



C.M.A.(MD).Nos.1118 and 1119 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2023

PRONOUNCED ON : 20.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.1118 and 1119 of 2018

A.Anand Abeson Daniel ... Appellant in both C.M.As.

Vs.

P.R.Sheena Parimala ... Respondent in both C.M.As.

COMMON PRAYER : Civil Miscellaneous Appeals filed under Order 43 Rule 1 of the Civil Procedure Code, to set aside the judgment and decree in I.D.O.P.Nos.84 and 151 of 2012 on the file of the learned District Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.T.Arul
For Respondent : Mr.N.Shankar Ganesh

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/husband, challenging the common order passed by the learned District Judge, at Nagercoil, Kanyakumari District in I.D.O.P.Nos.84 and



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151 of 2012 dated 27.07.2017.

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2.For the sake of convenience, the parties are addressed herein as appellant husband and respondent wife.

3.D.O.P.No.151 of 2012 was filed by the appellant/husband under Section 10(1)(IX)(X) of Indian Marriage Act to dissolve the marriage between the appellant husband and respondent wife. D.O.P.No.84 of 2012 was filed by the respondent wife under Section 32 of the Indian Divorce Act, 1869 as amended by Act, 51 of 2001 for Restitution of Conjugal Rights for restitution of conjugal rights of the respondent wife with the appellant husband.

4.The learned trial Court has framed two issues. The petitioner was examined as P.W.1 and one Lingadurai was examined as P.W.2 and 3 documents Ex.P1 to Ex.P3 were marked on the side of the petitioner. The respondent was examined as R.W.1 on the side of the respondent and 14 documents Ex.R1 to Ex.R14 were marked. On the basis of the oral and documentary evidence and the arguments put forth by the respective



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parties, the learned trial Court allowed D.O.P.No.84 of 2012 filed by the respondent wife seeking restitution of conjugal rights with costs and dismissed D.O.P.No.151 of 2012 filed by the appellant husband seeking relief of divorce.

5.Assailing the said common judgment, the appellant/husband has preferred these Civil Miscellaneous Appeals.

6.Heard Mr.T.Arul, learned counsel appearing for the appellant and Mr.N.Shankar Ganesh, learned counsel appearing for the respondent and perused the entire materials available on record.

7.The learned counsel for the appellant husband claimed that the respondent wife always quarrelled with the appellant husband and she failed to maintain smooth and cordial relationship with her husband and continued disrespecting the appellant husband even after giving birth to two children. She went to the extent of stabbing the appellant husband with knife. It was also contended by the learned counsel for the appellant that the respondent wife did not even take minimum care to maintain



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children and did not even provide the children with food in time, which caused untold pain and agony to the appellant husband. That apart, on 30.05.2005, the respondent wife dropped their children in the appellant's parent's house and after which, she failed to come forward to maintain her children.

8.It was contended by the learned counsel for the appellant that the respondent wife wantonly took away the second child Rakesh Daniel with the help of her sister and sister's husband at the time of final examination, which resulted in demotion of the second child and the said incident caused immense mental agony to the appellant husband. It was strongly contended by the learned counsel for the appellant that the respondent had spread false news that the appellant husband's mother was affected by leprosy disease and advised the children not to take any food from the appellant husband's mother and also spread the said news to the relatives causing great mental agony to the appellant husband. It was further contended that after desertion, the appellant husband came to India in order to take back the respondent wife to their matrimonial home. When he went to respondent wife parent's house, the respondent



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wife took a chopper and came out of the entrance shouting that she would murder the appellant husband and the said incident was witnessed by the driver of the appellant husband, namely Lingadurai.

9.The pleadings made by the respondent wife that the appellant husband had been a habitual drunkard and that he used to go to Bombay, Singapore, Chennai and China were utter false intended with a sole motive of defaming and demeaning the appellant husband and it was vehemently contended by the learned counsel for the appellant that the conjoint reading of the evidence of the respondent wife along with her pleadings would prove that all her defence in the petition for divorce and her allegations in the petition for restitution of conjugal rights were all concocted stories invented exclusively for the purpose of harassing the appellant husband.

10.That apart the learned counsel for the appellant contended that all the allegations of the respondent wife about the appellant husband with respect to his conduct of consuming liquor and that he enjoyed with ladies and friends had been intended in assaulting the character of the



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appellant husband and the same would amount to cruelty and on that ground, the appellant husband is entitled for a decree of divorce. That apart, the respondent wife having introduced an unknown character of Sony Disusa in her evidence alleging that the said female stayed in the house of the appellant husband at Dubai for six months and that the appellant husband had close contact with the said woman was the ultimatum of all allegations intended to paint the appellant husband black causing great dishonor to him. Highlighting the attitude of the respondent wife removing her thali chain from her neck and throwing the same into the dust bin in front of the first son, the learned counsel for the appellant submitted that the said activity would also amount to cruelty.

11.As far as the point of desertion is concerned, the learned counsel for the appellant contended that in the month of October 2004, when the respondent wife returned to India voluntarily and thereafter, refused to return to their matrimonial home despite the appellant husband's efforts to bring her back to her matrimonial home and the same was prevented by her atrocities behavior when he visited her in her maternal home, by conversing filthy words accompanied by a chopper.



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Refusing to come back to their matrimonial home itself would be a sufficient ground for the appellant husband to seek divorce. It is categorically contended that the respondent wife after deserting the appellant husband in the month of October 2004, there is no contact or cordial relationship between the appellant husband and respondent wife and there is no phone contact with the respondent wife as well. In view of the same, he pleaded for allowing the appeal.

12.Per contra the learned counsel for the respondent refuting the arguments put forth by the learned counsel for the appellant, submitted that the trial Court has elaborately dealt with both the cases and on the basis of the appropriate oral and documentary evidence had proceeded to dismiss the petition for divorce and allowed the petition for restitution of conjugal rights. In view of the same, he pressed for dismissal of the appeal.

13.It is the specific case of the appellant husband that the respondent wife had deserted him during October 2003 and right from the inception of marriage, the respondent wife never showed any love



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and affection towards him. However, it is pertinent to note that the first child Trevor Daniel was born on 29.11.1998 and the second child namely Rakesh Daniel was born on 15.05.2000 and during the pregnancy period, in both the occasions, the respondent wife was living with the appellant husband at Dubai. Hence, it is needless to state that from the year 1997 till 2000, the marriage between the appellant husband and the respondent wife must have been cordial. Hence, the allegation of the appellant husband that the respondent wife had not shown any love and affection from the inception of marriage need not be true.

14.A perusal of the materials available on record would reveal that the respondent wife had travelled to India for both the deliveries and the children were born through Caesarian section. It is brought to the notice of this Court that the appellant husband had purchased a piece of land measuring 12 cents at Parvathipuram, Nagercoil during the year 2002 and he constructed a new house in six cents of land and house warming ceremony was on 03.07.2003 and the photographs taken during the ceremony would reveal that both the appellant husband, the respondent wife, along with children were cordial on the date of house warming



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ceremony I.e., during the year 2003.

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15.However, the fact that the respondent wife had deserted him during October 2004 has been strongly defended by the respondent wife that on 19.10.2004, she returned to India from Dubai to take treatment for her back pain due to Caesarian Section deliveries within an interval of 1 ½ years and only due to the refusal of allowing her into her matrimonial home by the husband's family, she stayed with her parents in her maternal home for taking necessary treatment. It is also specific to note that had the respondent wife intended to desert the appellant husband would not have left all her belongings at Dubai except few dresses while she left for India for the said treatment. However, after the respondent's arrival to India, it was found that the appellant husband never took any steps to call her back to Dubai.

16.While so, the appellant husband came to India during May 2005, immediately the respondent's father on 30.05.2005 accompanied with the respondent wife and her children came to Oasis, Parvathipuram, Nagercoil. At that time, the appellant husband was with his parents at



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their home. When the respondent wife's father returned back at 10.00 a.m., to attend the work at Kuzhithurai Court, the appellant husband convinced the respondent wife that the appellant's mother is very cruel and hysterical and that she would become more ferocious if she saw the respondent wife. Thereafter, for that reason, he convinced the respondent wife that he will bring her back while he leaves for Dubai. He himself leaving the children with his parents took the respondent wife to her maternal home at Kuzhithurai on the same day at 01.30 p.m., and had lunch at Kuzhithurai and left for Nagercoil. When the respondent wife after two days was expecting for the arrival of her children tried to contact over phone, the appellant husband responded telling that 'he was at Dubai and he and his father together admitted the children at CSI Matriculation School, at Nagercoil and his mother will take care of the children'. He further warned the respondent wife not to go to Nagercoil and disturb his children and his parents. Thus, the appellant husband cunningly cheated the respondent wife taking the custody of their children and leaving them with his parents. The appellant husband and his father admitted Rakesh Daniel who did LKG, in the first standard directly. The appellant husband did not even know in which standard the



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kid studied at Dubai and Trevor was admitted in second standard.

Thereafter, the appellant husband and his parents never permitted the respondent wife and her parents to see the children at their home. During several occasions, the respondent wife stood outside the house and saw the children and returned back. Often the appellant husband's parents drove the respondent wife outside and locked the gate and children were tutored to hate their mother. Though originally the children were too fond of their mother in due course of time, they were made puppets in the hands of the appellant husband's parents.

17.While so the appellant husband's Driver one Lingadurai informed that Rakesh Daniel was admitted at Jeyasekaran hospital and that he was seriously ill and the respondent wife and her father went to hospital. On seeing them, the appellant husband's mother took a bottle full of water and started beating the respondent wife in front her parents and hospital authorities out of her rage. The appellant husband's father went to the extent of calling few rowdies and the respondent wife and her father were surrounded by a group of rowdies and the rowdies took away Trevor Daniel from the hospital. Left with no other option, the



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respondent wife has to move away with tears. On the next day, when the respondent wife went to the hospital, she found the child was admitted in the Intensive Care Unit. Though the respondent wife called the appellant husband several times through phone, he did not give any response to her. On 08.01.2006, the appellant husband's parents left the child at hospital and absconded. The respondent wife and her father cleared the hospital charges and dues and took the child to their house. On 28.01.2005, the appellant husband himself with his driver Lingam and some rowdies gone to the respondent wife's house in a drunken mood and tried to kidnap Rakesh and kill the respondent wife and her mother. The respondent wife got younger son Rakesh and has admitted in Infant Jesus School, Thiruthuvapuram. The elder son continued his studies at Nagercoil. Just to get undue advantage and to enjoy son's earnings, the parents of the appellant husband induced the appellant husband to desert the respondent wife. On the last annual examination day on coming to know that the visa was cleared for the elder son Traevor Daniel, he had planned to take away his elder son on the next day of exam to Dubai by giving him in adoption to the appellant husband's sister Beulah Vijayakumar. Hence, the respondent wife rushed to the school wherein



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Trevor Daniel was studying and she took away the elder son from the school after informing duly to Vadachery Police on the same day. Thereafter, two children and the respondent wife together stayed for the annual school vacation at Kuzhithurai that is the maternal home of the respondent wife.

18. Thereafter, the appellant husband's father after knowing that the respondent wife took the child, foisted false cases and filed complaints against the respondent wife and her relatives with the help of a local MLA. Influenced by the said MLA, the police had registered five cases of kidnapping and tried to arrest the relatives of the respondent wife. With the apprehension of the arrest, the respondent wife and her relatives took anticipatory bail from this Court. After a month, the case was referred by the police due to a compromise arrived at between them. At that time, with the help of police, the father in law obtained the passports of the respondent wife and her children.

19. On 07.06.2007, after school reopening, the respondent wife and her children voluntarily came to the appellant husband's house Oasis at



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S.S.Nager, Parvathipuram to continue her children's education at Nagercoil by staying at their house. The appellant husband's father admitted the children at Bellfield Matriculation School, Asaripallam. From that day, by tolerating the life threat and torture, the respondent wife lived continuously at the appellant husband's house till April 2009. The appellant husband's parents did not permit the respondent wife to sleep with her children. But compelled the children to sleep with them in separate room. They even did not permit the respondent wife to talk to the children. They treated the respondent wife less than a maid and utilized her extracting maximum household work. The appellant husband's mother inflicted acute domestic violence and they locked all the phone in such a way that the respondent wife could not contact anyone from home. That apart the children were trained not to call the respondent wife as "Amma". Many times the children were beaten by the grandmother for conversing with the respondent wife. While so, the respondent wife's mother passed away on 15.09.2009 and father passed away on 15.03.2010. Immediately after the death of the respondent wife's father, on 02.04.2010 to the shock of the respondent wife, the appellant husband issued an advocate notice to the respondent wife demanding



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mutual divorce. Thus, the appellant husband deserted the respondent wife and the respondent wife has no motive or enmity with the appellant husband or his parents and has no intention to separate from him.

20.To the scrupulousness of all, the children were continuously brain washed by the appellant husband's illusionary versions of living at Dubai, Canada, Singapore, Honkong, Bombay and other luxurious places. The children's welfare was affected due to the undue influence of the appellant husband and his parents directly and indirectly. In the meanwhile, he resigned his job as Accountant in 'Zambezi Shipping' and started night club. In due course of time, the children who were initially innocent were completely brainwashed and trained in such a way as to give company to the appellant husband and follow his parents. The respondent wife by all means is not willing to consent for divorce.

21.The appellant husband in D.O.P.No.151 of 2012, that is, Anand Abeson Daniel examined himself as P.W.1 and his evidence was fully based on the contents of the petition in D.O.P.No.151 of 2012, as well as the contents of counter in D.O.P.No.151 of 2012. Supporting his version



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in D.O.P.No.151 of 2012, three documents were marked as Ex.P1 to Ex.P3, ie., Ex.P1 is the copy of the marriage certificate, Ex.P2 is the copy of Advocate notice issued by the petitioner and Ex.P3 is the acknowledgement card. The petitioner in D.O.P.No.84 of 2012, that is, Sheena Parimala examined herself as R.W.1 and was cross examined by the counsel for the petitioner in D.O.P.No.151 of 2012, on the basis of the contents of the petition in D.O.P.No.84 of 2012 and the counter filed in D.O.P.No.151 of 2012 and put up suggestions to the petitioner P.W.1 Anand Abeson Daniel. He denied the contents of the counter in D.O.P.No.151 of 2012 and contents of the petition in D.O.P.No.84 of 2012.

22.The holistic consideration of the facts and circumstances of the case would reveal that the respondent Sheena Parimala had not deserted the appellant husband and children. On the other hand, the appellant husband had dropped her at her parent's home at Kuzhithurai and informed her that he will pick her up back, while he is leaving for Dubai. However, he did not do the same. He left for Dubai without taking the respondent wife and children with him. He admitted in the cross



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examination that at the time of marriage, he was working in Dubai as an Officer in the Shipping and Forwarding Agency. He also admitted in the cross examination that when the respondent wife was pregnant, he sent her back to India. After the birth of elder son, he admitted that along with the infant child, the respondent wife returned to Dubai. He denied each and every suggestion put forth by the respondent wife's counsel in terms of petition in D.O.P.No.84 of 2012 and counter in D.O.P.No.151 of 2012.

23.Further the facts and circumstances of the his case would unfold that the sister of the appellant husband did not have children and wanted to adopt the children of the appellant husband. The appellant husband was ready to give the children to his sister. However, the same was not consented by the respondent wife. The appellant husband took a receptionist from Mumbai on a tourist Visa to Dubai and obtained regular Visa and later allowed her to reside in the family house, due to which serious misunderstanding crept between the appellant husband and the respondent wife. The parents of the appellant husband were also there in matrimonial home in Dubai. During that evening, the appellant husband took the company of the receptionist to the night club and returned home



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early in the morning next day. Such activities of the appellant husband gave rise to enormous number of quarrels between the appellant husband and respondent wife and however, the appellant husband's parents kept supporting the appellant husband. Only on such circumstances, the respondent wife got pregnant with the second child and the appellant husband has brought her to India. He left her in her parent's house and returned to Dubai. Thereafter, the children and the respondent wife were residing in the matrimonial home at Parvathipuram. The appellant husband used to visit them once in a month or on business tours. While so, the custody of the children were cunningly taken by the appellant husband and left the custody of the children with his parents. The respondent wife was not allowed to live in her matrimonial home.

24. Under such circumstances, the respondent wife had taken the children from the school against which the appellant husband gave a complaint before All Women Police Station for the custody of the children. The appellant husband who was examined as P.W.1 had admitted that he had taken the respondent to her maternal house and denied the statement that he had not taken her back. In support of the



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petitioner's contention in the petition and the affidavit, the appellant husband examined one Lingadurai as P.W.2 and P.W.2 had deposed that he had driven a Ambassider car bearing registration No.TN-72-B-7272 along with the appellant husband to the residence of the respondent wife's parents. On seeing the appellant husband, the respondent wife had shut the door on the face of the appellant husband and tried to attack the appellant husband with aruval and warned the appellant husband that he would be attacked by aruval if he dared to enter the house. The appellant husband waited outside the gate of the respondent wife's parents house, Kuzhithurai. This was witnessed by the said Lingadurai and others at the respondent's maternal home. After that incident, the appellant husband never visited the wife's maternal house.

25.P.W.2 was cross examined by the respondent wife before the learned District Judge, Nagercoil. In the cross examination, he admitted that he was awarded life sentence by the very same learned Sessions and District Judge's Court, Nagercoil in an alleged kidnapping and murder of one Palanivel and the said judgment was confirmed by this Court and on appeal by him before the Hon'ble Supreme Court and the Hon'ble



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Supreme Court had reduced the sentence and he was set free in the year 2011. It was such a person who accompanied the petitioner to the Court and deposed evidence in his favour as P.W.2.

26.The respondent Sheena Parimala examined herself as R.W.1 and she was also examined by the appellant husband. In the cross examination, she admitted that when she was in Dubai, there was no problem between them. Further she stated that at the time, the parents of the appellant husband used to talk to him through phone and only on such occasions, the appellant husband picked up quarrels with her and used to assault her. She admitted that what was spoken to the appellant husband by the mother was not known to her. In the cross examination, she has stated that the sister of the appellant husband was also residing at Dubai in a different residence and she used to visit the appellant husband's family often. On such visit, she used to pick up quarrel with the respondent wife and the appellant husband joined her in the quarrel. That apart she added that the appellant husband was drunk on the night of the marriage itself and he was accustomed to habitual drinking. Therefore, in the cross examination, it was suggested that she had not



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mentioned about the appellant husband's drunken habit either in her petition or in the counter and the same is admitted by her. However, she stated that with her intention to re-join with him, she has not stated the same in her pleadings.

27. In the cross examination, she was confronted with the averment in the affidavit regarding the woman from Mumbai who was taken by the appellant husband to Dubai on tourist visa as receptionist and after reaching Dubai, the tourist visa was converted into regular visa. She promptly deposed the name of the receptionist as Sony Disuza and she reiterated that Sony Disuza stayed in the family house at Dubai for six months. In the cross examination, for the suggestion, the said Sony Disuza left after six months the respondent wife responded that instead of leaving her, the appellant husband had driven the respondent wife out of the family house. Further she stated that the said Sony Disuza was introduced to her by her husband as private secretary in the office. On assessment of the evidence of the appellant husband and the respondent, it is found that the averments in petition in D.O.P.No.151 of 2012 cannot be considered by the Court in the light of the evidence available before



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the Court.

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28.The pleadings and the evidence of the appellant husband canvasses that the respondent was leading an irresponsible live not taking care of the children. When the children were in young and tender age at Dubai, she used to go out of house very often leaving the children in hunger without taking care of the household chores. It was also categorically contended that the petitioner's husband on return from his job would take care of the children by cooking food and feeding them. However, the learned Trial Court proceeded to held that such averment cannot be believed by any person and any women would not decline to prepare food for husband and under any circumstances, a woman will never leave her child in hunger. The learned Trial Court concluded that the pleadings in the petition for divorce is unbelievable.

29.Further the learned Trial Court proceeded to observe that the appellant husband had taken the wife to Dubai, which is an unfamiliar place for the respondent wife in such circumstances, the respondent wife leaving the house is completely unbelievable and given the strict societal



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structure in the Arab, where a woman cannot move freely as in India and that the police in Arab had strict moral policing rules. Had the respondent wife being roaming around and moving around, a strict punishment would have been inflicted on her. While the respondent wife had no friends or relatives at Dubai, the question of leaving home and roaming around did not sound true.

30.The next contention that the respondent wife suffers from mental health issues. The learned Trial Court observed that in that case, it is the responsibility of the appellant husband to have given her appropriate psychological treatment and that recording the fact that the respondent wife is a graduate and that she has completed M.Sc, The contention of the appellant husband that the respondent suffered mental illness is not acceptable. Considering the fact that the parents of the appellant husband is alleged to have instigated the appellant husband resulting the appellant husband to pick up quarrel with the respondent wife, which in turn taking away the children from the custody of the respondent wife, denying the mother's love and affection to the children, obviously a women put to such circumstances would be subjected to



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emotional abuse on being forcibly separated from her children and would naturally lose her mental balance and composure. Hence, the learned Trial Court proceeded to observe that the allegations that the respondent wife suffered from mental health would be attributed to the conduct of the appellant husband and his parents alone. That apart the Court observes that the children of the respondent wife are with the appellant husband's parents and the respondent wife is living separately. Moreover, the Court observed that the evidence is available that the respondent wife is not allowed to enter the matrimonial home and on such circumstances, it is needless to state that any woman would be in a condition of depression.

31.The contention of the respondent wife that the appellant husband went to respondent wife's maternal home with one Lingadurai who is a released convict to threaten the respondent wife to part away with the younger child cannot be treated lightly or ignored as if the said Lingadurai himself has filed an affidavit supporting the appellant husband's case. That apart the learned Trial Court has observed that in the cross examination, the said Lingadurai was examined as P.W.2 admitted



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that he was convicted in an alleged case of murder and kidnap by the learned Additional District and Sessions Court, Nagercoil. Therefore, the learned Trial Court took adverse inference under Section 114 of Indian Evidence Act against the conduct of the appellant husband in threatening the respondent wife with dire consequences. This inference was thrown by the Court under Section 114 of Indian Evidence Act in the facts and circumstances and on the basis of evidence and from the records. Further the learned Trial Court proceeded to observe that the person who was convicted by the Court for murder even though the Hon'ble Supreme Court has reduced the sentence is still a convict in the eye of law. Knowing his criminal background, the appellant husband has exploited him to threaten his wife to keep away her from her children, thereby threatening her live and forcibly separated her from her children. Obviously that would cause unnatural outburst and emotional imbalance in her and naturally she would intent to revolt against the atrocious act of separating her children forcibly from her and as the result of which, she would have behaved awkwardly and the entire unpleasantness is attributable by the appellant husband and his parents. Thus the learned Trial Court proceeded to conclude that the appellant husband has his own



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reasons to take the side of his parents ignoring the feelings of the respondent wife.

32.However, the actions of the appellant husband could not be accepted by any Court of law dealing with matrimonial disputes and the appellant husband failed to prove before the Court regarding the atrocities committed by the wife against the husband that she treated him with cruelty warranting divorce. The learned Trial Court proceeded to record that by the time, when the Court was deciding the case, the first son had completed 12th standard and joined professional course in Marine Engineering at Chennai and the younger son also attained the age of 16 years and the proceeding of connected case in G.W.O.P.No.82 of 2012 before the same Court would throw light on the entire facts and circumstances that both the children had been completely brain washed by the appellant husband and his parents utilizing the lack of company of the respondent wife with her children for their own evil desire. In view of the said observation, the learned Trial Court proceeded to dismiss D.O.P.No.151 of 2012 seeking divorce by the appellant husband and allowed D.O.P.No.84 of 2012 filed by the respondent wife seeking



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restitution of conjugal rights.

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33.Though the appellant husband has claimed divorce on the ground of cruelty and desertion, it has elaborately dealt with by the learned Trial Court. It was only the appellant husband and his parents who forcibly separated the respondent wife from her minor children continuously and had inflicted unexplained emotional and psychological abuse. The traumatic life in which a mother who had been separated forcibly by the husband and was completely compelled to lead a battle against her husband seeking custody of her children or atleast to meet her children in a plausible and peaceful circumstances would obviously subject a women to suffer to an ultimatum and the instant case is a notorious case where the appellant husband had continuously succeeded in keeping his children away from his wife and succeeded in brainwashing his sons to the disadvantage of the mother and had taken a matrimonial feud as an egoistic battle and has proceeded to confront his wife before the learned Trial Court seeking divorce and has successfully managed to keep G.W.O.P. pending till the elder son attained the age of majority and the younger son attained the age of 16 years.



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34.The learned counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Ravi Kumar v. Julmi Devi** reported in **CDJ 2010 SC 467**, relying upon the definition of cruelty defined in paragraph no.18 of the said judgment and the same is extracted as follows:-

“18.It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behavior which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, some time it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behavior defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite. ... variety it may be subtle or even brutal and



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may be gestures and words. That possibly explains why Lord Denning in Sheldon vs Sheldon, (1992 2 All E.R. 257) held that categories of cruelty in matrimonial cases are never closed.”

35.The learned counsel for the appellant contended that there is no defined form of cruelty and the Court has to test as to how the husband has suffered in view of the cruel attitude of the respondent. All along, the respondent was adamant in not even providing food to the children and she had gone to the extent of taking away younger sons during the last exam which spoiled one year career of younger son. Further he relied upon the case of **K.Srinivas Rao v. D.A.Deepa** reported in **CDJ 2013 SC 145** submitted that the Hon'ble Apex Court has held in paragraph no 22 of the said judgment that the defamatory statement made by the wife against the husband amounts to cruelty. He further relied on the case of **Vivek Thambuswamy and another v. Maria @ Sijo Paul** reported in **CDJ 2020 MHC 3866** in which the Hon'ble Supreme Court has held that the allegations of dowry demand amounts to cruelty and accordingly granted the decree of divorce. In addition to that, he relied upon another Full Bench Judgment of the Hon'ble Apex Court in the case of **Samar**



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Ghosh v. Jeya Ghosh reported in ***CDJ 2007 SC 373***, in paragraph no. 96(xiv), held that “*where there has been a long period of continuous separation, it may be fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.*”

36.He relied upon yet another case of ***C.Sivakumar v. Srividhya*** reported in ***CDJ 2022 MHC 3632***, wherein the Hon'ble Division Bench of this Court has held as follows:-

“The removal of thali chain is often treated as an unceremonious act. We don't say for a moment that removal of thali chain per se sufficient to put an end to the marital knot, but the said act of respondent is a piece of evidence in drawing an inference about the intentions of the parties. The act of respondent in removal of thali chain at the time of separation coupled with various other evidences available on record, compel us to come to a definite conclusion that the parties have no intention to reconcile and continue the marital



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knot.”

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37.He relied upon yet judgment of ***Samitha v. V.R.Thirumal*** reported in ***CDJ 2023 MHC 7045***, wherein the Hon'ble Division Bench of this Court has held as follows:-

“9.The only question that would arise for determination is whether the husband had established cruelty pleaded by him so as to justify the grant of divorce by the Family Court. We have been taken through the evidence on record. As far as the documentary evidence is concerned, the same is not very helpful as what has been produced are only certain police complaints, resignation of the husband and medical records of the father and the husband himself. May be those documents by themselves cannot establish cruelty, but, at the same time, we find that the tenor and the manner in which the the husband (P.W.1) has been cross-examined by the learned counsel for the wife would be itself justify the conclusion of the Family Court.”

38.Per contra the learned counsel for the respondent relied upon the order passed by the Delhi High Court in an appeal in ***case no.MAT.APP.(FC).290/2018*** and in ***case no.MAT.APP.(FC).291/2018*** dated 19.09.2023, submitted that the Delhi High Court has reiterated that



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'the District Courts and High Courts are not empowered to pass an order of divorce on the ground of "Irretrievable Break Down" and the Hon'ble Supreme Court has alone have the power to do the same under Article 142 of the Constitution of India'.

39.The learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Shyam Sunder Kohli v. Sushma Kohli @ Sathya Devi*** reported in **2004 (7) SCC 747**, has dealt with the similar issue and the relevant portion of which is extracted as follows:-

“12.On the ground of irretrievable break down of marriage, the Court must not lightly dissolve a marriage. It is only in extreme circumstances that the Court may use this ground for dissolving a marriage. In this case, the respondent, at all stages and even before us, has enn ready to go back to the appellant. It is the appellant who has refused to take the respondent back. The appellant has made baseless allegations against the respondent. He even went to the extent of filing a complaint of bigamy under Section 494 of IPC, against the respondent. That complaint came to be dismissed. As stated above, the evidence shows that the respondent was forced to leave the matrimonial home. It is the appellant who



has been at fault. It can hardly lie in the mouth of party who has been at fault who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable break down. We, thus see no substance in this contention.”

40.The learned counsel for the respondent has relied upon the judgment of the Calcutta High Court in the case of ***Basanta Das v. Shyamali Das*** reported in ***2020 AIR (Calcutta) 47***, has dealt with the similar issue and the relevant portion of which is extracted as follows:-

“11.Our High Court has held that in a case (Apoorva Mohan Gosh v. Manashi Ghosh, (1989) AIR Calcutta 115) that desertion was complete, whoever might have given the initial cause, because all the three elements that generally go to constitute “desertion”, namely the factum of separation, the animus deserendi, I.e., the intention to live apart and the animus non-revertendi, I.e, the intention not to revert to the matrimonial home were proved.

14.In order to get a decree of divorce on the ground of desertion, it has to be proved by the appellant husband that the other party to the marriage has deserted his or her without reasonable cause and without the consent or against the wish of the petitioner including willful neglect of the



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petitioner by the other party to the marriage. In addition to the fact of separation, the animus deserendi and animus non reverendi it has to be proved by the petitioner/husband that the wife, where she is the deserting spouse and does not prove just cause for her leaving apart, and to satisfy the Court that the desertion was without just cause. We have found in evidence that wife has expressed her willingness and eagerness to reunite with her husband and to reuse her conjugal life. There is no reason to disbelieve her. In the facts and circumstances of the instant case, and in view of the legal principles as discussed above, we are of the opinion that in the instant case, it is the wife/respondent who has been deserted by the husband/appellant.”

41. Having heard the rival contentions raised by both the parties and carefully perusal the materials available on record, this Court is of the considered view that the instant case, in which the husband as the appellant has sought for divorce against the wife on the ground of cruelty and desertion, on an elaborate over view of the facts and circumstances of the case would unfold the untold miseries suffered by the respondent wife who was forcibly separated from her minor children cunningly by the husband by taking the custody of the children and handing over the



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custody of the children to the appellant husband's parents and keeping the respondent wife run between pillar and post even to have a glance of her children even for a moment.

42.Having successfully separated the children from the wife, the appellant husband has successfully tutored the children to the disadvantage of the mother by poisoning the children's mind about their mother to that extent that the children were made to depose evidence in a connected G.W.O.P.No.82 of 2012, wherein the children deposed evidence narrating unimaginable incidents about their mother.

43.The appellant husband examined himself as P.W.1 and another person one Lingadurai as P.W.2. The said P.W.2 was convicted in an alleged murder and rape case and was later released on remission by the Hon'ble Apex Court after a prolonged period of judicial custody. Various circumstances narrated by the parties to the case would reveal that the appellant husband had made use of the said P.W.2 Lingadurai to threaten the respondent wife and had even taken the said person to the maternal home of the respondent wife to deal with her. The respondent wife from



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the instance of filing of D.O.P.No.151 of 2012 seeking divorce by the appellant husband had diligently filed counter and had contested the case seeking restitution of conjugal rights by consciously filing D.O.P.No.84 of 2012 seeking to restitute her conjugal rights with the appellant husband.

44.The ground of cruelty can never be wrapped up by the appellant husband for the reason that all the cruelty has been inflicted on the respondent wife only by the appellant husband and his parents by creating circumstances of provocation subjecting the respondent wife to depression and emotional abuse by forcibly separating the children from her and prevented her from meeting her children.

45.The ground of desertion can never be invoked as against the respondent. On the basis of the available records and evidence, the fact that the house named OASIS was built up at Parvathipuram by the appellant husband and after that the respondent had been a companion during the house warming ceremony along with the children has also been put on record. That apart for the purpose of living with her children,



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she continued to live in her matrimonial home at Parvathipuram tolerating all the ill behavior of her in laws till April 2009 in her matrimonial home. Only thereafter, the appellant husband had played fraud on her by cunning taking her back to her maternal home and leaving her in her maternal home. During the interregnum period 2005 to 2007, the appellant husband made the respondent to remain in her maternal home and all the efforts to come and stay in the matrimonial home was cunningly prevented by her in laws. However, much efforts and several confrontations with the appellant husband and in laws on 07.06.2007, after school re-opening, the respondent voluntarily came to the matrimonial home at Parvathipuram and she tolerated all the torture till April 2009. But on April 2009, when she went to visit her ailing mother and thereafter, she was not permitted to enter into matrimonial home. Following which, on 15.08.2009, the respondent mother and on 02.04.2010, the respondent's father passed away. On such orphaned condition, the appellant husband had completely negated the respondent and successfully separated the children from her and fully refused her company to his children. In the year 2010, he filed a petition for divorce. All the efforts taken by the respondent wife to reconstitute the company of



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matrimonial life failed and hence, she also filed a petition for restitution of conjugal rights. It is not the respondent wife, but only the appellant husband who had deserted the company of the respondent wife fully after 2009.

46.The question of desertion could be decided only if the party alleging desertion succeeds on the proving that the other spouse is voluntarily living separately and that there is an *animus deserendi* on the part of the wife not to live with the husband. However, the case on hand is a clear case where the respondent wife continuously battled to live together with her family. It is pertinent to extract the following verse of Holy Bible, which reads as follows:-

“1 Corinthians 7.8-10-”To the married, I given this command-not I but the Lord-that the wife should not separate from her husband (but if she does separate, let her remain unmarried or else be reconciled to her husband”, and that the husband should not divorce his wife. And Mark 10.9 N(IV) “Therefore What God has joined together, let no one separate”. ”



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47.Fully in tune to the Holy verses of the Bible that the wife should not be separated from her husband and the husband should not divorce his wife, observing that the instant case is where the wife is completely put to untold agony by the husband by continuously separating their children from the wife on various occasions repeatedly and subjecting her to cruelty and claiming a divorce on the ground of cruelty that the wife had treated him with cruelty.

48.Recording the fact that the appellant husband failed to prove cruelty on the part of the respondent wife and *animus deserendi* of desertion on the part of the wife, C.M.A.(MD)Nos.1118 and 1119 of 2018 fails the test of proving the traits of cruelty and desertion against the respondent wife.

49.Accordingly, these Civil Miscellaneous Appeals stands dismissed. There shall be no order as to costs.

20.03.2024

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



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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The District Judge,
Nagercoil, Kanyakumari District.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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