence adduced



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on either side suggests that the respondent had complained of cruelty on account of dowry demand against the appellant. In such circumstances, the respondent cannot be compelled to live with the appellant.

5. This Court finds that the finding of the tribunal that reconciliation was not possible and that the appellant is not entitled to restitution of conjugal rights cannot be faulted. In any case, admittedly, the appellant and the respondent have been living separately since 2005 for about 20 years. No useful purpose would be served even if this Court were to hold that the appellant is entitled to restitution of conjugal rights. The point is answered accordingly Hence, the appeal deserves to be dismissed. Accordingly, the appeal is dismissed. No costs.

19.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. The Principal District Judge. Thoothukudi

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No. 1635 of 2010

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