



C.M.A.(MD)No.363 of 2018

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 20.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A.(MD)No.363 of 2018
and C.M.P.(MD)Nos.4785 of 2018**

Layola Selvakumar

... Appellant

versus

Merlin Rosy

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the Judgment and Decree dated 31.08.2015 in I.D.O.P.No. 82 of 2014 on the file of the Family Court, Tirunelveli.

For Appellant	: Mr.K.Jeyamohan for M/s.K.Prabhu
For Respondent	: Mr.M.Senthil Kumar

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J**)

The appellant herein is the husband and the respondent herein is the wife.

The husband had initially filed a divorce petition in I.D.O.P.No.102 of 2014 on



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the file of the learned Additional District Judge, Tirunelveli. Subsequently, after the establishment of the Family Court at Tirunelveli, the said divorce petition was transferred to the Family Court, Tirunelveli and renumbered as I.D.O.P.No.82 of 2014. The learned District Judge, after the enquiry and also considering the oral and documentary evidence, dismissed the divorce petition filed by the husband. Aggrieved over the same, the husband has filed the present Civil Miscellaneous Appeal.

2. The case of the appellant/husband is that the marriage between the appellant and the respondent was solemnized on 30.11.2011 at Infant Jesus Church, Palayamkottai, Tirunelveli, as per the Christian customs. From the date of marriage, the behavior of respondent/wife was so abnormal and she was not interested in the sexual affairs with the appellant. She always pick up quarrel with the appellant and his family members and abuse them in filthy language. Therefore, the appellant took her to a Doctor for counselling. After the counselling, she lived with him happily and got pregnant. During the pregnancy period, she lived with her parents and he used to meet her at her parents' home. Thereafter, she came to the appellant's house on 21.10.2012 for baby shower



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function and immediately after the completion of the function, she went to her parent's house on the same day itself. Thereafter, she gave birth to a female child and she came to the appellant's house only on 27.01.2013 for Baptism function. On that day, her behavior was abnormal and she scolded the appellant and his family members and also threatened them that she is going to commit suicide. Further, she never take care of her child and since her behaviour would endanger the life of the child, they sent the respondent to her parent's house. After seven months, i.e. on 25.08.2013, her parents took her to the appellant's house informing that she was in normal condition and she took treatment from one Jeeva, a Psychiatrist at Palayamkottai. But, they did not give any medical prescription regarding the treatment taken by the respondent. On the same day evening, i.e. on 25.08.2013, again, her behaviour was abnormal and her condition became worse and she threatened the appellant and his parents that she is going to commit suicide and she informed the same to her relatives over phone. Therefore, the respondent and her child were handed over to her parents. Thereafter, he gave a complaint before the Thalaiyuthu Police Station about her mental status and also filed a petition for divorce.



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3. The respondent/wife has denied the allegation of the appellant that she was suffering from mental disorder. She stated that from the date of marriage, she has been living with the appellant and after the marriage, they went to Kodaikanal for honeymoon, where, they spent their time happily. Out of the wedlock, they were blessed with a female child. She further stated that at the time of pregnancy period, she was staying at her parental home and the appellant used to meet her frequently at her parental home and they also went to the appellant's house for baby shower function. After delivery of child, they went to the appellant's house for Baptism function to the child. The appellant's father was a retired police officer in the very same jurisdiction police station and the appellant has given a false complaint against her under influence of his father. She further stated that she is ready and willing to live along with the appellant.

4. Before the trial Court, on the side of the appellant, he examined himself as P.W.1 and his mother Stella Mery was examined as P.W.2. and seven documents were marked as Exs.P1 to P8. On the side of the respondent, she examined herself as R.W.1 and three documents were marked as Exs.R1 to R3. The learned Judge, Family Court, Tirunelveli, after considering the oral and



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documentary evidence, dismissed the petition holding that the appellant/husband has not proved the fact that the respondent/wife was suffering from mental disorder. Aggrieved over the same, the appellant/husband is before this Court.

5. The learned counsel appearing for the appellant submits that the respondent left the matrimonial home voluntarily in the month of February 2012 itself and thereafter, she never turned up to live with the appellant in the matrimonial home along with the child. The respondent was not interested in sexual relationship with the appellant and only after the advice of the Doctor, the respondent became involved in sexual relationship with the appellant. After few days, she turned up into abnormal condition and used to scold the appellant in filthy language and behaved rudely. She was suffering from mental disorder even prior to the marriage, however, the said fact was suppressed by the respondent's family members. But, the learned Judge failed to consider the said fact. Further, the learned Judge believing the photographs produced by the respondent and the appearance of the respondent in the said photographs, disbelieved the allegations made by the appellant/husband and dismissed the divorce petition. According to him, the photographs produced by the respondent were taken after one week from



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the date of marriage and based on the said photographs, it cannot be decided that the respondent is a sound mind person. But, the learned Judge failed to consider the fact that the photographs produced by the respondent were taken only after one week from the date of marriage. Therefore, the photograph cannot be a sole ground to disbelieve the allegation of the appellant regarding unsound mind of the respondent. Though the appellant has proved the fact that the respondent is suffering from mental disorder, the learned Judge failed to consider the same. Therefore, the appellant is entitled for divorce on the ground of cruelty and continuous mental disorder.

6. The learned counsel appearing for the respondent submits that the respondent does not have any such mental disorder as alleged by the appellant and there is no proof for the same. The respondent was leading a peaceful matrimonial life with the appellant. Out of the peaceful wedlock, she gave birth to a female child. The baby shower ceremony and baptism function were also held only at the appellant's house. In order to substantiate the allegation of the appellant, he did not produce any documents, like, medical reports or prescription. Further, the appellant has not examined any Doctor, who gave



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treatment to the respondent. Under these circumstances, the Family Court found that the appellant has not proved the allegation that the respondent is suffering from mental disorder and therefore, rightly dismissed the divorce petition. Therefore, there is no merit in the appeal and the same has to be dismissed.

7. Heard the arguments on either side and perused the materials available on record.

8. Admittedly, the marriage between the appellant and the respondent was solemnized on 30.11.2011 at Infant Jesus Church, Palayamkottai, Tirunelveli, as per the Christian customs and out of the wedlock, they were blessed with a female child.

9. The case of the appellant/husband is that the respondent/wife was suffering from mental disorder even before the marriage, which was suppressed by her family members. After the marriage, the respondent has not shown any interest in sexual relationship with the appellant. Therefore, the appellant took the respondent to a Doctor for counselling and thereafter only, she had intimacy



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with the appellant and subsequently, she got pregnant. During the pregnancy period, she was staying at her parental home and she came only on 21.10.2012 for baby shower function. Immediately after the completion of the baby shower function, she left the matrimonial home. Thereafter, she came to the appellant's house only on 21.07.2013 for Baptism function of the child. On that day, she behaved rudely and immediately, she left the matrimonial home. Thereafter, she came to the house of the appellant and whenever she was in the house of the appellant, she used to behave rudely and in an arrogant manner, like, mental disorder person. Therefore, they have immediately informed the same to the respondent's parents, who took her for treatment. After sometime, they brought the respondent to the appellant's house and informed that earlier, she had mental problem, now, after taking treatment, she was perfectly alright. Again, her behaviour became worse. Thereafter, she left the matrimonial home along with the child in the month of February 2013 and she never turned up to lead the matrimonial life with the appellant. Since the family members of the respondent have suppressed the fact of mental disorder, the appellant sent a notice to the respondent, but, there was no reply. Therefore, he was constrained to file a petition for divorce.



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10. The case of the respondent/wife is that she had no such mental disorder and she never took any treatment for mental disorder. According to her, after thorough enquiry only, their marriage was performed and after the marriage, she started her matrimonial life with the appellant and they went to Kodaikanal for honeymoon, where, they spent their time happily and out of their wedlock, they were blessed with a female child. Even during the pregnancy, she stayed at her parental home as per customs and the appellant used to visit there frequently. They went to the appellant's house for baby shower function. After delivery of child, they went to the appellant's house for Baptism function to the child. She was also leading a matrimonial life with the appellant happily. However, the appellant has lodged a false complaint against the respondent and there is no iota of evidence to prove that she was suffering from mental disorder. According to her, all the allegations levelled by the appellant are invented only for the purpose of filing the divorce petition and there is no truth in the allegations levelled by the appellant. Further, the appellant has not proved the said allegations in the manner known to law.



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substantiate the same. But, he has not proved the same in the manner known to law. The appellant further alleged that the respondent did not co-operate for sexual relationship. However, the respondent gave birth to a female child. From the above, this Court finds that the respondent was leading peaceful matrimonial life with the appellant. Since the appellant has not proved the allegation that the respondent was suffering from mental disorder and her behaviour was abnormal, this Court is of the view that the learned Judge, Family Court, has rightly dismissed the divorce petition filed by the appellant, which does not warrant any interference.

12. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
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NCC : Yes/No
Index : Yes / No
Internet : Yes / No

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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

To

1. The Family Court,
Tirunelveli.

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Judgment made in
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