



C.M.S.A.(MD).No.29 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.12.2023

Delivered On : 19.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.29 of 2015

Gajapathy Sakthivel @ Sakthivel ... Appellant

Vs.

S.Vimal Roja ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 28 of Hindu Marriage Act r/w. Section 100 of CPC, to set aside the judgment and decree passed dated 27.02.2015 made in C.M.A.No.24 of 2014 on the file of the learned II Additional District and Sessions Judge, Thanjavur reversing the judgment and decree dated 24.06.2014 made in H.M.O.P.No.26 of 2012 on the file of the learned Additional Subordinate Judge, Thanjavur.

For Appellant	: Mr.P.Arun Jeyatram
For Respondent	: No Appearance



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JUDGMENT

The Civil Miscellaneous Second Appeal has been filed to set aside the judgment and decree passed in C.M.A.No.24 of 2014 on the file of the learned II Additional District and Sessions Judge, Thanjavur dated 27.02.2015, reversing the order passed in H.M.O.P.No.26 of 2012 on the file of the learned Additional Sub Judge, Thanjavur, dated 24.06.2014.

2.For the sake of convenience, the parties are addressed herein as per the rank in H.M.O.P.No.26 of 2012. The petitioner is the husband and the respondent is the wife.

3.The case of the petitioner in H.M.O.P.No.26 of 2014 is as follows:-

3.1.The marriage between the petitioner husband and the respondent wife was an arranged marriage. The marriage was held on 22.01.2007 at Arulmighu Dhandapani Swami Temple, at Palani in accordance with Hindu, customs and rites. The marriage between the petitioner husband and the respondent wife was arranged by his sister



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namely Ponmozhi and the respondent's maternal Aunt namely Latha. The respondent hailed from an economically deprived background. When the marriage talks were initiated between the petitioner's sister Ponmozhi and the respondent's Aunt Latha, it was informed to the petitioner's circle that the respondent cannot arrange marriage immediately without selling the immovable property of the respondent's father. On being communicated with such information, the petitioner's sister voluntarily mortgaged her jewelry and purchased 15 sovereign of gold jewelry from Manargudi Thamana Chettiyar Jewelry shop and handed over the same to the respondent's father along with the amount of Rs.1,00,000/- as hand loan for conducting their marriage. Only utilizing the said money and jewelry, the respondent was given in marriage to the petitioner at Palani Arulmighu Dhandapani Temple.

3.2.The petitioner with a magnanimous mind of giving life to a motherless girl, willingly married the petitioner with great hope of taking forward a beautiful matrimonial life with the respondent. But however, from the very first instance of matrimonial life, the respondent never respected the petitioner and she never got involved with her matrimonial



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life and led an unaffectionate life with the petitioner. When the petitioner enquired about her reluctant lifestyle, the respondent with disgusting expression informed him that she was given in marriage to him without her consent forcibly by her father. Since the petitioner is 12 years elder than the respondent and since he is a bald headed man, she is not able to cope up with the petitioner in unison to lead a happy marriage life. She always remained depressed and spent most of the time crying and expressing her dissent towards her marriage with the petitioner by openly conversing about her disagreement in marrying to the petitioner directly to the petitioner. However, the petitioner fearing that any such kind of information being leaked out of the family circle would bring great disharmony and shame to the family, he adjusted with the respondent and started living with her patiently and with great hope that in due course of time, the respondent would learn the nuances of marriage and he was leading a careful and patient life with the petitioner. However, nothing worked and finally on 28.08.2007, without informing the petitioner, the respondent left her shared matrimonial home. When the petitioner returned back home not being able to find out his wife, he searched for her in the houses of his relatives, friends and being not able to find her,



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he finally visited her maternal home he found her in her father's home.

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3.3.Despite the petitioner's request to come back, the respondent failed to come back to the shared matrimonial home even for the Thalai Deepavali I.e., first Deepavali after marriage. Despite the petitioner's invitation, the respondent did not turn up. While so, it was informed to the petitioner that the respondent was admitted in Surya Hospital as in patient. During Deepavali time, even without celebrating Deepavali, the petitioner visited the respondent and accompanied her in the hospital and took care of her and fully borne the medical expenditure of the respondent. But the respondent after discharge from the hospital straightly went to her maternal home and refused to come back. While so during May 2008, the respondent gave birth to a girl child namely Brindha. Even for the delivery, the petitioner took fully responsibility of all related expenses and took care of the mother and child. After delivery on being discharged, the petitioner took the mother and child to their shared matrimonial home. However after 15 days, the respondent who had left her shared matrimonial home along with her child to her maternal home failed to return back to her shared matrimonial home.



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Whenever the petitioner visited the respondent and called her back, the respondent humiliated the petitioner with filthy words pointing out his old age and refused to come back to his house.

3.4. While so, on 20.08.2009, the petitioner with Panchayathars I.e. with mediating elders and relatives went to her maternal home and initiated conciliation conversation for which the respondent categorically informed the elders that she is not inclined to live with an elderly person like the petitioner causing mental agony to the petitioner and her relatives. The petitioner's sister never ever demanded the money which was given as loan to the respondents father and other money which was given for the purchase of jewelry at the time of marriage. The respondent while she left her shared matrimonial home after delivery, took away all the jewelry, which was adorned to her at the time of marriage along with her. Under such circumstances, despite the petitioners reasonable efforts for re-conciliation, the respondents continuously intended to remain separated from the petitioner and the same has compelled the petitioner to file this petition for divorce on the ground of cruelty.



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4.The case of the respondent in H.M.O.P.No.26 of 2014 is as follows:-

The respondent has filed a counter in H.M.O.P.No.26 of 2012 refuting each and every allegation which has been put forth by the petitioner in his petition for divorce. The counter has been filed by the respondent admitting the factum of marriage with the petitioner and the child birth. All the other allegations of dissented marriage and indifferent attitude of the respondent as against the petitioner citing old age and bald head were vehemently objected and disagreed by the respondent in her counter. The allegation that the entire marriage between the petitioner and the respondent was sponsored by the petitioner's sister Ponmozhi is also denied by the respondent. That apart the respondent categorically pleaded that the petitioner and her sister along with her husband continuously demanded dowry and even during the time of marriage without being satisfied by the Srithana offered by the petitioner's father, they demanded an additional dowry of Rs.50,000/- and categorically declared that until and unless the said amount is given to the petitioner, the petitioner will not live with the respondent. The problem created by the petitioner's sister went to the extent of taking the issue to the elders



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and Panchayatars of the locality and only after that the demand for dowry at the end of the petitioner side came to an end. On 14.01.2012, such demand was once again made by the petitioner and his sister as the result of which, the same ended in a compelling situation that, the respondent left with no other option had to lodge a complaint before the All Women Police Station, Pattukottai, for which C.S.R.No.14 of 2012 was also issued to the respondent. The respondent is always willing to live with the petitioner along with her daughter and it is only the petitioner who has continuously failed to take care of the respondent and her daughter and because of financial constraints to maintain herself and her daughter, she is even compelled to file a maintenance case in M.C.No.21 of 2012 before the learned Judicial Magistrate, Orathanadu. Pleading that there is no basis for filing for divorce, the respondent prayed for dismissal of the petition for divorce.

5.The learned Trial Court has framed two issues. The petitioner and his sister Ponmozhi were examined as P.W.1 and P.W.2 before the learned Trial Court and Ex.P1 to Ex.P3 were marked on the side of the petitioners. The respondent and her father Sakthivel were examined as



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R.W.1 and R.W.2 and no document was marked on the side of the respondent. The learned Trial Court proceeded to decide the petition for divorce on the basis of the evidence deposed by both the parties, the documents marked through them and the arguments submitted by the counsel for both the parties. The learned Trial Court observed that from the evidence deposed by the petitioner and the respondent, it could be understood that the petitioner and the respondent are living separately from the year 2008 for the past six years before the date of filing of the petition for divorce. The reason put forth by the respondent for the separation is the demand of dowry of Rs.50,000/-, by the petitioner and his family.

6.That apart the petitioner continuously insisted that the respondent hailed from a family with poor economical background. It is only because of his family support, the entire marriage was borne by his sister and the marriage was conducted between the petitioner and the respondent. However, at the time of cross examination, the respondent herself failed to depose that the separation was only because of demand of Rs.50,000/- as dowry. However, to a specific question as to the



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demand of dowry which was put by the petitioner's counsel to the respondent she has admitted that there was no demand for dowry, though the respondent's father deposed that there was a demand of Rs.50,000/-. The contradiction between the respondent and her father's evidence would reveal that there was no such dowry demand from the side of the petitioner. However, while analyzing as to the reason for the separation between the petitioner and the respondent though the petitioner has contended that his old age and his bald has been the greatest problem of the respondent to get separated from him, it can be understood from the evidence deposed by the petitioner, the respondent and her father that before marriage, the petitioner and the respondent were not allowed to meet each other and the marriage was held only on the compulsion of the respondent's father. However, her father deposed that he is unaware of the problem which is subsisting between his daughter and his son in law.

7.Hence, the learned Trial Court proceeded to observe that since the respondent was not willing to live with the petitioner and did not take steps to live with him, instead she took steps to file a maintenance case seeking maintenance and only because of her reluctance to live with the



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petitioner, she has made a complaint as against the petitioner with irrelevant and false allegations before the All Women Police Station.

Though she has contended that the petitioner is trying to remarry again despite their separation for more than six years, nothing of that kind had happened in the life of the petitioner. In view of the same, the learned Trial Court proceeded to conclude that the respondent has voluntarily left the company of the petitioner thereby, compelling him to suffer in loneliness for the past more than six years and on that basis, allowed the petition for divorce dissolving the marriage between the petitioner and the respondent which was held on 22.01.2007.

8.Assailing the same, the respondent wife has filed an appeal in H.M.C.M.A.No.24 of 2014 before the learned II Additional District and Sessions Judge, Thanjavur. The learned first Appellate Court had framed one issue and on the basis of the arguments made by both the counsels of the respective parties, the available documents on record and the lower Court judgment proceeded to decide the first appeal. The learned first Appellate Court proceeded to observe that according to the husband, the wife married him without any interest on him and she blamed the



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husband as he is an old aged man and a bald headed person. Further it was also observed that the husband criticized the poverty situation of the wife's parents and there is no specific allegations against the wife with regard to cruelty.

9.The learned first Appellate Court further observed that on the side of the husband to prove the allegation of cruelty. The husband himself was examined as P.W.1 and his sister was examined as P.W.2. P.W.2 sister of the petitioner has stated that the respondent's family is not wealthy and his brother filed this petition for divorce only because the respondent had given complaint to the All Women Police Station. She further said that the jewelry and money lend by her to the father of the respondent was not returned by them. However, the sister of the petitioner who deposed evidence as P.W.2 did not disclose anything about the cruelty meted out by the respondent to her brother. That apart even the petitioner himself in his evidences did not state or elaborate any of the cruelty, which was meted out to him. Further the learned first Appellate Court proceeded to observe that respondent had consummated her marriage with the petitioner and had given birth to a child and there



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is no allegation as to the fact that the girl child do not belong to the petitioner. That apart the allegations of the petitioner that respondent had continuously called him as an old man and bald headed man cannot be taken as serious aspects of cruelty and could be taken only as trivial irritations. So in any angle the learned first Appellate Court observed that the petitioner miserably failed to prove the ground of cruelty.

10. Further observing that the learned Trial Court allowed the divorce petition on the ground that there was no give and take policy between the husband and wife and they never lead a happy life and no such situation leading a happy life prevailed between them and they had been separated for more than 6 years without any valid reason. As the result of which the petitioner suffered loneliness and the petitioner's steps for reunion also proved futile. Observing that it is only on that basis, the learned Trial Court had granted divorce, the learned first Appellate Court proceeded to hold that for allowing the petition for divorce, on the ground of cruelty, no proof was established by the petitioner as to substantiate any kind of cruelty, which was inflicted on him by the respondent. Had the petitioner been really interested in reunion he ought



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to have taken legal steps by way of restitution of conjugal rights. Under such situation, the learned first Appellate Court proceeded to decide in favour of the respondent wife that the allegation put forth by the petitioner is not sustainable and is not as grave as to decide in his favour thereby allowing his petition for divorce. On that basis the learned first Appellate Court proceeded to dismiss the petition for divorce in H.M.O.P.No.26 of 2012 by setting aside the fair and decreetal order of the learned Trial Court.

11. Against the same, the appellant husband has filed this Civil Miscellaneous Second Appeal on the following substantial question of law:-

“(i) Whether the judgment and decree of the lower Appellate Court is in conformity with Order 41 Rule 31 of C.P.C., wherein the lower Appellate Court has not framed necessary issues for determination and failed to render finding on each issue separately ?

(ii) Whether the appellant is entitled for divorce on the ground of cruelty ?

(iii) Whether the finding rendered by the lower Appellate Court in the judgment will justify the conclusion?



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(iv)Is not finding of the lower Appellate Court has been on

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mere surmise and conjective without any legal basis ?”

12.The petition for divorce in H.M.O.P.No.26 of 2012 has been filed under Section 13(1)(i-a) of the Hindu Marriage Act seeking divorce on the grounds of cruelty. It is pertinent to mention here that though the petition for divorce was filed seeking divorce on the grounds of cruelty, the learned Trial Court proceeded to pass an order of divorce on the ground of desertion. For that single reason the order and decretal order passed by the learned Trial Court is liable to be set aside.

13.To constitute cruelty, the conduct 'complained of' should be grave and weighty so as to come to the conclusion that the petitioner's spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than ordinary wear and tear of a married life. However, the allegations made by the petitioner in this petition for divorce is that the respondent was reluctant to live with the petitioner from the first instance because he was elder than the respondent by 12 years and that he suffered a bald headed personality. That apart he also



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made a wild allegation that she hailed from a poor family background and she voluntarily left her shared matrimonial home and lived with her father in her maternal home. Though admitting that she had begotten and given birth to his daughter namely Brindha, he had insisted for divorce on the grounds of cruelty. The only allegation which was made by him is that she had lodged a complaint before All Women Police Station, Pattukottai as against the petitioner. However, on going into the materials on record, it can be understood that the said petition has been lodged by the respondent on the allegation of dowry demand from the petitioner and his sister. Though the complaint was lodged by the petitioner the same never culminated either in registration of a criminal case as against him or even to a level of police enquiry as against the petitioner except to the fact of issuance of a C.S.R. Receipt acknowledging the receipt of the complaint from the respondent wife.

14.The word cruelty is nowhere defined in the Hindu Marriage Act. However, the Honorable Apex Court in the case of ***Shobha Rani vs Madhukar Reddi*** reported in ***(1988) 1 SCC 105*** has held that cruelty is the conduct in relation to or in respect of matrimonial conduct in respect



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of matrimonial obligations. It is the conduct, which adversely affects the spouse. Such cruelty can either be mental or physical, intentional or unintentional. To judge whether or not something is mental cruelty, the nature of the cruel treatment has to be examined and the mental impact it has on the spouse and whether it causes a reasonable apprehension in the mind of that spouse that it would be harmful or injurious for them to live with the other spouse has to be examined.

15.In the instant case, the allegations made by the petitioner as against the respondent on the basis of which a divorce is sought are not serious enough to come to a conclusion that the petitioner had been subjected to such mental or physical abuse to that extent that he would have been affected to a level of developing an apprehension in mind that it would be injurious to live with the respondent at any point of time anymore. He had genuinely admitted that they are blessed with the girl child. That apart except general allegations that the respondent very often left for her maternal home, no serious incidents or instances of cruelty or atrocious behavior of the respondent has been substantiated or even proved by the petitioner beyond reasonable doubt. The law requires that



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the petitioner should not level vague or too general allegations. This is the typical case full of vague allegations raised by the petitioner husband as against the respondent wife. While petty scrambles and disagreements on small issues are normal wear and tear of every marriage, unless and until treatment of one spouse by the other is not established extremely unjust, one cannot seek dissolution of marriage. In the instant case, no instances of serious cruelty has been established by the petitioner as against the respondent. It is clear that the petitioner and the respondent were living separately for a period of six years on the date of filing of divorce. But the petition was not filed seeking divorce on the ground of desertion. Therefore, fully concurring with the judgment passed by the learned first Appellate Court, I am not inclined to interfere with the same.

16. Accordingly, the Civil Miscellaneous Second Appeal fails and stands dismissed. There shall be no order as to costs.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The II Additional District and Sessions Judge, Thanjavur.
- 2.The Additional Sub Judge, Thanjavur.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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