



C.M.S.A.(MD)No.26 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.12.2023

PRONOUNCED ON : 25.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.26 of 2020

Dheenadhayalan

... Appellant / Appellant / Petitioner

Vs.

K.Pandiselvi

... Respondent / Respondent/ Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC r/w order 42 of CPC, to set aside the Judgment and decree dated 15.06.2020 passed in H.M.C.M.A.No.6 of 2017 on the file of Additional District and Sessions Judge, Sivagangai by confirming the Judgment and decree dated 25.10.2017 in H.M.O.P.No.43 of 2013 on the file of the Subordinate Court, Devakottai.

For Appellant : Mr.H.Lakshmi Shankar

For Respondent : Mr.Shaji Chellan

For Mr.S.M.Mohan Gandhi



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JUDGMENT

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This Civil Miscellaneous Second Appeal has been preferred against the Judgment and decree dated 15.06.2020 passed in H.M.C.M.A.No.6 of 2017 on the file of Additional District and Sessions Judge, Sivagangai by confirming the Judgment and decree dated 25.10.2017 in H.M.O.P.No.43 of 2013 on the file of the Subordinate Court, Devakottai.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The petitioner is the husband and the respondent is the wife. The petitioner / husband filed a petition under Section 13 (1) (ia), (ib) of Hindu Marriage Act, 1955, seeking to dissolve the marriage between the petitioner / husband and the respondent / wife by decree of divorce on the ground of cruelty.

4. The case of the petitioner:

(i) According to the petitioner, the marriage between the petitioner



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and the respondent was solemnized on 08.06.2011, as per the Hindu Aadhi Dravida Community rites and customs at Kundrakudi Shanmuganathan Swamy Kovil, Thirupathoor Taluk, Kundrakudi. After the marriage, the petitioner and the respondent commenced their matrimonial life in their matrimonial home at Karaikudi Navarathna Nagar, Pavalam Street, Door No.902 with the parents of the petitioner. At the time of marriage, the respondent's parents presented 20 sovereigns of Gold jewelry to the respondent / wife and 5 sovereign chain, wrist chain and ring were given to the petitioner. On the side of the petitioner, 8 sovereign Thali Chain and 1 sovereign gold ring were given to the respondent. The petitioner was working as clerk in State Bank of India. The respondent was working as part-time lecturer in Maths Department at Arumugampillai Sethaiammal College, Thirupathoor. The father of the petitioner was also working in State Bank of India, Devakottai. Whenever the mother of the petitioner had gone out for purchase, she advised the respondent to lock the door for safety purpose. However, the respondent never obliged her words. The respondent quarrelled with the petitioner and compelled him to come to Thulavoor which is the place of respondent for conducting family life. But the petitioner was not willing to reside in mother-in-law's house.



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(ii) The petitioner further submitted in his divorce petition that the respondent had superiority complex as she had studied post graduation in Mathematics and hence she used to ignore and insult the petitioner. At this juncture, baby shower was conducted on 23.05.2012 and she went to her parents house at Thulavoor. Whenever the petitioner visited the respondent, she compelled the petitioner to reside at Thulavoor. Thereafter, a girl child was born on 05.06.2012. Though it was not informed to the petitioner and his parents, after knowing the news of child birth through the friends, the petitioner and his parents went to the hospital to see the newly born baby. But, all of them were insulted, likewise the respondent had not informed the naming ceremony of the child. Therefore, the petitioner suffered a lot and he was subjected to mental agony. Though, mediation was initiated several times by well wishers the respondent was not willing to reside with the petitioner. Hence, a legal notice was issued by the petitioner seeking restitution of conjugal rights. However, the respondent replied the same with false allegations against the petitioner. Thereafter, the petitioner gave a complaint before the All Women Police Station, Karaikudi seeking restitution with the respondent. During the enquiry, the respondent agreed to live with the petitioner. Accordingly, both of them started residing separately in the upstairs of petitioner's



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house. However, once again the respondent lodged a false complaint, on the basis of which police conducted an enquiry and advised the respondent to live with the petitioner. The respondent has made false allegations against the petitioner, abused and insulted him at All Women Police Station and the respondent categorically said that she was not willing to live with the petitioner. Without any rhyme or reason, the respondent wantonly caused mental torture, insulted and forced the petitioner to live separately. However, the petitioner made proper attempts for reconciliation, arranged separate living at his upstairs even by getting a separate gas connection. But all his efforts went in vain. Hence, this petition for divorce has been filed by the petitioner seeking to dissolve the marriage between the petitioner and the respondent which was held on 08.06.2011.

5. The case of the respondent:

(i) The respondent had filed a counter refuting each and every allegation put forth by the petitioner in his divorce petition. Admitting that the marriage between the petitioner and the respondent was held on 08.06.2011 and that the petitioner was working as clerk in State Bank of India, the respondent further submitted that she worked as lecturer before marriage at Sethaiammal College, Thirupathoor. However, after the



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marriage as per the request of the petitioner, she left the job and she had been doing her duty as wife towards the petitioner. The respondent stated that the mother of the petitioner locked the door from outside, whenever the respondent was inside the home. Aggrieved by that, the respondent compelled the petitioner for separate living at Thulavoor. According to the respondent, the birth of girl child was informed to the petitioner through the sister of the respondent. But the petitioner's mother insulted the respondent for having delivered a girl baby and also abused the sister of the respondent. Thereafter, the petitioner came to hospital, went to the extent of snatching her thali and attempted to assault the respondent with iron rod which was kept in the hospital for fixing glucose bottle. The petitioner also abused the parents of the respondent and assaulted them with stone. The respondent denied the petitioner's contentions of initiation of conciliations. However, the respondent is always willing to reside with petitioner and she never refused to live with the petitioner. The petitioner and his parents only in order to suppress their wrong doings preferred false petition before All Women Police Station, Karaikudi. During the enquiry the petitioner was advised to take back the respondent. When the respondent went to the petitioner's house along with child, the petitioner and his parents harassed the respondent to bring cash and jewels. The



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petitioner was so adamant that the respondent satisfy all the demands of his parents. Thereafter, the respondent lived with the petitioner along with their child in the upstairs.

(ii) At this juncture the respondent was prohibited to talk with her parents and the demand for jewels and cash increased. The petitioner refused to give her jewels. Hence, on 19.01.2013 at night 9.00 p.m. the petitioner and his parents quarreled with the respondent and had threatened the respondent to remove the thali chain. The respondent told that she would bring her elders for conducting panchayat. However, the petitioner and his brother pulled the hairs of the respondent, pushed her outside the room and locked. On the next day morning the petitioner, his parents and his brother threatened to kill the respondent and it was informed to All women police station by the respondent. Thereafter, the police came and the respondent was brought to her parents home. Left with no other option, the petitioner went to her parents home and started living separately. However, she was not ready for a divorce. Hence, she sought for dismissal of the petition seeking divorce.



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6. The learned Trial Court had framed one issue. Following which, the petitioner was examined as P.W-1 and Ex.P-1 to Ex.P-8 were marked on the side of the petitioner. The respondent was examined as R.W-1 and no document was marked on the side of the respondent.

7. On the basis of the evidence and the arguments submitted by the respective parties, the learned Trial Court proceeded to observe that the petitioner and the respondent are well educated. At the time of marriage both of them worked in a decent job, however, after the marriage the respondent has left the job. Observing the fact that for the welfare of the family life, the respondent left the job and in such circumstances there was no necessity to keep the respondent inside the house and locked outside. This fact was stated by the petitioner in para 4 of the HMOP petition. However, it was stated as for the purpose of safety only, it was done. The learned Trial Court recorded the fact that the respondent is not a child, she is a married lady and she was a lecturer in the college. Hence, she knew how to protect herself when she was in the house. Therefore, the learned Trial Court proceeded to conclude that keeping the respondent inside the home and locking the house outside was not a fair and genuine deed. It was further observed that the demand of separate living was not cruelty.



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Further, it was concluded that the petitioner alleged that the petitioner and his parents were insulted and abused in the hospital when they have gone to see the baby, however, the petitioner failed to prove the same with sufficient documentary evidence and except self serving evidence of petitioner as PW.1, there is no other corroboration.

8. It was observed that the petitioner alleged that the respondent had given false complaint and hence the relationship between the parties got deteriorated. But, there was no proof for filing false complaint against the petitioner and his family. Of course at the time of argument the memo was filed with deposition in C.C. 270/13 on the file of Judicial Magistrate Court, Karaikudi. However, there was no pleadings to that effect. The learned Trial Court further proceeded to conclude that the petitioner stated that for the purpose of living together panchayat was held. But no one was examined to prove the conduct of panchayat. The learned Trial Court further observed that the respondent is having girl baby and hence, it was the bounden duty of every lovable husband to live with the wife at least for the sake of their lovable girl baby. Therefore, the learned Trial Court proceeded to conclude that the petitioner failed to prove mental cruelty. Accordingly, the learned Trial Court dismissed the said HMOP.



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9. As against the same, the petitioner / husband preferred a Hindu Marriage Civil Miscellaneous Appeal in H.M.C.M.A.No.6 of 2017 before the Additional District and Sessions Judge, Sivagangai. The learned First Appellate Court framed two issues. As far as the issue pertaining to the grant of divorce to the husband is concerned, regarding the argument of the petitioner / husband's Counsel that the respondent had inflicted cruelty on the petitioner / husband, the learned First Appellate Court proceeded to observe that the respondent did not listen to the advice of the petitioner's mother, however, it has been alleged by the respondent that her mother in law would lock the door from outside out of suspicion. The said fact has been brought to the record of both the Trial Court and the First Appellate Court. The First Appellate Court categorically recording the fact that the respondent / wife being a grown up women and a lecturer pretty well ought to have known to take care of herself and not listening the advice of the petitioner's mother would not amount to cruelty. The learned First Appellate Court negated the arguments substantiated by the petitioner / husband that the respondent / wife inflicted mental abuses and cruelty as against the petitioner / husband and held that the petitioner had miserably failed to prove his allegations of cruelty. That apart, the petitioner claim that the respondent would insist the petitioner to come down to her home



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to lead their matrimonial life. The learned First Appellate Court categorically concluded that it would not amount to cruelty.

10. The learned First Appellate Court further observed that regarding the skirmish that took place on 05.06.2012, the petitioner and his family went to visit the new born baby, they were roughed up, beaten and badly abused by the respondent, however, the petitioner failed to prove the same with appropriate evidence. Hence, the learned First Appellate Court dismissed the said Hindu Marriage Civil Miscellaneous Appeal. Challenging the same, the present Civil Miscellaneous Second Appeal came to be filed.

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

“(i) Is the approach of courts below deciding the case by completely ignoring and overlooking the unsubstantiated and grave allegations by the respondent against the appellant and his family members in the counter statement, reply notice and in the oral evidence, that are by themselves cruelty, sustainable in law?”



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2. *Are the courts below justified in concluding that the complaint by the respondent against appellant and his family members, proceedings in C.C.No.270 of 2013 and her conduct of demanding separate home, not informing the birth of the child and performing naming ceremony and other rituals on her own, independently or cumulatively, does not amount to mental cruelty on the appellant?*

3. *Whether the conclusion of Courts below that respondent was ill treated by locking her inside the house and was forced to leave her job, sustainable in law being not based on the materials on record and whether the dismissal of the divorce application is justifiable on those grounds?*

4. *Are not false accusations regarding demand of dowry, beating her and locking her up, threatening to kill her by the respondent against her in laws, amount to mental cruelty?"*

12. This is the case where the petitioner / husband sought for divorce on the grounds of cruelty on the basis of the evidence and documents produced by the respective parties. Both the Trial Court and the First Appellate Court have concurrently found both the H.M.O.P.No.43 of 2013



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and H.M.C.M.A.No.6 of 2017, unfit for allowing, for the reason that the petitioner / husband miserably failed to prove the allegations of mental cruelty as inflicted on him by the respondent / wife. The Hon'ble Apex Court in the case of *Vishwanath Agrawal .Vs. Sarla Vishwanath Agarwal reported in (2012) 7 SCC 288* has dealt with a case of concurrent finding 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.

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



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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.”

13. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the fact and findings as recorded by the learned Trial Court and the learned Additional District and Sessions Judge, Sivagangai and the reasoning therein, holding that the decisions of both the lower Courts are fully supported by the evidence, I am not inclined to interfere with the Judgment and decree passed by the learned Additional District and Sessions Judge, Sivagangai in H.M.C.M.A.No.6 of 2017 and the learned Subordinate Judge, Devakottai in H.M.O.P.No.43 of 2013.

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

25.03.2024

NCC : Yes / No
Index : Yes / No



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Internet : Yes
Sml

To

- 1.The Additional District and Sessions Judge,
Sivagangai.
- 2.The Subordinate Judge,
Devakottai.

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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