



C.M.S.A.(MD).Nos.13 to 15 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 02.08.2024

DELIVERED ON : 21.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.S.A.(MD).Nos.13 to 15 of 2021

Madan Kumar

... Appellant/Husband in all appeals

Vs.

M.Lalitha

... Respondent/Wife in all appeals

PRAYER : Civil Miscellaneous Second Appeals filed under Section 23 of Hindu Marriage Act, to set aside the common judgment and decree dated 16.08.2019 made in H.M.C.M.A.Nos.16 of 2017, 8 of 2018 and 12 of 2018 reversing the decree of judicial separation by way of the judgment and decree, dated 26.04.2017 made in H.M.O.P.Nos.15 and 14 of 2017 on the file of Sub Judge, Thirumangalam.

For Appellant : Mr.R.Suriya Narayanan
For Respondent : No Appearance
(In All Appeals)



C.M.S.A.(MD).Nos.13 to 15 of 2021

COMMON JUDGMENT

WEB COPY

These civil miscellaneous second appeals have been filed by the husband to set aside the common judgment and decree dated 16.08.2019 made in H.M.C.M.A.Nos.16 of 2017, 8 of 2018 and 12 of 2018 reversing the decree of judicial separation by way of the judgment and decree, dated 26.04.2017 made in H.M.O.P.Nos.15 and 14 of 2017 on the file of Sub Judge, Thirumangalam.

2.The petition in H.M.O.P.No.29 of 2011 was filed before the Sub Court, Uthamapalayam by the husband seeking the decree of divorce with the following averments:

The marriage between the parties took place on 13.09.2007 as per their customary rites at Chinnamanur. After some time of marriage the respondent wife, at the instigation of her parents compelled the husband to come down to their Village namely Vandapuli and live there. Without the knowledge of the husband, the wife deserted and left the matrimonial home and went to her parental home. Originally the husband was working in Pachamadi in the Indian Army in the month of October 2007, he was taken to Pachamadi by the husband. She stated that in December



C.M.S.A.(MD).Nos.13 to 15 of 2021

2007, again she left and deserted the husband and went to her parental home. A male child was born on 02.10.2008. Again within two months the wife left home with the child went to her parental home. Another female child was born on 17.10.2010. But that was not intimated to her husband. He came to know that female child was born to the wife only when he went to her parental home to take her back. The wife was continuously pressurizing the husband not to help his parents and have contact with them. When that was refused, she started behaving in like manner. On 11.05.2011, the husband and their relatives went to her parental home to settle the issue and get back the wife. But, they were ill-treated, abused and the wife refused to go back. So the petition was filed seeking decree of divorce.

3.The wife filed a counter stating that only for 20 days both were living together and after that the husband went to Madhya Pradesh on duty. So wife was living in the matrimonial home and during that time she was ill-treated, harassed abused by the in-laws. In the month of November 2007 the husband demanded a two wheeler. After that she was taken to Madhya Pradesh and lived there happily. Again at the



C.M.S.A.(MD).Nos.13 to 15 of 2021

instigation of his parents, she was taken to her parental home, left there and went back to his duty, again they started living in the matrimonial home. Again the torture continued by the in-laws. They also snatched away her jewels. On 06.02.2008, the husband assaulted her breaking his index finger. For continuing treatment he asked her mother to take her to the parental home. In the meantime she became pregnant. When that was intimated to the husband it was not properly responded. Again she was taken to Madhya Pradesh and again took her parental home and on 11.08.2008 at about 3.45 a.m. she was left alone in the Madurai Railway Junction, the husband went back. Child was born on 10.10.2008. After a month only the husband visited her and their child. A panchayat was held and the husband agreed for the same and again took the child and wife to the Secunderabad. She became pregnant for second time in the month of January 2011. Living Secunderabad, up to 8 months of pregnancy. So it is denied that the birth of the second child was not known to the husband.

4. On 11.05.2011, a panchayat was arranged among the relatives to sort out the issue. At that time, the husband promised that he will take



C.M.S.A.(MD).Nos.13 to 15 of 2021

leave, come back and take the children and the wife, by returning the jewels. But, against the above said undertaking, he filed the petition seeking the divorce.

5.The wife filed H.M.O.P.No.2 of 2014 before the very same court under Section 9 of Hindu Marriage's Act seeking restitution of conjugal rights. The divorce petition was renumbered as H.M.O.P.No.15 of 2017 by Sub Court, Thirumangalam, by the order, dated 26.04.2017, granting decree of separation and the petition filed by wife was renumbered as H.M.O.P.No.14 of 2017 by the Sub Court, Thirumangalam and by the order, dated 26.04.2017 dismissed the application. Against which appeals filed before appellate court namely IV Additional District Judge, Madurai, in H.M.C.M.A.No.16 of 2017 by the husband, against the decree of separation. Similarly wife also filed H.M.C.M.A.No.12 of 2018 against the very same order. The wife again filed H.M.C.M.A.No.8 of 2018 against the order of dismissal passed by the trial Court in H.M.O.P.No.14 of 2017. All the three appeals were heard in common and common judgment was passed. The appellate court allowed the appeal filed by the wife against the judgment of separation and dismissed



C.M.S.A.(MD).Nos.13 to 15 of 2021

the petition filed by the husband seeking divorce. Simultaneously allowed the H.M.O.P.No.14 of 2017 ordering restitution of conjugal rights. Simultaneously H.M.C.M.A.No.12 of 2018 was allowed in part.

6. Against the common order, these civil miscellaneous second appeals are preferred by the husband in C.M.S.A.(MD).Nos.13 of 15 of 2018.

7. Heard both sides.

8. Before we go further into the discussion a mistake committed by the appellate Court must be placed on record. As stated above, the trial Court instead of granting decree of divorce granted, judicial separation. The husband filed appeal seeking complete order of divorce, instead of judicial separation. The appellate court dismissed the divorce petition filed by the husband. Against the same order the wife filed the appeal to set aside the order of judicial separation and to dismiss the divorce petition in entirety. By mistake allowed the appeal filed by the wife partly. Once the appellate court has found that the petition filed by the



C.M.S.A.(MD).Nos.13 to 15 of 2021

petition seeking divorce is liable to be dismissed, automatically the appeal filed by the wife ought to have been allowed in entirety and consequently, the appeal filed by the husband might have been dismissed. Because of that only the husband has filed two second appeals against the order of dismissing the divorce petition and another CMSA against the order passed in the petition filed by the wife seeking restitution of conjugal rights. But, the ultimate finding of the appellate court is that divorce petition filed by the husband is liable to be dismissed, since there is no ground was made out. With that we will go further into the discussion.

9.For better understanding the issue between the parties and dates and events are summarized in brief:

1.The date of marriage is 13.09.2007.

2.After 20 days, the husband went to Madhya Pradesh, Pachamadi, to attend his duty.

3.In November 2007 wife was taken to Pachamadi by the husband.

4.For two months they were living together in Pachamadi. Later wife returned the matrimonial home, according to the wife. But,



C.M.S.A.(MD).Nos.13 to 15 of 2021

according to the husband she went to her parental home.

WEB COPY

5. According to the wife in February 2008, the husband sent the wife to parental home for taking treatment. Again after some time wife went to matrimonial home.

6. Again on 11.08.2008, when wife was pregnant she was taken to her native place and left in the Madurai Junction itself. A child was born on 02.10.2008. A Panchayat was convened. Child and wife was taken to Secunderabad.

7. Wife became pregnant in January 2011. They live in Secunderabad for about 8 months. Female child was alleged to be born on 17.10.2010.

8. A panchayat was convened on 11.05.2011. According to the wife the husband promised to take her back, but failed.

9. Petition seeking divorce was filed before the Sub Court, Uthamapalayam on 23.09.2011.

These are the sequence of events, ofcourse there is some difference of opinion, regarding the events. We will discuss if in the later portion of the order.



C.M.S.A.(MD).Nos.13 to 15 of 2021

10. In the light of the above said sequence of events, now it has been established that in spite of difference of opinion between the husband and wife two children were born to them. One on 02.10.2008. Another female child on 17.10.2010. After few months from the date of birth of the child, petition was filed seeking decree of divorce. Now we see the reasons assigned by the husband for divorce.

11. The first reason is that the wife started compelling the husband to come to Vandapuli that is her parental Village and another condition is that husband would separate from his parents. Next allegation is that she left or deserted the matrimonial home and went to her parental home without any reason. The above said desertion occurred in November 2009. The next allegation is that neither the pregnancy nor the child birth was informed. So according to the husband, wife deserted the matrimonial home twice demanding disconnection of the parents.

12. Before we going into that allegation made in the petition, argument advanced by the appellant counsel has to be addressed first. According to the appellant, a clear allegation of extramarital relationship



C.M.S.A.(MD).Nos.13 to 15 of 2021

was made against the husband. He is referring to Ex.P9, copy of the complaint sent by the wife to the Higher Official of the husband. So according to him, when such unfounded allegation is made against the husband and that is enough for granting of decree of divorce. Now we will go into the finding of the trial court on that aspect. There is nothing but, subsequent event took place during the pendency of that petition. Paragraph 31 of the trial Court is related to the issue. In the complaint/petition, the wife stated that the husband is having extra marital relationship with some other lady. Only on that ground, a judicial separation was ordered by the trial Court. Now the appellate court is also of the opinion that in paragraph No.23, it is stated that there is no material with regard to the above said allegation and so that allegation need not be given any importance.

13.Ex.P9 is dated 01.07.2013. It is addressed to Commanding Officer, Military Hostel, Chennai. In response to the above said complaint, the Commanding Officer sent letter to the husband on 05.07.2013 for offering his remarks. That was replied by the husband. It was also stated by the appellate court in the order. Apart from the above



C.M.S.A.(MD).Nos.13 to 15 of 2021

said allegation it is stated that she left the husband. But, the husband is not willing, because is living with some other lady. Maintenance amount is sought for in the complaint and before that in the Village there was settlement between the parties. It is dated 27.02.2013. There was a compromise reached between the parties against the compliant given by the wife against the husband and others stating that they demand dowry. In the compromise, both the parties agreed that they will abide by the order to be passed by the Sub Court, Thirumangalam. They exchanged their jewels. So the complaint given by the wife was settled between them. But, so far Ex.P9 is concerned, whether a stray sentence in the complaint is sufficient enough to say that the unfounded allegation made against the husband causing mental cruelty and that must now in result of divorce.

14.As mentioned above, the appellate Court has given a thought of full consideration in the above said allegation and stated that all along, only the husband was not keeping his part of promise in resolution to the matrimonial affairs. Even a wrong statement before the Court that the birth of second child was not brought to his notice. But, in fact along



C.M.S.A.(MD).Nos.13 to 15 of 2021

with the wife only he visited the father in Madurai. Having failed in his duty, according to the appellate Court, a stray sentence in the complaint need not be given any importance. No doubt that the above said averment or allegation is unfounded. But, still the wife says that she wants to live with her husband since they got two children.

15.Now we will go to the main allegation made in the petition. As mentioned in the preamble portion, it is the allegation on the side of the husband that the wife without knowing her responsibility as dutiful wife, used to desert him frequently and two such occasions are mentioned in the petitions. But, those allegations or averments as the case may be unfounded, since the husband and wife were living together. So the allegation that frequently, the wife deserted the husband is not established. That second allegation is that the birth of the second child was not informed to him. But, as stated above, both were visiting the father of the wife in the hospital, after the above said alleged desertion. Similarly, the allegation that there was a frequent compulsion on the side of wife to shift the residence to Vandapuli, this also highly unbelievable, since the husband is working in Army, they cannot living together in the



C.M.S.A.(MD).Nos.13 to 15 of 2021

wife's Village, where ever the husband is transferred wife will follow. So this allegation is also unfounded.

16. Even reading of the evidence of the husband during the course of cross examination, does not inspire any confidence at all. He even goes to the extent of dis knowing the knowledge about the birth of his child, second child. For what reasons he seeks divorce is also not clearly established by him. Now, we will go to the evidence of RW1. During the course of cross examination, it was suggested to her that after the birth of the second child the husband came and visited the child. At that time, he wanted to take with him. But, the wife refused stating that a separate stay must be arranged. So second child was born on 17.10.2010, probably according to the husband, after a month, when he came and visited the child, he wanted them to take back. At that time, the wife refused. Later, on 11.05.2011, he also gave a petition for joint living. During the Panchayat, the husband compromised to take her back after 6 months. So the cross examination made by the husband shows that he was also willing to take the wife and child along with him till 11.05.2011. But he presented the petition seeking divorce on 26.09.2011. So it appears that



C.M.S.A.(MD).Nos.13 to 15 of 2021

without taking any further steps for taking the wife and child along with him, he hurriedly filed the petition. So the ground of cruelty and desertion made by the husband is not established on record.

17. Now we will go to the finding of the trial Court on the unfounded allegation of adultery and explanation given by the wife stating that the above said allegation was made by her in the complaint on the information given by one Balasubramanian, who is the relative of the husband. As mentioned above, the date of Ex.P9 complaint is 01.07.2013. Only on that ground, the trial Court, thought it fit to grant judicial separation. Authorities are against making such unfounded allegations against the spouse, treating it a mental cruelty. No doubt that the husband, namely, the appellant herein was at fault, Ex.P9 came into existence. As mentioned above, for no reason the petition was filed by the husband seeking divorce. But, the wife in an attempt to resolve the issue has taken another unfounded allegation. So it is seen that it is her own creation. She ought to have mentioned clearly in the complaint that she have no personal knowledge about the extramarital intimacy. It was informed to her by Balasubramanian. Had it been done so, we would



C.M.S.A.(MD).Nos.13 to 15 of 2021

have rendered a finding that only a genuine complaint was made by the wife without verifying the ground facts, it appears that such a complaint has been given to the higher authorities. The higher authorities also sought explanation from the appellant herein over that this allegation. What happened to the enquiry is not known. But, now it is admitted that a portion of the salary of the appellant was ordered to be recovered towards maintenance. Now they got a male child. Atleast in the interest of the child both the appellant and the respondent must sort out their differences. But it appears that both are having their own ideas, not coming forward to make any settlement for reunion. Only the time will tell the parties to the future course of action to be adopted to resolve the issue. Only with that idea in mind, it appears that the trial Court thought it fit to order judicial separation. I find absolutely nothing to interfere with the above said order.

18. But, the appellate court thought otherwise and kept aside the above said allegation of extramarital affair stating that only it is a minor issue. But as mentioned above, the authorities on that point is now well settled. So we cannot keep aside the above said allegation on any ground.



C.M.S.A.(MD).Nos.13 to 15 of 2021

As mentioned above, it is own invite of the wife. She must come down to forgot the past events and come forward atleast in the interest of the child in future.

19. With this I am of the considered view that the order passed by the trial Court was interfered by the appellate Court without sufficient reason. So the orders passed by the appellate Court in H.M.C.M.A.Nos. 16 of 2017, 8/2018 & 12 of 2018 are hereby set aside. The order of judicial separation passed by the trial Court in H.M.O.P.No.15 of 2017, is restored and the petition filed by the wife seeking restitution of conjugal rights is dismissed and the order passed in H.M.O.P.No.14 of 2017 stands confirmed. Accordingly, these appeals are allowed. No costs.

21.10.2024

Index : Yes / No
Internet : Yes / No
TM



C.M.S.A.(MD).Nos.13 to 15 of 2021

To

WEB COPY

- 1.The IV Additional District Judge, Madurai.
- 2.The Sub Judge, Thirumangalam.
- 3.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.S.A.(MD).Nos.13 to 15 of 2021

G.ILANGO VAN,J.

TM

C.M.S.A.(MD).Nos.13 to 15 of 2021

21.10.2024