



C.M.S.A.(MD)No.2 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.03.2024

PRONOUNCED ON : 19.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.2 of 2012

Rajalakshmi ... Appellant / Appellant / Respondent

Vs.

Muthukumar ... Respondent / Respondent/ Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, to set aside the Judgement and Decree of the Lower Appellate Court dated 26.08.2011 in H.M.C.M.A. No. 16 of 2009 on the file of the 1st Additional District Judge, Tirunelveli, confirming the Judgment and Decree of the Trial Court dated 04.02.2009 passed in H.M.O.P No. 10 of 2006 on the file of the Principal Sub Judge, Tenkasi.

For Appellant : Mr.S.Veeranasamy

For Respondent : Mr.R.T.Arivukumar



C.M.S.A.(MD)No.2 of 2012

JUDGMENT

WEB COPY

This Civil Miscellaneous Second Appeal has been directed against the Judgement and Decree in H.M.C.A. No. 16 of 2009 on the file of the 1st Additional District Judge, Tirunelveli, dated 26.08.2011 confirming the Judgment and Decree passed in H.M.O.P No. 10 of 2006 on the file of the Principal Sub Judge, Tenkasi, dated 04.02.2009.

2. The appellant herein is the wife and the respondent is the husband. The respondent/husband herein filed a petition under Section 13 (1) (ia) and (1) (ib) of Hindu Marriage Act, 1955, in H.M.O.P. No. 10 of 2006 seeking to dissolve the marriage between the petitioner/husband and the respondent/wife by decree of divorce on the grounds of cruelty and desertion.

3. For the sake of convenience and brevity, the parties are referred to as per their original ranking/status in the Original Petition.

4. The case of the petitioner (husband):

i. Following the birth of the baby, during 1st week of December, 1997, the petitioner's parents brought the respondent along with the baby to their home. From that very day, the respondent incessantly pressured the



C.M.S.A.(MD)No.2 of 2012

petitioner to have a nuclear set-up family. Since the parents of the petitioner are aged persons, the petitioner refused this proposal of the respondent. So, the petitioner advised the respondent to lead a proper life discharging her duties as a wife. But the respondent said she cannot live together with the petitioner if not for the nuclear family set-up and she would ask the petitioner for the same. Nevertheless, the petitioner tolerated all of this for the sake of the family's dignity.

ii. This being the case, during the last week of December 1997, the respondent left for her maternal home without informing the petitioner or his parents. The next day, the petitioner attempted to persuade her to return home, but the respondent responded with verbal abuse. She informed him that she intended to pursue a teacher training course and expressed her unwillingness to continue living with the petitioner. She suggested that the petitioner should approach the court seeking divorce.

iii. In January 1998, the petitioner's parents visited the respondent's parent's house and requested the respondent to reconcile and live together with the petitioner. However, the respondent firmly expressed her



C.M.S.A.(MD)No.2 of 2012

unwillingness to continue living with the petitioner and asked him to initiate divorce. The respondent's parents also accepted this decision.

iv. In the meantime, the respondent enrolled in a teacher training course at Munjinapatti without informing the petitioner, withholding any details about the same. For the past eight years, without providing any valid reason, the respondent has chosen to live separately from the petitioner.

v. On 05.07.2005, through a mediator named Madasamy, the petitioner attempted to reconcile with the respondent and requested her to reunite with him. However, the respondent sent Madasamy back, affirming her unwillingness to live with the petitioner and stating her intention to pursue divorce proceedings.

vi. Hence, on 26.07.2005, the petitioner, through his lawyer, sent a legal notice seeking mutual divorce. In response, the respondent, via her lawyer in a notice dated 29.08.2005, provided misleading information,



C.M.S.A.(MD)No.2 of 2012

falsely claiming her willingness to reconcile and live with the petitioner.

However, following this exchange, the respondent did not return to live with the petitioner for a further period of five months. Instead, on 03.02.2006, she filed a false complaint at Tenkasi All Women's Police station. Consequently, the Sub-Inspector of Police threatened the petitioner, who endured mental abuse as a result of this situation. The respondent deserted the petitioner for a period of 8 years without any valid reason.

5. The case of the respondent (wife's):

i. The respondent's parents had generously bestowed upon the respondent 50 sovereigns of gold jewellery, an almirah, and various other items valued at Rs. 50,000/-, in addition to a 40-gram gold chain and Rs. 25,000/- in cash as dowry. Initially, the petitioner and the respondent enjoyed six months of harmonious matrimonial life. However, the petitioner's behaviour took a drastic turn thereafter, as he began to insult the respondent and her family. This illtreatment extended to the public humiliation of the respondent before others.

ii. The petitioner alleges that the respondent led a proper



C.M.S.A.(MD)No.2 of 2012

matrimonial life only until December 1997 respondent refutes this and all other accusations of the petitioner, including those outlined in the notice, as false.

iii. Upon being informed about the birth of their son, the petitioner and his family visited the respondent and the newborn belatedly by a week. Despite this delay, neither the petitioner nor his family initiated any efforts to bring the respondent and the newborn back to their matrimonial home. It was solely the respondent's parents who took the initiative in this regard. Fearing societal pressure, the petitioner and his parents eventually relented and brought the respondent and the newborn to their matrimonial home.

iv. Upon their arrival in Kadayanallur, the petitioner remained silent and uncommunicative, refusing to engage with the respondent or their son. Despite the respondent's efforts to convey this concerning behaviour to the petitioner's parents, they showed little concern and they never bothered about it. They would always act in favour of the petitioner only.



C.M.S.A.(MD)No.2 of 2012

v. It appears that there was a promise made by the petitioner and their father, communicated through the petitioner's brother, Mr. Vaidyanathan, stating that due to challenging times astrologically faced by the respondent and the new born, it was necessary for the respondent and the petitioner to temporarily live apart for a period of six months. They made the respondent and her family believe in this story. Consequently, on 09.11.1998, the respondent and their son were sent to the respondent's maternal home with the understanding that they would be reunited with the petitioner after the stipulated time frame. Regrettably, despite assurances, the petitioner and their family failed to fulfil their commitment to bring the respondent and their son back to their matrimonial home even after the agreed-upon period had elapsed. Hence, the respondent's father arranged for the return of the respondent to her matrimonial home through Mr. Rajendran on 20.08.2000.

vi. However, on 22.08.2000, the petitioner's father, along with elder sons, Palanisamy and Vijayasankar, unexpectedly dropped off the respondent and the baby at the respondent's maternal home and the reason they cited was the same bad astrological time. Whenever the respondent



C.M.S.A.(MD)No.2 of 2012

attempted to return to her matrimonial home, the petitioner's father would consistently send her back, citing the same astrological reasoning that it was an inopportune time for both the respondent and the petitioner to live together.

vii. So, the respondent's father filed a petition before their community members and an impromptu enquiry happened on 31.08.2003, and based on their decision, the respondent and the baby were sent back to the petitioner's home.

viii. Following the petitioner's brother's marriage on 07.09.2003, the petitioner's father promptly sent the respondent and their baby back to her maternal home on 08.09.2003. Despite numerous attempts at mediation and reconciliation, facilitated by neutral parties and with the respondent's father's support, the petitioner continually provided various excuses and refused to reconcile, preventing the respondent's return to their matrimonial home. Subsequently, on 26.06.2005, the respondent's father, accompanied by Velayutham and Gomathi Ammal, escorted the respondent and her son to the petitioner's residence. However, upon arrival, the



C.M.S.A.(MD)No.2 of 2012

petitioner refused them entry, subjected them to public humiliation, physically pushed them out, and then locked the door.

ix. A mediation was arranged through their community members on 27.06.2005, however, it was postponed due to the absence of the petitioner's father, who was out of town. Petitioner concealed all the true state of affairs and wrongly alleged that the respondent pestered him for a nuclear family set-up, that the respondent went away to her maternal home without informing the petitioner and her in-laws, and that the respondent verbally abused them. The respondent is in complete denial of all the allegations of the petitioner.

x. The respondent endured persistent abuse related to dowry demands out of concern for preserving her marital harmony. However, the relentless ill-treatment inflicted by the petitioner and his family ultimately shattered her marital life. Left with no recourse to safeguard herself, she resorted to lodging a complaint regarding the dowry demands.

xi. In an attempt to evade accountability for this crime, the petitioner agreed to allow the respondent back into their matrimonial home. Despite



C.M.S.A.(MD)No.2 of 2012

WEB COPY
this apparent reconciliation, on the fateful evening of 19.05.2006, around 9 P.M., the petitioner violently assaulted the respondent. He forcefully grabbed her by the neck, pushed her to the ground, and subjected her to further physical abuse by kicking her.

xii. In a chilling display of cruelty, he threatened to immolate both her and their son if she refused to leave their home. Shaken by this traumatic incident, the respondent confided in her sister, who, along with their mother, promptly sought medical assistance for her at Kadayanallur Government Hospital. Subsequently, the respondent received treatment as an inpatient from 19.05.2006 to 24.05.2006. Police from Kadayanallur Police Station came and enquired the respondent about the incident but never took any action against the petitioner. Petitioner was unwilling to reconcile due to his illicit affair with another woman and the respondent's inability to meet his unlawful dowry demands.

6. The learned Trial Court had framed one issue for consideration. Following which the petitioner was examined as P.W-1 and Ex.P-1 to Ex.P-6 were marked on the side of the petitioner. The respondent was



C.M.S.A.(MD)No.2 of 2012

examined as R.W-1 and no Exhibits were marked on the side of the respondent.

7. The Trial Court observed that despite the husband being present, the respondent/wife stayed in a hostel and studied without his knowledge. This was admitted by the respondent during her cross-examination. For about two years, she remained unaware of her husband's situation, effectively disregarding the essence of their marital relationship. It is concluded that this scenario, where the wife pursued her education in secrecy, could cause significant mental distress to the husband. Ex. P-2 is a reply notice dated 29.08.2005 sent by the respondent claiming she is ready to live with the petitioner, however, there is no evidence as to whether both the parties initiated any efforts to that effect.

8. The Trial Court further observed that the respondent appeared only after the third summons was issued through a newspaper advertisement, despite being aware of the first two summons. If the respondent had intended to live with the petitioner, she should have approached the court earlier to submit her written statement and expressed the desire to live



C.M.S.A.(MD)No.2 of 2012

together. However, the respondent did not take any such action. Without the petitioner's knowledge, the respondent completed her higher education.

9. The wife pursued her studies without the husband's knowledge, anticipating that their marital relationship might eventually end. Observing the respondent's overall conduct, it can be concluded that the respondent intentionally neglected the petitioner. Due to the respondent's intentional neglect of the petitioner for approximately 10 years, it is determined that there are no prospects of the couple living together as husband and wife. Consequently, the Trial Court found the petitioner's/husband's claims for divorce proven and allowed the petition accordingly granting him the relief of divorce. Assailing the same, the respondent/wife preferred H.M.C.A. No. 16 of 2009 on the file of the 1st Additional District Judge, Tirunelveli.

10. The learned First Appellate Court framed one issue for consideration. And observed that while the respondent/wife was examined as R.W.1 she deposed as follows:- "...From 1997 to 2008, if there was no communication between me and the petitioner, I often went to my husband's house. He was the one who said it was not the right time...we



C.M.S.A.(MD)No.2 of 2012

both lived together for only 6 months..” This part of evidence proved she has been living with her parents from 1997 onwards, after expiry of 6 months from the date of marriage whenever a wife is living with her parents continuously, she is bound to prove that she is living with sufficient reason and when she has failed to prove such reason, that fact of living separately is failure to give matrimonial obligation continuously by deserting the matrimonial home.

11. The First Appellate Court dismissed the respondent’s argument, noting that during the examination of P.W.1, no suggestion was made indicating that he had advised her to live separately because time was not good for living in the matrimonial home. The respondent had specifically pleaded that she was advised by her husband to live separately because it was not the right time to live together in the matrimonial home. Since this allegation was not substantiated, it must be presumed that the respondent/wife failed to prove her claim as required by law. The learned First Appellant Court observed that given these circumstances, the court concluded that the respondent/wife had left her matrimonial home from 1997 onwards on the basis of preponderance of probabilities established by



C.M.S.A.(MD)No.2 of 2012

the evidence on either sides. Even during the trial, there was no attempt made to reconcile and live together. Additionally, she failed to respond to the notice for restitution of conjugal rights. All these factors indicate that she has deliberately deserted the matrimonial home. Therefore, the Trial Court's decision to grant the divorce is valid and in accordance with the law. Hence, the First Appellate Court found no irregularity in the trial court's judgment. Consequently, the First Appellate Court dismissed the appeal in H.M.C.M.A. No. 16 of 2009.

12.Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent. Carefully perused the materials available on record.

13.After being sent for delivery, on child birth, the respondent was brought back to her matrimonial home during the 1st week of December, 1997. However, even according to her own counter affidavit , she was sent back on 09.11.1998 to her maternal home. Interestingly, in her cross-examination as RW-1 she admitted that from 1997 to 2008 there was no communication between her and her husband. It is also understood that



C.M.S.A.(MD)No.2 of 2012

during this prolonged period of separation, she had also pursued her higher studies without the knowledge of her husband.

From the careful perusal of available records and the evidence deposed, it has transpired that though the petitioner husband had issued a notice dated 26.07.2005 for reunion and the same has been positively replied by the respondent wife, in actual terms till 2008 there was no further communication between them.

14.In the meanwhile, she also gave a police complaint against the petitioner on 19.05.2006 contrary to her reply notice expressing willingness to live with him. In the said complaint marked Ex.P3, The respondent wife has mentioned that she has been living separated from her husband for nearly seven years. Further, the FIR marked as Ex.P4 would reveal that she had been living with her husband for 3 months in the upstairs portion of her husband's house. Since, on 19.05.2006 at about 09.00 a.m., he grabbed her by neck and pushed her down to the ground and stamped her by foot and intimidated her that he would kill her and their son, she was compelled to lodge the said complaint. The surrender application filed by the petitioner in Crime No.285 of 2006 before the learned Judicial Magistrate, Tenkasi, has been marked as EX P6. A



C.M.S.A.(MD)No.2 of 2012

collective perusal of the documents marked would reveal that the respondent without reasonable cause had lived separately for about seven years from 09.11.1998. After conciliation though she lived for about three months with the petitioner during 2006, since she lodged a criminal complaint against the petitioner on 19.05.2006 as a result of which a FIR in crime no. 285/2006 was registered against him resulting in his surrender before the jurisdictional Judicial Magistrate, the same has culminated in the filing of this H.M.O.P.NO.10 of 2006 by the petitioner husband seeking divorce on the file of the principal sub judge, Tenkasi.

15.A careful perusal of the evidence deposed by both the parties would reveal that the respondent wife has miserably failed to substantiate her pleadings with probable oral and documentary evidence. After reconciliation during 2006, it was only the respondent wife who had stepped out of her matrimonial home to lodge a criminal complaint against the petitioner. However she failed to bring on record as to whether the said FIR in crime no.285/2006 on the file of kadiayanalloor police station culminated in filing a final report before the jurisdictional Magistrate. However, the petitioner had duly marked his surrender petition filed before Judicial Magistrate, Tenkasi, as EX P6, thereby substantiating that



C.M.S.A.(MD)No.2 of 2012

he was witch hunted to the extent of voluntarily surrendering before the jurisdiction Magistrate in a matrimonial dispute which further compelled him to file a petition for divorce after 9 years from the date of his marriage . There is nothing on record to show that the respondent had filed a petition for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

16. The Hon'ble Apex Court in ***Rakesh Raman vs Kavita [223] SCC Online SC 497*** held that,

“20... where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

The marriage becomes a fiction, though supported by a legal tie”

Even in the instant case it is an admitted fact that the petitioner and respondent were separated for more than seven years without any serious reason till they were facilitated to live separately in the upstairs of their matrimonial home during 2006 after reconciliation by elders. However, within 3 months the respondent walked out to lodge a criminal complaint against her husband despite registering a FIR against him never culminated in filing a final report, rather the said FIR became a tool to witch hunt the



C.M.S.A.(MD)No.2 of 2012

petitioner to surrender before the jurisdictional Magistrate.

WEB COPY

17. In a recent decision in ***Smt. Roopa Soni vs Kamal Narayan Soni*** [MANU/SC/0980/2028:2023/NSC814} the Hon'ble Supreme Court has held as under;

“10. On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.”

From the allegations, pleadings and evidence, I am satisfied that the wife had lived separately for a period of seven years without any reasonable justification from 19.11.1998. Even after reconciliation during 2006, they were not able to get along which resulted in lodging a criminal case against her husband resulting in his surrender before the jurisdictional Magistrate. From such circumstance, I am satisfied that the respondent never ever took serious efforts to rejoin her husband and she didn't even bother to file a petition for restitution of conjugal rights. Even during Trial her demeanor has been recorded by the learned Trial Court that she was not willing to live with her husband. Hence, I have no hesitation to hold that a wife who is implicitly unwilling to live together with her husband, but



C.M.S.A.(MD)No.2 of 2012

pleading before matrimonial courts for the sake of defeating her husband before the court of law that she is always willing for a conciliation and keeping her husband in abeyance itself would amount to mental cruelty.

18. That apart, the Hon'ble Apex Court in the case of ***Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal reported in (2012) 7 SCC 288*** has dealt with the case of concurrent findings by the Trial Court and the First Appellate court and has held that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. The relevant portion of the same is extracted as follows:

“36. In Major Singh v. Rattan Singh it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.



C.M.S.A.(MD)No.2 of 2012

WEB COPY

37. *In Vidhyadhar v. Manikrao it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in Abdul Raheem v. Karnataka Electricity Board.”*

19. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the various facts of the learned Principal Sub-Judge, Tenkasi and the learned Additional District Judge, Tirunelveli and holding that the decisions of both the lower Courts are fully supported by the evidence and proper application of legal mind, I am not inclined to interfere with the Judgment and decree passed by the learned 1st Additional District Judge, Tirunelveli in H.M.C.M.A. No.16 of 2009 in H.M.O.P No. 10 of 2006.



C.M.S.A.(MD)No.2 of 2012

20. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs.

19.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1. The 1st Additional District Judge,
Tirunelveli.
2. The Principal Subordinate Judge,
Tenkasi.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)No.2 of 2012

L.VICTORIA GOWRI, J.,

Sml

C.M.S.A.(MD)No.2 of 2012

19.06.2024