



C.M.S.A.(MD).No.23 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.11.2024

Delivered On : 08.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.23 of 2016

Rajendran ... Appellant

Vs.

Ambigavathi ... 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 26.02.2016 made in H.M.C.M.A.No.19 of 2012 on the file of the learned III Additional District Judge, Tirunelveli confirming the judgment and decree dated 14.02.2012 made in H.M.O.P.No.46 of 2009 on the file of the Subordinate Court, Vallioor.

For Appellant	: Mr.T.A.Ebenezer
For Respondent	: No Appearance



C.M.S.A.(MD).No.23 of 2016

WEB COPY

JUDGMENT

The Civil Miscellaneous Second Appeal has been filed to set aside the judgment and decree passed in H.M.C.M.A.No.19 of 2012 on the file of the learned III Additional District Judge, Tirunelveli dated 26.02.2016 confirming the order passed in H.M.O.P.No.46 of 2009 on the file of the learned Sub Judge, Vallioor, dated 14.02.2012.

2.For the sake of convenience, the parties are addressed herein as per the rank in H.M.O.P.No.46 of 2009. The petitioner is the husband and the respondent is the wife.

3.The case of the petitioner in H.M.O.P.No.46 of 2009 is as follows:-

(i)The marriage between the petitioner and the respondent was an arranged marriage, which was conducted on 10.07.1993 according to Hindu rites and customs in the presence of friends and relatives. Out of the matrimony, the petitioner and the respondent are blessed with a son and a daughter. The petitioner was living with his mother before marriage



C.M.S.A.(MD).No.23 of 2016

and it is the petitioner, who is taking care of his mother. The petitioner's son was five years old and daughter was eight years old respectively at the time of filing the petition for divorce. The mother who is a senior citizen of 70 years old, has been living with the petitioner and the respondent was aware of the same even before the marriage. Very often the respondent, for the reason known to her leaving the petitioner and children, left for her maternal home and it has habitual on the end of the petitioner in due course of time. The respondent had always hurt the petitioner seriously by conversing unparliamentary words and had not been a responsible wife at any point of time. She even went to the extent of refuting her matrimonial responsibilities and quarreled with the petitioner refusing to maintain his mother by disrespecting the petitioner and his mother together. When the petition for divorce was filed, the respondent was already separated from the petitioner and she was living alone.

(ii)The petitioner is running a medical store. The respondent's attitude and habitual desertion deserting the petitioner and children at the matrimonial home and leaving for maternal home has caused



C.M.S.A.(MD).No.23 of 2016

unanticipated difficulties in the affairs of the family and the children were left in lurch very often. Finally on 10.08.2007, the petitioner directly went to the respondent's maternal home and compelled her to come back. However, the respondent had abused the petitioner badly and refused to come back and she finally declared that she can never ever live with him. Hence, the petitioner arranged for a conciliation through known persons and called her back on 06.09.2009. For which, the respondent never heeded to. Hence, the petitioner caused a legal notice on 07.08.2009 to the respondent. Even after receiving the same, the respondent never made up her mind to join with the petitioner. Hence, the petitioner has filed this petition for divorce under Section 13(1)(i-a)(i-b) of Hindu Marriage Act.

4.All the allegations made by the petitioner has been denied as false by the respondent except the factum of the marriage between the petitioner and the respondent and the birth of two children. The respondent had never conducted herself to treat her husband and her mother with disrespect and rudeness and had always been a responsible wife. All the allegations of disrespect and frequent desertion by the



C.M.S.A.(MD).No.23 of 2016

respondent had been denied by the respondent admitting that her daughter was five years old and the son was eight years old respectively at the time of filing of petition for divorce and her mother in law was 70 years old. The respondent submitted that the petitioner was employed abroad at the time of marriage. By that time, the petitioner's mother was willing to get her brother's daughter in marriage to her son. However, contrary to her wishes, the petitioner married the respondent and the same had been the point of indifference between the respondent and her mother in law. Within 15 days of marriage, the petitioner left for his job in abroad. During that period of time, his mother inflicted heinous domestic violence emotionally and economically on the respondent. After marriage, he came back to India after a period of six months. Thereafter, he used to visit India only once or twice in two years. It is only after nine years of matrimony on 28.05.2002, a girl child was born. Within few days of girl birth, both the petitioner and his mother together troubled the respondent and voluntarily chased away the respondent and her child to her maternal home. Thereafter, he himself lodged a complaint before All Women Police Station, Vallioor and the respondent co-operated for the inhouse enquiry of All Women Police Station wherein the petitioner was



C.M.S.A.(MD).No.23 of 2016

advised to take back the respondent with him. Following which, a male child was born to them. After the birth of the son, the petitioner did not sent the respondent back to her maternal home. With much difficulty, the respondent lived in her matrimonial home despite the inimical attitude of the petitioner and his mother. Even after filing this case, the respondent was living with the petitioner in her matrimonial home. The petitioner has filed a petition for divorce. However, the respondent is willing to live with him for the sake of matrimony and her children.

5.The learned Trial Court has framed two issues. One witness was examined and six documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The learned Trial Court on the basis of allegations and counter allegations by the respective parties, proceeded to consider whether the petitioner is entitled to seek divorce on the ground of cruelty and observed that for the grant of divorce on the ground of cruelty, the nature of cruelty must be something more than the ordinary wea and tear of married life. The living condition between the spouse should have reached a point to that extent that it would be impossible for the couple



C.M.S.A.(MD).No.23 of 2016

to live together without mental agony, torture and distress and the cruelty could be both physical and mental. From the back drop of the above understanding, the learned Trial Court observed that the allegations which has been pleaded by the petitioner in his petition for divorce is not serious enough to consider the same for grant of divorce. Though the petitioner during the cross examination stated that the respondent did not take care of his mother when he was working abroad nothing prevented him from examining his mother to prove the same. In the absence of such witness, the Trial Court observed that it could not be possible to consider the same as a mere allegation raised by the petitioner for grant of divorce. Similarly the allegation of abusive language and disrespectful behavior on the end of the respondent was also not duly proved by proper oral and documentary evidence and concluded that the act of cruelty was not successfully established by the petitioner.

6.As far as the question of desertion is concerned, it was the case of the petitioner that the respondent frequently visited her maternal home leaving the petitioner and his children in his matrimonial home and that she never turned up after 06.09.2009, to lead a peaceful life. However,



C.M.S.A.(MD).No.23 of 2016

the same was vehemently denied by the respondent and the respondent during her cross examination submitted on 10.02.2009, she had lodged a complaint before All Women Police Station, Vallioor requesting the police to help her to reunite with her husband. Relying upon Ex.R1, the learned Trial Court observed that the said complaint revealed that the petitioner used to scold the respondent with filthy language and assaulted her very often. Until and unless the factum of desertion for continuous period of two years immediately before presenting the petition for divorce before the respective Court is proved, the prayer sought for by the petitioner to grant divorce on the ground of desertion could not be considered. That apart the learned Trial Court relied upon the cross examination of the petitioner wherein he deposed that he lodged a complaint before the Vallioor Police that his wife was abducted during the year 2010 I.e. on 02.03.2010 from his house and the said complaint was lodged by the petitioner as against his father in law and brother in law. A copy of the statement was given by the father in law of the petitioner namely Ramanathan Chettiyar and the respondent would reveal that they have denied the fact that she was abducted by her father. But the father came and took her to his house on the information given by her.



C.M.S.A.(MD).No.23 of 2016

On such observation, the learned Trial Court proceeded to observe that the petitioner and the respondent were living together till 02.03.2010 and the petitioner had filed the petition for divorce on September 2009 and hence, the same would reveal even after filing of the petition for divorce, they were living together till 02.03.2010. On that basis, the learned Trial Court proceed to dismiss the petition for divorce.

7.Assailing the same, the respondent wife has filed an appeal in H.M.C.M.A.No.6 of 2007 before the learned District Judge, Sivagangai. Extensively considering the pleadings and the order and decretal order of the lower Court and after hearing the arguments put forth by the respective parties, the learned first appellate Court categorically observed that the evidence deposed by the respective parties would show that the petitioner even after the filing of divorce in the year 2009, was living along with his wife and children and subsequently on 03.03.2010, he made a complaint that his wife and children were kidnapped on 27.02.2010 as against the father in law and brother in law. Recording the same, the learned first Appellate Court observed that the said complaint would go to show that even after the filing of divorce, the petitioner and



C.M.S.A.(MD).No.23 of 2016

the respondent are living with the children. Relying upon the order of the learned Trial Court which recorded the fact that there is no evidence in favour of the petitioner that the respondent had committed cruelty as against him, the learned first Appellate Court dismissed the Civil Miscellaneous Appeal.

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

“(i) Whether refusal to live with the husband without any cause amounting to cruelty to the husband?

(ii) Whether the statutory separation period for divorce can be calculated by the lower Appellate Court while deciding the appeal?

(iii) Whether the pleadings and the evidence of the wife are completely ambiguous and contradictory, whether decree can be passed in favour of the wife?

(iv) Whether the wife admitted in the evidence that the husband never committed any cruelty, whether it can be decided that the wife is forced to live away from husband?”



C.M.S.A.(MD).No.23 of 2016

9.No doubt after going through the entire materials on record, the ground of divorce on the ground of desertion will never arise because it has been categorically proved by the respondent that she has been living with the petitioner even after filing of the petition for divorce by the petitioner till 02.03.2010. As on date, the petitioner husband would be 63 years old and the respondent would be 58 years old. All the allegations of cruelty inflicted by the respondent wife as against the petitioner and his mother were vague and general. None of the allegations were specific and the same were not duly proved by the petitioner by producing oral and documentary evidence. However, it can be observed from the examination in chief and cross examination of the respective parties that all through the matrimonial life there had been minor skirmishes between the couple and respondent wife and mother in law. It has been clearly proved before the learned Trial Court that the couple lived together even after the date of filing of the petition for divorce. The allegations of cruelty and desertion pleaded by the petitioner as against the respondent are not serious enough to the extent of that it would not be possible or safe for the petitioner to live with the respondent any more. The condition of the life of the petitioner and the respondent had been in such



C.M.S.A.(MD).No.23 of 2016

a way that the respondent even lived with him after the filing of the petition for divorce.

10.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



WEB COPY



C.M.S.A.(MD).No.23 of 2016

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.”

11. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the fact as recorded by the learned Trial Court and the learned III Additional District Court, Tirunelveli 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 III Additional District Judge, Tirunelveli in H.M.C.M.A.No.19 of 2012 and the learned Subordinate Judge, Vallioor in H.M.O.P.No.46 of 2009.



C.M.S.A.(MD).No.23 of 2016

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

08.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The III Additional District Judge, Tirunelveli.
2. The Sub Judge, Vallioor.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



C.M.S.A.(MD).No.23 of 2016

L.VICTORIA GOWRI, J.

Mrn

C.M.S.A.(MD)No.23 of 2016

08.03.2024