



C.M.S.A.(MD)No.55 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 06.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.55 of 2016

Vasanthi

... Appellant / Appellant / Petitioner

Vs.

Muthukrishnan

... Respondent / Respondent/ Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, to set aside the decreetal order and Fair order dated 04.02.2016 passed in C.M.A.No.41 of 2011 of the Principal District Judge, Dindigul and also set aside the decree and fair order dated 20.04.2011 passed in H.M.O.P.No.194 of 2006 on the file of the Principal Subordinate Judge, Dindigul against the relief of divorce between the petitioner and the respondent as prayed for.

For Appellant : Mr.S.Raja

For Respondent : Mr.H.Lakshmi Shankar



C.M.S.A.(MD)No.55 of 2016

JUDGMENT

WEB COPY

This Civil Miscellaneous Second Appeal has been preferred as against the decreetal and Fair order dated 04.02.2016 passed in C.M.A.No. 41 of 2011 of the Principal District Judge, Dindigul, confirming the decreetal and fair order dated 20.04.2011 passed in H.M.O.P.No.194 of 2006 on the file of the Principal Subordinate Judge, Dindigul.

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

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

4. The case of the petitioner:

(i) The respondent is the maternal uncle of the petitioner. The marriage between the petitioner and the respondent was solemnized on



C.M.S.A.(MD)No.55 of 2016

05.03.1995 at Dindigul Narayana Iyer Marriage Hall, at Dindigul town in the presence of the parents of the respective parties, friends and relatives, according to the Hindu rites and customs. At the time of marriage, the petitioner was adorned with 20 sovereigns of gold jewelry and Rs.50,000/- (Rupees Fifty Thousand only) worth home appliances including cot and almirah. Immediately, after marriage, the petitioner and the respondent commenced their matrimonial life in the shared matrimonial home at Sitharevu. After a span of time, the respondent voluntarily proposed to lead a separate independent life, as a result of which, they together left their family house and started to live separately at Sitharevu in another house. Very often, the respondent's maternal aunt visited the petitioner and the respondent. On her visits, she insisted the respondent that the petitioner has brought insufficient jewelry and other movable and immovable assets. The respondent never interfered with his aunts behavioural excesses for the reason that she actually brought him up from his childhood. Whenever the petitioner complained to the respondent about his aunt, the respondent / husband never bothered about the attitude of his aunt and he told the petitioner that it was her duty to adjust with her or she has to leave the house.



C.M.S.A.(MD)No.55 of 2016

WEB COPY

(ii) Every month atleast 25 days, the said aunt stayed with them and created a lot of rugs in the matrimony between the petitioner and the respondent. While so, on the guise of his employment, very often the respondent left the house and returned home after staying in outstations for several days. In the meanwhile, the petitioner got pregnant and was sent to her maternal home for delivery. Till her delivery, the respondent did not visit her maternal home even once. On 17.10.1997, a male child was born to the petitioner. Despite giving information to the respondent, he never turned up to visit the child even once. That apart, he did not even take any steps to take back his wife and son to their matrimonial home. Left with no other option, the petitioner's mother called for the interference of the elders and well wishers and she requested the respondent to take back the petitioner and her son to their matrimonial home. However, the respondent stated that 5 sovereigns would be provided for the child, thereafter, the respondent shall take the petitioner with him. The respondent deserted the petitioner for 9 years from 10.07.1997. All the efforts taken by the friends, relatives and elders in both the families for reconciliation between the petitioner and the respondent proved futile. Hence, the petitioner has filed this H.M.O.P seeking divorce by dissolving the marriage held on 05.03.1995 at Dindigul Narayana Iyer Marriage Hall, at Dindigul.



C.M.S.A.(MD)No.55 of 2016

WEB COPY

5. The case of the respondent:

(i) Per contra, the respondent had filed a counter refuting each and every allegation put forth in the H.M.O.P petition. The respondent admitted that the petitioner's mother and the respondent is the brother and sister. The respondent further submitted that the petitioner's father served as a Foreman in the Tamilnadu Electricity Board. The respondent admitted that the marriage with the petitioner was held on 05.03.1995 at Dindigul Narayana Iyer Marriage Hall, at Dindigul. At the time of marriage, it was told that the parents of the petitioner owned a house at Chinnalapatti and the house which belonged to the petitioner's father was sold to the respondent, even before their marriage and only in that house, the petitioner and the respondent commenced their matrimonial life. The respondent denied that the petitioner was adorned with 20 sovereigns gold jewelry and Rs.50,000/- (Rupees Fifty Thousand only) worth home appliances were provided her, at the time of marriage. He further submitted that only 10 sovereigns gold jewelry was given as Sridhana and there was no demand of any money from the side of the respondent. Considering the fact that the respondent sister's and her husband were heart patients, the respondent never troubled them in the name of dowry at any point of time.



C.M.S.A.(MD)No.55 of 2016

WEB COPY

(ii) The respondent categorically submitted that the matrimonial life between the petitioner and the respondent was peaceful and happy and the same was cherished by the birth of the beautiful male child. The respondent was running a business of car brokerage business by purchasing and selling of old cars. For the purpose of his business, he had to travel to outstation often, therefore, the allegation that the respondent frequently stayed several days far away from home was not true. The allegation that the respondent's aunt stayed in their matrimonial home at least 25 days was also denied by the respondent. The allegation that the respondent never ever visited the petitioner and her son is a blatant lie. In fact, the respondent and his relatives visited the petitioner at the time of her delivery in the hospital. The allegation that the respondent have demanded 5 sovereigns gold to the new born child was also denied by the respondent. That apart, only on the request of the petitioner that she was inclined to take care of her ailing parents, the petitioner left from her matrimonial home. While so, the petitioner's father passed away on 09.04.2001, even after the death of the petitioner's father, the petitioner lived with her mother at Chinnalapatti for about 1 ½ years. Despite, several requests made by the respondent to come back to their matrimonial home, the same was not appreciated by the petitioner. Thereafter, the petitioner never turned back



C.M.S.A.(MD)No.55 of 2016

to her matrimonial home and the allegation that the respondent had deserted her was fully denied.

5. The learned Trial Court had framed one issue. Following which, the petitioner was examined as P.W-1 and three documents were marked on the side of the petitioner. Two witnesses including the respondent were examined as R.W-1 and R.W-2 and one document was marked on the side of the respondent.

6. On the basis of the evidence deposed by the respective parties, the documents marked and the arguments submitted by both the Counsels, the learned Trial Court proceeded to observe the cross examination of the petitioner wherein, she stated that she came to her maternal home for delivery and after the child birth, she did not return to her matrimonial home. She also admitted that the respondent took steps for reconciliation with her and requested the petitioner to come back to their matrimonial home. The learned Trial Court recorded the fact that the admission made by the petitioner is that she is involved deeply in spirituality and on that basis, she is not interested in family life.



C.M.S.A.(MD)No.55 of 2016

7. That apart, her admission with respect to the fact that the petitioner participated in the funeral ceremony of the petitioner's father was also recorded by the learned Trial Court. Referring all those admissions made by the petitioner, the learned Trial Court proceeded to conclude that the allegations of the petitioner that the respondent never ever took any steps for reconciliation was not correct. That apart, the admissions of the petitioner in her cross examination that no one from his side intended to contact the respondent for reconciliation and that the respondent never demanded 5 sovereigns gold for the child. Interestingly, she also admitted that the respondent never demanded any money or jewelry at any point of time. Observing the said admissions were fully contrary to her pleadings, the learned Trial Court dismissed the H.M.O.P.No. 194 of 2006.

8. As against the same, the petitioner / wife preferred a Civil Miscellaneous Appeal in C.M.A.No.41 of 2011 before the Principal District Judge, Dindigul. The learned First Appellate Court has framed two issues. The learned First Appellate Court proceeded to observe that during the chief examination, the petitioner contented that she was provided with 20 sovereigns gold and Rs,15,000/- cash along with cot, almirah and other



C.M.S.A.(MD)No.55 of 2016

utensils. She further deposed that the maternal aunt of the respondent used to demand dowry, however, the same was not interfered by the respondent.

But, during cross examination, she admitted that at the time of marriage, she was adorned with 10 sovereigns gold jewelry only. She further admitted that no cash was given and the respondent purchased the property belonging to her father even before their marriage. She categorically admitted that there was no conciliation for reunion. She also admitted that the respondent has not demanded 5 sovereigns of gold for the child and she further admitted that the respondent never demanded any dowry at any point of time.

9. She contended in her petition that after the delivery of the child, the respondent has not taken her, despite her mother's attempt for conciliation. However, during cross examination, she clearly admitted that her mother has not taken any efforts for reunion. She also admitted that she came to her parents' house for delivery and after that she has not returned back to her matrimonial home. The learned First Appellate Court further recorded that she was fully interested in spirituality and therefore, she was not interested to lead a family life. Hence, the allegations made by petitioner on the respondent were not properly proved. In view of the



C.M.S.A.(MD)No.55 of 2016

same, the learned First Appellate Court proceeded to dismiss the C.M.A.No.41 of 2011. Assailing the same, the present Civil Miscellaneous Second Appeal came to be filed.

10. The substantial question of law framed in this CMSA are as follows:

a) Whether the Courts below are justified in dismissing the petition on the ground of non-desertion?

b) Whether the petitioner's sanniyasin which is deemed as she has renounced the world by entering any religious order as contemplated u/s 13 (vi) of the Hindu Marriage Act, 1955 is affected due to reunion?

c) Whether petitioner's right of privacy is totally affected which is secured under article 21 of the Constitution by compelling her to have sexual intercourse against her will due to reunion of the petitioner and respondent?

d) Whether the respondent plea is valid due to respondent had not filed any petition under Section 9 of the Hindu Marriage Act, 1955 for the



C.M.S.A.(MD)No.55 of 2016

restitution of conjugal rights?

WEB COPY

e) Whether the Courts below found observation that the respondent has not been maintaining the petitioner past 9 years?

11. This is a case where the petitioner / wife sought for divorce on the grounds of desertion as against her husband. The marriage has been admitted by both the parties and the factum of the birth of the male child on 17.10.1997 was also admitted by both the parties. However, the case of the petitioner /wife is that after delivery, the respondent never took back her along with her child to her matrimonial home. Apart from the interference of his maternal aunt, the petitioner did not allege of any problems with her husband, except that the respondent never took any efforts for reconciliation at any point of time. Further, the respondent indulged in demand for dowry. On the basis of the pleadings of both the parties, the evidence deposed, the documents marked and the arguments of the respective parties, the learned Trial Court and the learned First Appellate Court have elaborately dealt with the facts and circumstances of the case and had concluded in similar lines that the petitioner was sent to her maternal home only for delivery in the year 1997.



C.M.S.A.(MD)No.55 of 2016

12. Thereafter, recording the various admissions made by the petitioner, at the time of her cross examination with respect to the fact that it is only because of her involvement in spirituality and her uninvolved in matrimonial life, she actually refused to come back to her matrimonial home, after delivery, despite several conciliations efforts taken by the respondent personally and through friends, parents and other relatives at various point of time. Both the learned Trial Court and the learned First Appellate Court duly recorded the admissions made by the petitioner that there was no demand for dowry by the respondent at any point of time.

13. The Hon'ble Apex Court in the case of Vishwanath Agrawal .Vs. Sarla Vishwanath Agrawal reported in (2012) 7 SCC 288 has dealt with the case of concurrent finding by the Trial Court and the First Appellate court has held that the Supreme 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



C.M.S.A.(MD)No.55 of 2016

WEB COPY

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 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.”

14. 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 District Court, Dindigul and 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 District Judge in C.M.A.No.41 of 2011 and H.M.O.P.No.194 of 2006.



C.M.S.A.(MD)No.55 of 2016

WEB COPY

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

06.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.Principal District Judge,
Dindigul.
- 2.The Principal Subordinate Judge,
Dindigul.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)No.55 of 2016

L.VICTORIA GOWRI, J.,

Sml

C.M.S.A.(MD)No.55 of 2016

06.03.2024