



C.M.S.A.(MD)No.19 of 2020

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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.19 of 2020

and

C.M.P.(MD)No.16515 of 2023

K.Senthilvelan

... Appellant / Appellant / Petitioner

Vs.

Nagarathinam

... Respondent / Respondent/ Respondent

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 12.12.2019 in H.M.C.A.No.25 of 2017 on the file of the V Additional District Judge, Madurai confirming the Judgment and Degree of the Trial Court dated 07.07.2017 passed in H.M.O.P.No.430 of 2010 on the file of III Additional Sub Judge, Madurai.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
For Mr.T.Cibi Chakraborty



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For Respondent : Mr.M.Tamilmani

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JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred against the Judgement and Decree of the Lower Appellate Court dated 12.12.2019 in H.M.C.A. No. 25 of 2017 on the file of the V Additional District Judge, Madurai confirming the Judgment and Decree of the Trial Court dated 07.07.2017 passed in H.M.O.P No. 434 of 2010 on the file of III Additional Sub Judge, Madurai.

2. The appellant is the husband herein and the respondent is the wife. The appellant/ herein filed a petition under Section 13 (1) (ia) and (1) (ib) of Hindu Marriage Act, 1955, in H.M.O.P. No. 434 of 2010 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.



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4. The case of the .Petitioner (Husband's):

i. Marriage between the petitioner and respondent was solemnised as per Hindu rites and customs on 20.01.2008 at the petitioner's home in Solankuruni. The petitioner has spent around 1 Lakh Rupees for the said wedding. Petitioner is a graduate holding M.Sc., B.Ed., degree. He works as a teacher at a Government Middle School in Nedumadurai. At the time of engagement, the petitioner gifted the respondent a sum of cash amounting to Rs. 1001/- and a 2-gram gold ring. Following marriage, the petitioner further bestowed upon the respondent 5 sovereigns of nuptial chain and a mobile phone valued at Rs. 6,500/-. Likewise, the respondent's parents gifted the petitioner a 2 sovereigns gold chain, 2 sovereigns wrist chain, and an additional 35 sovereigns gold jewellery, along with an almirah, cot, and other related items as part of dowry.

ii. After the wedding, the petitioner and respondent led a happy matrimonial life in a joint family setup for one month. The respondent conceived, and without any reason, she illegally aborted the child without informing the petitioner. When the petitioner questioned her about it, to his shock and dismay, the respondent callously admitted that the child was not that of the petitioner, expressing no shame or guilt.



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iii. After two months of marriage, the respondent began speaking to and treating the petitioner and his parents with disrespect. She frequently woke up late in the morning and never contributed to household chores, leaving all the work to the petitioner's mother. In addition, without the knowledge of the petitioner or his mother, she would frequently speak to a doctor on the phone. When questioned about it, she revealed that she was supposed to marry the doctor first and had been in contact with him ever since. However, the doctor suddenly passed away, and she mourned his death as if he were her own husband's death. She refused to cooperate with the petitioner in any way. Moreover, the petitioner discovered that she was communicating with other men through the phone he had gifted to her. When confronted, she broke the phone and threw it at the petitioner. Despite enduring this mental cruelty, the petitioner tolerated it for the sake of his family's dignity.

iv. The respondent's parents, sister, and everyone else visited her at home to offer advice, yet there was no change in her behavior. When questioned, she would threaten to falsely accuse the petitioner and his parents of dowry demands, promising to have them arrested and shamed.



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v. On 15.05.2008, the respondent took all her jewels and departed for her maternal home. When the petitioner called her back, she informed him that she was pregnant and had gone to her maternal home to undergo an abortion. Despite the petitioner's pleas for her to return, she remained steadfast in her decision. On 08.06.2008, the petitioner, along with his parents, travelled to Kadavur and stayed at Thirumalaisamy's home. They then contacted the respondent, her parents, and relatives in an attempt to negotiate a compromise. However, the respondent's father and brother addressed the petitioner's parents disrespectfully, leading to a scuffle and chaos.

vi. In 09.06.2008, the petitioner went to lodge a complaint before the Superintendent of Police, but was advised to file it at the All-Women Police Station. Subsequently, on 09.06.2008, the petitioner lodged a complaint at the All-Women Police Station, leading to an investigation on 11.06.2008. Following the investigation, the Sub-Inspector advised the respondent, prompting the petitioner to agree to take her back. However, the respondent imposed conditions, demanding that the petitioner leave his parents and provide a written undertaking severing ties with them. She



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refused to return to live with the petitioner unless these conditions were met. To comply, the petitioner established a nuclear family at Vilayankulam. When questioned by the investigating officer, she claimed to have her jewels and provided a written undertaking to that effect. Furthermore, all the dowry items were taken to the new home in Vilayankulam, where they set up their nuclear family.

vii. The respondent falsely claimed to possess a B.Com. degree when she had only completed her +2 education. Deceiving the petitioner, she entered into marriage under false pretenses. From 09.07.2008, they resided in a nuclear family setup, where the situation remained unchanged. The respondent consistently failed to treat the petitioner with respect and neglected her basic duties as a wife. The respondent would make calls from a 1-rupee coin booth near their home and would be on call for more than 20 minutes, if questioned, she would say it was her sister whom she was speaking to. But, when the petitioner asked about the same to her sister, she would say she never spoke with her. Often, she would depart for Madurai at 10 A.M., and return at 8 P.M., and react with verbal abuse when questioned about her activities. In instances where the petitioner requested



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food, she responded with disdainful remarks. In this difficult situation, the respondent got pregnant and left for her maternal home on 19.11.2008 for delivery. Despite having access to necessary facilities, respondent did not opt to do baby shower as per family customs with an intention to shame the petitioner, instead, she left for her maternal home on her own accord, on 27.11.2008 she gave birth to a baby boy. Despite numerous pleas from the petitioner, the respondent consistently expressed her unwillingness to reconcile. Her actions have subjected the petitioner to various forms of abuse, leaving him with no choice but to reside with his parents.

5. The case of the respondent (Wife):

i. Marriage between the petitioner and respondent was solemnised as per Hindu rites and customs on 20.01.2008 at the petitioner's home in Solankuruni. The expenses incurred for the marriage were shared jointly by the petitioner's family and the respondent's family.

ii. The respondent dismisses the petitioner's allegations as mere products of his imagination, labelling them as concocted tales devoid of truth. These assertions are firmly denied by the respondent as false, frivolous, fictitious, and fraudulent. Furthermore, the respondent contends



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that the discord between the petitioner and herself stemmed from his illicit relationship with another woman. Despite this, the respondent continues to reside in the matrimonial home, which is also the petitioner's residence. However, the petitioner has erroneously and intentionally listed the address of the respondent's mother as her own in the petition's cause title. The respondent asserts that she has made numerous attempts to reconcile with the petitioner amicably, but he remains resistant due to his involvement with another woman.

6. The learned Trial Court had framed one issue. Following which, three witnesses including the petitioner were examined as P.W-1 to P.W-3 and Ex.P-1 to Ex.P-9 were marked on the side of the petitioner. The respondent was examined as R.W-1 and Ex.R-1 to Ex.R-2 were marked on the side of the respondent.

7. The Trial Court noted a major contradiction in the petitioner's allegation regarding the death of a doctor with whom the respondent was allegedly in contact. The petitioner claimed the doctor died within two months of marriage, but evidence suggested otherwise. The trial court



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found this inconsistency and disbelieved the evidence accordingly.

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8. The petitioner accused the respondent of aborting a pregnancy and denying paternity. However, the trial court reasoned that if the abortion was carried out against the respondent's will, it would indicate reluctance towards further pregnancies, which contradicts the subsequent normal delivery within ten months. Additionally, the court found the evidence regarding fertility treatment inconclusive, as there was no direct proof linking it to the alleged pregnancy.

9. The Trial Court acknowledged the complaint made by the respondent against the petitioner for alleged illegal intimacy with his brother's wife. However, it noted that the complaint did not involve dowry harassment and suggested advising the parties instead of pursuing legal action. The court inferred that the respondent did not insist on dowry harassment charges. The trial Court concluded that the petitioner during his cross-examination admitted that he has made efforts many times to live with the respondent/wife after the birth of the child, if the respondent/wife has inflicted cruelty to the extent that the petitioner/husband could not live



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with her anymore, then he would have not made such efforts to live with her. The trial court observed that, hence, it is clear that the marriage was not irretrievably broken, and the court found no valid grounds or substantial evidence to grant the petitioner/petitioner/husband the relief of divorce. Consequently, the Trail Court found the petitioner's claims for divorce unproven and dismissed the petition accordingly. Assailing the same, the petitioner/husband preferred an appeal in C.M.A.No.25 of 2017 before the V Addl. District Judge, Madurai.

10. The learned First Appellate Court framed one issue. And observed that the trial court had appropriately evaluated the credibility of witnesses and evidence, confirming the trial court's observation and as per the admission of the PW2 during the cross-examination despite residing in a portion of the property belonging to the petitioner/husband, the respondent/wife lacked essential amenities like electricity, which she obtained from her aunt. This indicated her willingness to live with the petitioner despite the difficulties faced.



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11.The First Appellate Court dismissed the petitioner's argument regarding the respondent's failure to file for restitution of conjugal rights, stating that this alone is not sufficient grounds for challenging the trial court's verdict. Additionally, the court highlighted that the petitioner himself as witness PW1 admitted that the respondent was living in a portion of the petitioner's/husband's property, suggesting her willingness to stay with him. Consequently, the appellate court deemed the petitioner's/husband's reasoning for challenging the trial court's decision unacceptable, emphasizing that the trial court had appropriately evaluated the credibility of witnesses and evidence. Hence, the First Appellate Court found no irregularity in the Trial Court's judgment. Consequently, the First Appellate Court dismissed the appeal in C.M.A. No. 25 of 2017.

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

13. The substantial questions of law framed in this CMSA are as follows:

i. Whether the first appellate court is correct in not framing various



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points for determination which is contemplated under Order 41 Rule 31 of CPC

ii. *Whether the Courts below are correct in coming to the conclusion that the respondent had not committed any mental cruelty when the complaints admittedly initiated by the respondent were found to be false by the competent authorities.?*

iii. *Whether the courts below are correct in not giving any specific finding about the veracity of the evidence of DWI when admittedly she is an utter liar on the basis of the Exhibit P8 (certified copy of the evidence) is quite contra to the true fact that she is employed and also in the light of Exhibit P1 that her educational qualification is patently false.*

14. The Hon'ble Apex Court in the case of ***Vishwanath Agrawal .Vs. Sarla Vishwanath Agraval 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



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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.

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.”

15. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the learned Trial Court Madurai and the learned District Court, Madurai and holding that the decisions of both the lower Courts are fully supported by the evidence, I am not inclined to



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interfere with the Judgment and decree passed by the learned District Judge in C.M.A.No.25 of 2017in H.M.O.P.No.434 of 2010.

16. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.06.2024

Index : Yes / No

Internet : Yes

Sml

To

1. The III Additional Sub Judge,
Madurai.
- 2.The V Additional District Judge,
Madurai.

Copy to

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



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L.VICTORIA GOWRI, J.,

Sml

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