



CMA(MD)Nos.752 and 753 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

CMA(MD)Nos.752 and 753 of 2019

C.M.A.(MD).No.752 of 2019

B.Vinothkumar

... Appellant

vs.

S.Shanthi

... Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act, 1984, to set aside the fair and decretal order dated 15.07.2019 passed in H.M.O.P.No.21 of 2016 on the file of the Family Court, Dindigul and grant divorce to the appellant/petitioner by dissolving the marriage that took place between the petitioner and respondent on 22.05.2009.

For Appellant : Mr.C.M.Arumugam

For Respondents : Mr.J.Anandkumar



CMA(MD)Nos.752 and 753 of 2019

C.M.A.(MD).No.753 of 2019

B.Vinothkumar

... Appellant

VS.

S.Shanthi

... Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act, 1984, to set aside the fair and decreetal order dated 15.07.2019 passed in H.M.O.P.No.26 of 2016 on the file of the Family Court, Dindigul.

For Appellant : Mr.C.M.Arumugam

For Respondents : Mr.J.Anandkumar

COMMON JUDGMENT

(Order of the Court was made by **P.VELMURUGAN, J.**)

The husband is the appellant, and the respondent is the wife. The appellant/husband filed a petition for divorce. The respondent wife filed a petition for restitution of conjugal rights. The petition filed by the husband for divorce was dismissed on the file of the Family Court, Dindigul in H.M.O.P.No.21 of 2016 and H.M.O.P.No.26 of 2016 filed by the wife was allowed. The learned Judge, Family Court, Dindigul while dismissing the petition filed by the husband for divorce, allowed the



petition filed by the wife for restitution of conjugal right. Aggrieved over the same, now, the husband has filed both the appeals before this Court.

2.The case of the appellant/husband is that the marriage between the appellant and the respondent took place on 22.05.2009. Thereafter, they lived together and out of their wed lock a male child was born. The main allegation of the appellant as per the averment made in the petition for divorce is that the respondent was suffering from epileptic disorder even before the marriage. The said fact was suppressed by the respondent and her parents, before the marriage. Soon after the marriage, the parents of the respondent requested the appellant to stay close to their house told that the respondent was suffering from epilepsy and she was taking treatment and they also told that the respondent will recover if she takes medicine continuously for one yes. So the petitioner also agreed for the same and lived near their house. But, the respondent did not live with him and she often picked up quarrel with him. She also used to take overdose of medicine due to epileptic seizures. This abnormal behaviour affected the children. Further allegation of the appellant is that the respondent also had psychopathic disorder as well as schizophrenia even since her childhood. The same was suppressed by the respondent's family



and the life of the appellant has become hopeless and the appellant issued notice to the respondent on 19.11.2015 and she gave a false reply on 16.12.2016 and also the respondent threatened the appellant that she would commit suicide, if he compelled for divorce. Then the appellant filed the petition for divorce against the respondent/wife.

3.The case of the respondent is that the marriage is admitted and however, she has admitted that she was suffering from epilepsy, and the same was not suppressed by the respondent and this illness was prior to the marriage. But, after the marriage she never had any such disorder. Before marriage, she was suffering from epilepsy, but, after the marriage there was no recurrence. But, the appellant in order to get divorce, made false allegation against the respondent and during their wedlock, the respondent became pregnant and the respondent delivered a male child on 17.02.2010 and also she denied that the respondent took over dose of medicine due to which the child was admitted in the hospital for treatment. Further, the respondent had blood pressure. When the child was born, the respondent was also admitted in the hospital as inpatient. Therefore, the respondent denied all the allegations made by the appellant. The respondent wants to live with her husband, but, the



husband willfully refused to live with her. Therefore, the respondent has filed the petition for restitution of conjugal right.

4.Oral evidence also let in on the side of the appellant, the appellant alone was examined as P.W.1 and no documents were marked and on the side of the respondent 2 witnesses were examined as R.W.1 and R.W.2 and 6 documents were marked as Ex.R1 to Ex.R6.

5.The learned Judge, Family Court, after the enquiry, recording of evidence and considering the materials on records dismissed the petition filed by the appellant/husband and allowed the petition filed by the respondent/wife. Challenging the same, the husband is before this Court.

6.The learned counsel for the appellant would submit that the respondent was suffering from epilepsy even prior to the marriage and the same was suppressed by the respondent and her family members and also she has got psychopathic disorder as well as schizophrenia from her childhood, for which, she took medicine and also since she took over dose of medicine her son also affected. The learned Judge, Family Court, Dindigul also failed to consider the suppression of the material facts by



the spouse is amounts to mental cruelty and the wife also did not adduce any evidence regarding her epilepsy and she also admitted that she had epileptic disorder during her childhood. The appellant took steps to produce medical record before the Court by serving notice to produce the document but the respondent wife failed to produce the document. Though the appellant did not condone the abnormal act of the respondent, the Family Court erroneously held that the appellant condoned the act of the respondent. The abnormal behaviour of the respondent was continuing. In the said circumstances to condone the cruelty of the respondent does not arise at all. Therefore, the order passed by the Family Court is liable to be set aside. As far as the petition for restitution of conjugal right is concerned, the wife left the matrimonial home, she did not like to live with him and frequently picked up quarrel with him. Therefore, she is not fit for the matrimonial life and the learned Judge, Family Court, Dindigul failed to consider the same. Therefore, the order passed by the learned Judge, Family Court, Dindigul in both cases are liable to be set aside and these appeals are liable to be allowed.



7.The learned counsel for the respondent would submit that the appellant made a false allegation against the respondent, though the respondent was suffering from epilepsy only prior to the marriage. But, after the marriage, they were living as a husband and wife peacefully and she never had relapse of epilepsy and also, the appellant also admitted that he had not proved the same and after the marriage epilepsy was continuing which was disturbing the matrimonial life and no such episode arose during the matrimonial life and also she was never suffering from any other disease as stated above and also she never took over dose. But, taking advantage of her child hood disease, the appellant has made the false allegation against her stating that the respondent also suffered from psychopathic disorder and also schizophrenia. But, however, he has not produced any material to prove the same. Therefore, the family Court has rightly considered the fact and dismissed the petition filed by the appellant and allowed the petition filed by the respondent. There is no merit in the appeals and seeks to dismiss both the appeals for want of materials.



8.This Court considered the rival submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

9.Though, the specific case of the appellant is that the respondent suppressed certain material facts regarding the ailments of the respondent and also she caused mental cruelty and further she was also suffering from psychopathic disorder and schizophrenia. The suppression amounts to cruelty and also the respondent had other ailments. Therefore, the appellant asked for divorce through mutual consent but the respondent did not budge and the respondent tried to commit suicide. Therefore, he filed an application.

10.The case of the respondent is that though she admitted that during her childhood, she had epilepsy, but, she never had any other ailment alleged by the appellant. The epilepsy was only prior to the marriage but after the marriage no episode had happened. The appellant also did not produce any medical records.



11. Perusal of the records show that the appellant made certain allegation against the respondent having ailment and causing mental cruelty but the appellant has not produced any material to substantiate his allegation levelled in the petition. Though the learned counsel for the appellant would submit that the respondent herself admitted that she suffered from epilepsy before the marriage. However, the appellant has not proved that after the marriage such disorder continued and because of such recurrence the matrimonial life got disturbed. Though he has stated that she took over dose of medicine, and hence, child was admitted in hospital, to prove the same, only the appellant has been examined as P.W. 1 and not other witness was examined. The appellant has not produced any documentary evidence like medical records that she took over dose and also she took medicine for other ailments. Further, he has not produced any medical records or any witness and she was suffering from psychopathic disorder and schizophrenia. Further, the learned for the appellant would submit that he tried to call for the documents by giving the notice to produce document but they have not been produced. The matter is prior to the marriage, something might have happened, but the appellant was not able to produce documents after the marriage during the matrimonial life that she was suffering from any of the ailments and



CMA(MD)Nos.752 and 753 of 2019

no independent oral or documentary evidence were produced when the respondent strongly denied all the allegations levelled by the appellant. It is the duty of the appellant to prove that the allegations made in the petition and also the ground seeking for divorce.

12. Therefore, the appellant is not able to prove that the respondent suffered from incurable disease and also she caused mental cruelty and also she suppressed the material facts which amounts to cruelty. It is the duty of the appellant who approached the Court for divorce to prove the case with substantial materials, whereas, on reading of the entire materials this Court finds that there is no *iote* of oral and documentary evidence to substantiate his allegation levelled in the petition. Therefore, as the appellate Court while re-appreciating the evidence does not find any reason for interfering with the judgment of the family Court and also this Court does not find any perversity in appreciation of the evidence by the Family Court. In the said circumstances, both the appeals are liable to be dismissed.



CMA(MD)Nos.752 and 753 of 2019

13. Accordingly, these Civil Miscellaneous Appeals are dismissed and the order passed in H.M.O.P.Nos.21 and 26 of 2016 dated 15.07.2019 by the learned Judge, Family Court, Dindigul is hereby confirmed. There shall be no order as to costs.

(P.V.J.) (M.S.Q.J.)
12.09.2024

NCC : Yes / No
Index : Yes / No
Neutral Citation : Yes / No
sbn

To

1. The Family Court,
Dindigul.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CMA(MD)Nos.752 and 753 of 2019

P.VELMURUGAN, J.
and
MOHAMMED SHAFFIQ, J.

sbn

COMMON JUDGMENT MADE IN
CMA(MD)Nos.752 and 753 of 2019

DATED : 12.09.2024