



C.M.A.(MD)No.309 of 2022

children were born out of the wedlock. Differences of opinion arose between the appellant and the respondent. Hence, they have been living separately from 2017.

ii)The respondent filed a petition for divorce on the ground of cruelty stating that she was forced to go out of the matrimonial home on 29.09.2017 on account of various acts of cruelty committed by the appellant.

iii) The appellant filed a counter denying all the averments made in the divorce petition and stated that the appellant was always willing to live with the respondent and the allegations were false and invented for the purpose of the divorce petition.

iii) Therefore, the appellant filed a petition for restitution of conjugal rights in I.D.O.P.No.82 of 2008.

iv)The learned Additional District Judge (FTC), Tenkasi, after considering the pleadings and evidence on record, found that the respondent had established cruelty against the appellant and granted a decree of divorce. The said order is now under challenge.

v) The learned counsels on either side, on instructions, state that the petition filed by the appellant for restitution of conjugal rights came to be dismissed subsequently.

3.The learned counsel for the appellant submitted that the impugned



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judgment is contrary to the evidence on record and the learned Judge had ignored the evidence of the appellant, who had deposed that the allegations have been invented only for the purpose of divorce petition and that the learned Additional District Judge(FTC), Tenkasi, committed an error in not disposing of the divorce petition and the petition for restitution of conjugal rights simultaneously.

4. The learned counsel for the respondent per contra submitted that the evidence of P.W.1 and P.W.2 along with other evidence on record clearly established cruelty; that there was no necessity for joint trial of the petition for divorce and the petition for restitution of conjugal rights; and that there is no infirmity in the judgment impugned in this appeal and prayed for dismissal of the appeal.

5. Heard both sides and perused the materials available on record.

6. The point for consideration in the instant appeal is whether the respondent had established cruelty and was entitled to a decree of divorce.

7. The averments in the petition for divorce are that the appellant was an alcoholic; that he had insulted the respondent on several occasions; that



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he suspected her character; that he always forced her to resign her job; and that he had also assaulted her in public places on several occasions. The appellant had denied all the averments and stated that he respected the respondent and heeding to her request set up a separate matrimonial home; that he took care of the respondent as a dutiful husband; that he took care of the children very well; that the respondent, who was earning more than him, did not respect him; and in spite of that, he took best efforts to save the marriage and to take care of the respondent and the children.

8. The respondent had examined two witnesses, namely, herself and her father. The evidence disclose that the appellant, was removed from his job on disciplinary grounds; that he was in the habit of assaulting the respondent and indulging in lavish spending; and that he was also an alcoholic. Though the appellant had claimed that he had spent money for the educational expenses of the children, he did not produce any proof to substantiate the same. However, in the cross-examination the appellant had admitted that his signature is not found in the form for admission to the school of the two children; that he had taken jewels of the respondent for his business purposes, pledged them and obtained money; that he had changed several jobs; and that he was in the habit of coming alcoholic occasionally. The reading of the evidence adduced on the side of the appellant and the



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respondent would show that the respondent has established cruelty and hence the finding of the trial court cannot be faulted.

9.This Court also finds no infirmity in not conducting joint trial of the divorce petition and also the petition for restitution of conjugal rights. Therefore, this Court finds no reason to interfere with the judgment impugned in this appeal granting divorce to the respondent. Hence, the point is answered accordingly and the appeal is liable to be dismissed.

10. It is stated that the two children namely, the daughter and the son, who are now aged 17 years and 15 years respectively, are now in the custody of the respondent. Not only the appellant, as a father, is entitled to visitation, but the children are also entitled to love and affection of the father. The learned counsel for the respondent has no objection for the appellant visiting the children once in a month. Therefore, in the facts and circumstances of the case, this Court is of the view that it is just and necessary to permit the appellant to visit the children once in a month. It is agreed between the parties that the appellant can visit the children in the Farm House belonging to the respondent, which is situated in Sy.No.689, Parankundrapuram, Vaadiyur Panchayat, V.K.Pudur Taluk, Tenkasi District. The appellant is permitted to visit the children between 10.00 a.m to 1.00



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p.m on 3rd Sunday of every month at the farm house mentioned above.

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11. With the above direction, this appeal is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

30.09.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. Additional District Court (FTC), Tenkasi.

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.309 of 2022
and C.M.P(MD)No.2850 of 2022

30.09.2024