



C.M.A(MD)No.356 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.356 of 2014

T.V.Kumar

... Appellant/Petitioner

Vs.

Chandrakantha Packiamani

... Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Order XLI, Rule 1 of CPC and r/w Section 55 of Divorce Act, 1869, to call for the records pertaining to the D.O.P.No.238 of 2011 on the file of learned Principal District Judge, Thoothukudi District, dated 10.12.2013 and set aside the same and allow this appeal and pass an order of divorce dissolving the marriage between the appellant and respondent performed on 25.11.1984 at St.Jacob Church, Toove Puram, Thoothukudi.

For Appellant : Mr.A.Robinson

For Respondent : Mr.S.Kadarkarai



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in D.O.P.No.238 of 2011 on the file of the Principal District Judge, Thoothukudi, dated 10.12.2013, wherein the appellant herein has filed the petition under Section 10 (i) (ix) of the Divorce Act, 1869, as against his wife (i.e.,) respondent for dissolving their marriage solemnized on 28.11.1984 on the ground of desertion. The Trial Court has dismissed the petition and thereby, the present Civil Miscellaneous Appeal has been filed by the petitioner.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the petition averments are as follows:

The marriage between the petitioner and the respondent was solemnized on 28.11.1984 as per Christian Procedure. The petitioner was partially deaf and thereby, the respondent neglected the petitioner. The respondent very often insulted the petitioner by saying that he is deaf. The respondent not even served the food to the petitioner. Since the respondent



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was working in a high position, she not even given respect to the petitioner. Due to wedlock between the petitioner and the respondent, on 07.11.1985, male child was born and thereafter, on 26.06.1990, one female child also born to them. On 01.06.2007, without any valid reason, the respondent left the matrimonial home along with her children and thereafter, did not return to the petitioner's house. When the petitioner convened Panchayat, she refused to live with him. Therefore, he filed this petition seeking divorce.

4. The brief averments of the counter filed by the respondent are as follows:

The marriage between the parties and the children born to them are admitted. The averments that the respondent very often insulted the petitioner without giving respect are all denied. The averments that without any valid reason, the respondent left the matrimonial home along with her children is also denied. In fact, the respondent was act as a dutiful wife to the petitioner and never insulted him. The salary of the respondent also given to the petitioner. Both of them have purchased the house in P & T Colony, Thoothukudi and lived happily. The petitioner is having a habit



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of consuming alcohol and thereby, he used to insult and harass the respondent. Since the petitioner was working in the Railway Department, he used to come to the home only thrice in a week. While the facts are being so, the daughter of the respondent fell in love with the neighbor and thereby, matter went up to police station. However, they got married as against the will of the parents. Thereafter, the petitioner having illicit intimacy with another lady and now, living with her. The petitioner only harass the respondent and the respondent tolerated all the acts of the petitioner. Now with the false averments, the present petition has been filed. Even now, the respondent is ready to live with the petitioner. Therefore, the petition is liable to be dismissed.

5. In order to prove the case of the petitioner, the petitioner has examined P.W.1 and marked Exhibit P.1 and on the side of the respondent, R.W.1 was examined and no documents were marked.

6. After analyzing the oral and documentary evidences adduced on either side, the Trial Court has dismissed the petition. As against the order passed by the Trial Court, the present Civil Miscellaneous Appeal has



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been filed by the petitioner / husband on various grounds.

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7. The learned Counsel appearing for the appellant would contend that the respondent is the wife of the appellant and the marriage took place in the year 1984 and thereafter, two children were born to them and the respondent very often insulted the petitioner due to his partial deaf. Further, the respondent without any valid reasons left the matrimonial home and neglected the petitioner and thereby, he filed the petition before the Trial Court. The Trial Court has failed to consider that the separation between the parties took long back and both the parties not interested for their reunion. The Trial Court has failed to consider that the respondent admitted that the petitioner (i.e.,) the appellant and the respondent living separately for long time. The respondent levelled allegation as against the appellant, that he is having illicit intimacy with another lady without any evidence and thereby, it amounts to cruelty. The appellant was examined as P.W.1 and he deposed about the cruelty and the desertion. But the Trial Court failed to consider the petitioner's side evidence and erroneously dismissed the petition. Thereby, the order passed by the Trial Court is liable to be set aside by allowing this appeal.



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8. The learned Counsel appearing for the respondent would contend that the appellant / petitioner has not proved the grounds for desertion and no valid grounds raised by the appellant to allow this appeal. The appellant / petitioner caused cruelty to the respondent / respondent, even now, the respondent is ready to live with the appellant / petitioner. The respondent is very affectionate towards appellant / petitioner and she acted as a dutiful wife to her husband and the petitioner / appellant failed to prove the grounds for divorce and thereby, the Trial Court has dismissed the petition. Therefore, there is no grounds to allow this appeal and the present appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appeal is liable to be allowed or not?

10. In this case, before the Trial Court, the appellant / petitioner herein has filed a petition for divorce on the ground of desertion and he



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was examined as P.W.1 and marked Exhibit P.1. On the side of the respondent, she herself examined as R.W.1 and no documents were marked. The main ground urged for divorce is desertion and the petitioner / appellant has failed to prove the alleged desertion with sufficient evidence. In this context, the Trial Court has discussed in paragraph No.9 that the petitioner has submitted that until 1995, the respondent wife used to leave the matrimonial home frequently and not pleaded in the petition that she continued the said alleged practice and leaving the matrimonial home frequently even after 1995 and the husband stated that the wife deserted him on and from 01.06.2007. However, he has not chosen to examine those relatives and elders, who are said to be the persons aware of the alleged desertion as witness on his side. The petitioner / appellant has stated in those proof affidavit that the respondent deserted him on and from 01.06.2006. The petitioner has given two different dates as the alleged date of desertion. Further, the Trial Court has discussed in the order that a police complaint was given and the police had advised the petitioner not to have any relationship with another lady and thereafter, he reside with his wife, namely, the respondent in their house for about one month in or about October 2010. Therefore, the contention



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of the appellant / petitioner that the wife deserted either from 01.06.2007 or from 01.06.2006 is false. Since the petition is filed only on the ground of desertion, the petitioner / appellant has not proved desertion. Though the respondent herself admitted that she is residing separately to attract the ground for desertion, the respondent has to prove the respondent neglected the appellant / petitioner and without any valid reason, she left from the matrimonial home of the appellant / petitioner. But in this case, it is an admitted fact that there was a police complaint given as against the appellant / petitioner in respect of having illicit intimacy with another lady and thereby, the respondent was residing separately. Therefore, the appellant / petitioner failed to prove that the respondent neglected the petitioner / appellant and residing without any valid reasons to attract the ground of desertion. Therefore, the Trial Court after elaborate discussion, dismissed the petition filed by the appellant / petitioner.

11. The learned Counsel appearing for the appellant has relied upon the following judgments:

- (i) ***I.Subramanian Vs. C.Kuppammal reported in 2011 (4) LW 428.***
- (ii) ***D.Nagappan Vs. T.Virgin Rani reported in 2009 (3) CTC 15.***



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12. On careful perusal of the above said judgments, it is clear that if one of the spouse levelled baseless allegation of adultery, it amounts to act of cruelty. But in the case on hand, the petition has been filed by the petitioner under Section 10 (i) (ix) of the Divorce Act (i.e.,) on the ground of desertion. Therefore, the above said case law will not apply to the facts of the present case.

13. In view of the above said discussion, this Court also is of the opinion that the order passed by the Trial Court is in order and no any perverse or infirmity found in the order of the Trial Court. Therefore, this Court has no warrant to interfere with the order of the Trial Court. Hence, the appeal has no merits and deserves to be dismissed. In the result, this Civil Miscellaneous Appeal stands dismissed. The order passed by the Trial Court in D.O.P.No.238 of 2011, dated 10.12.2013 on the file of the learned Principal District Judge, Thoothukudi is confirmed. There shall be no order as to costs.

08.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Principal District Judge,
Thoothukudi District.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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