



C.M.S.A.(MD)No.2 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.01.2024

PRONOUNCED ON : 26.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.2 of 2017

S.Veerasamy

... Appellant / Appellant / Petitioner

Vs.

N.Vimala

... 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 Judgment and decree dated 20.10.2016 passed in C.M.A.No.11 of 2011 by Principal District Judge, Karur by confirming the Judgment and decree of the Principal Subordinate Judge, Karur passed in H.M.O.P.No.51 of 2009 dated 06.06.2011.

For Appellant : Mr.I.Vel Pradeep

For M/s.S.Vijayashanthi

For Respondent : Mr.S.R.A.Ramachandran



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JUDGMENT

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This Civil Miscellaneous Second Appeal has been preferred against the Judgment and decree dated 20.10.2016 passed in C.M.A.No.11 of 2011 by the Principal District Judge, Karur by confirming the Judgment and decree of the Principal Subordinate Judge, Karur passed in H.M.O.P.No.51 of 2009 dated 06.06.2011.

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

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

4. The case of the petitioner:

(i) According to the petitioner, the marriage between the petitioner



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and the respondent was solemnized on 03.02.2006, as per the Hindu Sastric rites and customs of the community at Sri Balaji Mahal, Vellakovil, Kangeyam Taluk in the presence of the parents of the parties, relatives and friends. After the marriage, the petitioner and the respondent commenced their matrimonial life in their matrimonial home at Cuddalore Village, Aravakurichi taluk in the month of Febraury, 2007. At the time of marriage the respondent's parents presented 30 sovereigns of Gold jewelry as seervarisai to the respondent / wife, along with cot and bed and almirah. Out of the wedlock a male child namely Adith Vikash was born to the petitioner and the respondent. At the time of filing the H.M.O.P petition, the child was 2 years old. At the first instance, the marriage went smoothly and the petitioner and the respondent lived happily as a husband and wife only for a few months. Thereafter, the respondent did not pay any attention to the advice of the petitioner and also refused to discharge her duties as a dutiful Hindu wife. In due course, the respondent began to quarrel with the petitioner without any reason and without giving respect to the petitioner and his family members. Very often, she went to her maternal home without the consent and knowledge of the petitioner and she herself would come back to the matrimonial home. The respondent insulted and ill-treated the petitioner in front of the relatives and friends of the petitioner



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that he is an uneducated person. The respondent is a post graduate and she was working as a Lecturer in Arungaraiaimman Arts & Science College Chinnadharapuram and she was also working as an LIC Agent. The petitioner is just qualified in 9th standard and he is an agriculturist. The behaviour of the respondent had affected the petitioner mentally to a great extent.

(ii) Considering the better future life of his children all the efforts taken by the petitioner to cope up with the respondent went in vain. However, the quarrels of the respondent increased day after day. While so, in the month of February 2007, the respondent voluntarily left her matrimonial home with all her jewelry and went to her maternal home without the knowledge and consent of the petitioner. All the efforts taken by the petitioner to bring back the respondent to their matrimonial home proved futile. In the month of February 2009, the well-wishers and close relatives of both the families intervened in the matter and convened a Panchayat at the house of the respondent. However, the respondent categorically stated that she will not come back to matrimonial home and cannot lead a peaceful life with the petitioner. Despite the intervention of elders of both the families with adamant attitude, the respondent refused to



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come and live with the petitioner. Hence, the petitioner came to the conclusion that there was no possibility for the reunion of the petitioner with the respondent. Since the respondent has deserted the petitioner for the past two years, the petition for divorce on the grounds of desertion and cruelty, came to be filed.

5. The case of the respondent:

(i) The respondent had filed a counter refuting each and every allegations putforth by the petitioner in his divorce petition. Admitting that the marriage between the petitioner and the respondent was held on 03.02.2006 at Sri Balaji Mahal, Vellakovil, Kangeyam Taluk in the presence of both the families, relatives and friends and that the same was an arranged marriage, conducted as per Hindu Kongu Velalar Gounder rites and customs. The respondent proceeded to submit in her counter that she was given with 40 sovereigns gold jewelry as demanded by the petitioner's family. That apart, Rs.1,00,000/- (Rupees One Lakh only) cash and home appliances including cot and almirah were also given. She further submitted that the marriage expenditure was shared by both the families equally. The respondent submitted that the petitioner, apart from doing agriculture, he was also running a money lending business. Denying



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the submissions of the petitioner that the respondent was continuing to work as a Lecturer in Arungaraiamman Arts & Science College Chinnadharapuram, she submitted that at the time of pregnancy, she resigned her job. They were blessed with a male child namely Adith Vikash and he was born on 16.11.2006.

(ii) According to the respondent, the petitioner was a man of strange behaviour and mannerisms. He was an adamant person and enforced his ideals on all the other persons including his parents. After the delivery of the first child, the respondent / wife became pregnant during the period between 2017 and 2018. The petitioner had consulted an astrologer and believed that the conceived child was only a female child. Accordingly, he compelled the respondent / wife to abort the pregnancy. However, since the doctors refused to do the same, the respondent negated the idea of the petitioner to abort the second pregnancy. Finally, on 10.04.2019, the petitioner himself forcefully chased away his pregnant wife / respondent out of their matrimonial home, compelling her to abort the foetus. Left with no other option, the respondent / pregnant wife went to her maternal home. On 25.10.2009, at Kangeyam Shanmugapriya Hospital, a girl child was born. The respondent strongly contended that she had never failed to



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do her duties as a dutiful Hindu wife to her husband. She further submitted that the allegations of misbehaviour and humiliations on the petitioner and his parents by the respondent are utter false. In reality, the petitioner inflicted strange mental abuses on the respondent because of his inferiority complex and ridiculous behaviour. The respondent was seriously initiating steps for reconciliation with her husband and by all means she was not ready for a divorce and sought for dismissal of the petition seeking divorce.

6. The learned Trial Court had framed two issues. Following which, the petitioner was examined as P.W-1 and one document was marked on the side of the petitioner. The respondent was examined as R.W-1 and two documents were marked on the side of the respondents.

7. On the basis of the evidence and the arguments submitted by the respective parties, the learned Trial Court proceeded to observe that the petitioner had miserably failed to prove the allegations, namely,

(i) That the respondent compelled him to be a domestic husband in her maternal home;



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(ii) The respondent never treated her husband and his parents with dignity and respect; and that

(iii) She always treated him with cruelty by adducing cogent evidence, relevant documents and appropriate arguments.

Though it is submitted by the petitioner that the respondent had misbehaved and humiliated him before his parents, friends, relatives and other persons and such instances resulted in mental anxiety, he miserably failed to prove the same with appropriate evidence. On that basis, the learned Trial Court proceeded to conclude that the petitioner / husband had miserably failed to prove that the respondent inflicted cruelty on him.

8. The second question is one of desertion. The contention that the respondent deserted the petitioner by the month of February 2007, voluntarily leaving her maternal home was also not decided in favour of the petitioner by the learned Trial Court. Though the petitioner has contended that the respondent voluntarily deserted the petitioner on February 2007 EX.R-2 birth certificate of the second child born on 25.10.2009 would disprove the same. At the time of cross examination, the



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petitioner did not refuse that the second child is not his child. On the other hand, he only said that he was not informed about the birth of his daughter.

Hence, the allegation that the respondent voluntarily deserted the petitioner as early as in the month of February 2007 was disproved. On that basis, the learned Trial Court held that the ground of desertion pleaded by the petitioner had no *locus standi*. However, the respondent both in her counter and at the time of evidence, both while chief examination and cross examination categorically stated that she always intended to rejoin and live a peaceful life with the petitioner. Accordingly, the learned Trial Court dismissed the said HMOP.

9. As against the same, the petitioner / husband preferred a Civil Miscellaneous Appeal in C.M.A.No.11 of 2011 before the Principal District Judge, Karur. The learned First Appellate Court has framed three issues. During the pendency of the said Civil Miscellaneous Appeal, the respondent / wife filed a Guardian O.P.No.17 of 2011 seeking the custody of her first child, that is, her son namely Adith Vikash. However, the learned Trial Court, vide order, dated 10.12.2015 had allowed the said petition by permitting the respondent / wife to meet her son with certain conditions periodically. Seeking to mark the order and decreetal order



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passed by the learned Trial Court on 10.12.2015 in Guardian O.P.No.17 of 2011, I.A.No.209 of 2016 came to be filed by the petitioner. Since the respondent did not file any counter, the learned First Appellate Court allowed the said I.A.No.209 of 2016, thereby, marking the Judgment and decree in Guardian O.P.No.17 of 2011 dated 10.12.2015 as Ex.P-2 and Ex.P-3 respectively.

10. As far as the issue pertaining to the grant of divorce to the husband is concerned, regarding the argument of the petitioner / husband's counsel was that the respondent had inflicted cruelty on the petitioner / husband by lodging several complaints as against the petitioner. The learned District Judge proceeded to observe that the allegations has not been proved by appropriate evidence and not even a single FIR was registered at the instance of the respondent / wife as against the petitioner / husband. That apart, the learned District Judge further observed that the petitioner filed the application for divorce on 24.04.2009 and not even any criminal case has been lodged by the respondent as against the petitioner / husband before the filing of the divorce petition and the same has been brought on record by both the Trial Court and the First Appellate Court. The First Appellate Court categorically recorded the fact that the



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respondent / wife never intended or lodged any complaints in actual terms as against the petitioner / husband by all means at any point of time before the date of application filed by the petitioner, that is, on 24.04.2009. The learned District Judge negated the arguments substantiated by the petitioner / husband that the respondent / wife inflicted mental abuses and cruelty as against the petitioner / husband and held that the petitioner had miserably failed to prove his allegations of cruelty. That apart, the petitioner's claim that the respondent had deserted from her matrimonial home in the month of February 2007 was also negated.

11. A careful perusal of the records would reveal that the second delivery of the girl child was on 25.10.2009 and the petition for divorce has been filed by the petitioner within a few months of the pregnancy of the second child, that is, on 24.04.2009. Observing the fact that in terms of Section 13 (1) (ib) of Hindu Marriage Act, 1955 under the grounds of desertion, the couple should have been separated at least for a period of two years before the date of filing of the petition for divorce, recording the fact of the birth of the second child on 24.04.2009 would disprove the case of desertion by the petitioner / husband. Accordingly, the learned District Judge dismissed the said Civil Miscellaneous Appeal. Challenging the



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same, the present Civil Miscellaneous Second Appeal came to be filed.

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12. The substantial questions of law framed in this CMSA are as follows:

“(i) Whether the Courts below right in dismissing the petition and appeal by the appellant for seeking relief of dissolution of marriage, when both the parties agreed that they were deserted each other for more than 2 years at the time of trial without considering the apex Court decisions as long separation and irretrievable breakdown are impossible for re-union?”

“(ii) Whether the Courts below right in dismissing the appeal by confirming the judgment and decree of lower Court of dismissal order for the relief of dissolution of marriage on the ground of cruelty, when there is a clear admission made by the respondent as she used to give several criminal complaints to the police officials?”

13. This is the case where the petitioner / husband sought for divorce on the grounds of cruelty and desertion on the basis of the evidence and documents made by the respective parties. Both the Trial Court and the First Appellate Court has concurrently found both the H.M.O.P.No.51 of



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2009 and C.M.A.No.11 of 2011, unfit for allowing, for the reason that the petitioner / husband miserably failed to prove the allegations of mental cruelty as inflicted on him by the respondent / wife and the allegations of desertion with effect from February 2007 before filing of the petition for divorce on 24.04.2009. The factum of the birth of the second child / daughter by the respondent / wife on 25.10.2009 itself would disprove the entire allegations of the petitioner / husband. 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



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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, Karur 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 Principal District Judge, Karur in C.M.A.No.11 of 2011 and the learned Subordinate Judge, Karur in H.M.O.P.No.59 of 2009.



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

26.02.2024

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

To

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

Copy to

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



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L.VICTORIA GOWRI, J.,

Sml

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