



C.M.S.A.(MD) Nos.21 & 22 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.S.A.(MD)Nos.21 & 22 of 2023

and

C.M.P.(MD)No.16048 of 2023

In C.M.S.A.(MD)No.21 of 2023:

Kavitha

... Appellant

vs.

Senthilkumaran

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 13 (1) (ia) of the Hindu Marriage Act read with Section 100 of C.P.C, against the judgment and order dated 14.09.2023 in C.M.A.No.11 of 2022 on the file of the Additional District and Sessions Court, Palani, Dindigul by reversing the Judgement and decree dated 29.08.2022 in H.M.O.P.No.16 of 2017 on the file of the Principal Sub Court, Palani.

For appellant : Mr.M.Elanchezhian

For Respondent : Mr.M.P.Senthil for
Mr.D.Venkatesh

In C.M.S.A.(MD)No.22 of 2023:

Kavitha

... Appellant



C.M.S.A.(MD) Nos.21 & 22 of 2023

vs.

WEB COPY

Senthilkumaran

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 13 (1) (ia) of the Hindu Marriage Act read with Section 100 of C.P.C, against the judgment and order dated 14.09.2023 in C.M.A.No.12 of 2022 on the file of the Additional District and Sessions Court, Palani, Dindigul by reversing the Judgement and decree dated 29.08.2022 in H.M.O.P.No.78 of 2015 on the file of the Principal Sub Court, Palani.

For appellant : Mr.M.Elanchezian

For Respondent : Mr.M.P.Senthil for
Mr.D.Venkatesh

COMMON JUDGMENT

The instant second appeals have been filed by the wife aggrieved by the dismissal of the petition for restitution of conjugal rights and allowing the petition for divorce by the Lower Appellate Court.

2. The facts leading to the filing of the above second appeals are as follows:

a. The appellant/wife and the respondent/husband got married on



C.M.S.A.(MD) Nos.21 & 22 of 2023

03.09.2009. Out of the wedlock, a male child was born. The relationship between the parties was strained ever since the date of marriage. The appellant/wife left her matrimonial house while she was pregnant and did not return to the matrimonial house. The respondent issued a notice for divorce and thereafter, filed H.M.O.P.No.58 of 2013 alleging cruelty. While the matter was pending, the appellant wrote a letter to the presiding Judge and stated that she was willing to live with the respondent. Considering the said representation, the learned Judge directed the respondent to live with the appellant, which was acceded to by the respondent and the parties, thereafter, lived together till December 2014.

b. In the meanwhile, the appellant became pregnant for the second time and the second child was born on 20.03.2014. After December 2014, the relationship once again got strained and the respondent left her matrimonial house. Hence, the respondent filed H.M.O.P.No.78 of 2015 for divorce on the ground of cruelty, where the respondent cited various instances which had caused cruelty from the date of marriage till the date of filing of the petition. The appellant, by filing counter, denied the averments in the said petition and sought dismissal of the divorce petition. Thereafter, the appellant filed H.M.O.P.No.16 of 2017 for restitution of



C.M.S.A.(MD) Nos.21 & 22 of 2023

conjugal rights.

WEB COPY

c. Before the Trial Court, the respondent examined himself as P.W. 1 and marked Exs.P1 to P9. The appellant examined herself as R.W.1 and did not mark any documents.

d. The Trial Court found that the instances stated by the respondent were petty in nature and therefore did not constitute cruelty and dismissed the petition for divorce by allowing the petition for restitution of conjugal rights filed by the appellant.

e. The respondent had preferred the appeals in C.M.A.(MD)Nos.11 and 12 of 2022 aggrieved by the judgment of the Trial Court, wherein the Lower Appellate Court had allowed both the appeals. The unsuccessful wife has challenged the judgement passed in the above two appeals.

3. The learned counsel for the appellant would submit that the Lower Appellate Court had erroneously reversed the well considered judgment of the Trial Court, wherein the Trial Court had, after analysing the evidence, held that the respondent had failed to establish cruelty; that



C.M.S.A.(MD) Nos.21 & 22 of 2023

the respondent, who had committed cruelty on the appellant, in fact, demanded dowry; and that the Lower Appellate Court, without considering the evidence in a proper prospective, had allowed the two appeals and hence, sought interference.

4. The learned counsel for the respondent, per contra, would submit that the evidence would show that the respondent's mother was a cancer patient and the appellant had ill-treated his mother; that the relationship was strained from the very beginning, though he tried his best to reconcile after the earlier petition for divorce, all efforts ended in vain; that the marriage was broken down irretrievably; and that the instances of cruelty cited by the respondent are sufficient to constitute cruelty and therefore, the Lower Appellate Court was right in allowing the petition for divorce on the ground of cruelty.

5. The learned counsel, further, would submit that pending those appeals, the appellant had moved an application in I.A.No.3 of 2023 before the Lower Appellate Court for returning her articles, in which, she had stated that she was willing to hand over the custody of the children to the respondent and since the respondent agreed to the same, the said



C.M.S.A.(MD) Nos.21 & 22 of 2023

petition was allowed. However, the appellant had not handed over the custody of the children; and that the conduct of the appellant would, therefore, show that the appellant was not willing to live with the respondent and the marriage was irretrievably broken down.

6. In support of his submission, the learned counsel for the respondent, further, relied upon the following judgments:

1. Judgement rendered by the Hon'ble Supreme Court in the case of ***Samar Ghose vs. Jaya Ghose reported in [2007] 4 SCC 511;***
2. Judgement rendered by the Hon'ble Supreme Court in the case of ***Rakesh Raman vs. Kavita reported in 2023 SCC 497;***
3. Judgement rendered by the Hon'ble Supreme Court in the case of ***Roopa Soni vs. Kamalanarayan Soni reported in 2023 (3) MWN (Civil) 677;***
4. Judgement rendered by this Court in the case of ***S.Dharmalingam vs. Sooria Praba reported in 2023 [SCC] Mad 3658;***
5. Judgment rendered by the High Court of Kerala in the



C.M.S.A.(MD) Nos.21 & 22 of 2023

case of ***Beena M.S. vs. Shino G.Babu reported in [2022]***

WEB COPY

2 KLT 139.

7. The allegations of the respondent are that the marriage from the very beginning was strained and the appellant left her matrimonial house while she was pregnant and had not informed the respondent about the birth of the child. Though the fact that she did not inform the respondent about the birth of the child is in dispute, the fact that they have been living separately since 2010 for a period of three years is not in dispute. The appellant had filed the petition for divorce in the year 2013, wherein, pursuant to the willingness expressed by the appellant to live with the respondent, a compromise was arrived between the parties and the respondent withdrew his petition for divorce. The respondent and the appellant have been living together thereafter till 07.12.2014, on which date according to the appellant, she was beaten and was driven out of her matrimonial house by the respondent. However, according to the respondent, the appellant picked up a quarrel and left her matrimonial house. All the efforts taken by the family members of both the parties to reconcile the differences and re-unite the appellant and the respondent failed. The appellant filed the petition for divorce once again in the year



C.M.S.A.(MD) Nos.21 & 22 of 2023

WEB COPY

8. The instances of cruelty according to the respondent are that the appellant never respected the respondent and his family members; that she did not inform about the birth of the child after she left her matrimonial house for delivery of the first child; that she always took pride in the fact that she was well educated and she can live alone; that the respondent's mother was a cancer patient and in spite of knowledge of the said fact, the appellant ill-treated the respondent's mother and on more than one occasion abused the respondent also in filthy language; and that in spite of best efforts by the respondent, the appellant refused to live with him. Though the appellant had denied all these averments in her counter, the fact that they have been living separately is not in dispute.

9. It is also not in dispute that the appellant had initiated proceedings under the Domestic Violence Act, alleging domestic violence against her by the respondent and his family members and also seeking maintenance. Pending disposal of these appeals, the appellant had also filed an application before the Lower Appellate Court in I.A.No.3 of 2023 praying for handing over the children to the respondent, for which the



C.M.S.A.(MD) Nos.21 & 22 of 2023

respondent agreed. The Trial Court had also passed an order directing the appellant to hand over the custody of the children to the respondent.

However, she had not handed over the children as ordered by the Trial Court. That apart, the appellant had filed the application seeking return of her jewels and the same was ordered, pursuant to which the respondent had returned all the jewels to the appellant. The Lower Appellate Court, on facts, found that the respondent had established the fact that the appellant had not informed him or his relatives about the birth of the child or about the naming ceremony; and that the appellant had also not established that she was forced to leave from the matrimonial house.

10. The Lower Appellate Court, further, considered the evidence on record and held that the respondent had established cruelty and therefore, entitled to divorce. Though the appellant would submit that the appeals raised several substantial questions of law, a reading of the grounds and the submissions made by the appellant reveals that the appellant seeks to challenge the judgment on facts. In the absence of any question of law involved in the above appeals, much less a substantial question of law, this Court is not inclined to interfere with the factual finding rendered by the Lower Appellate Court, which is neither perverse nor illegal.



C.M.S.A.(MD) Nos.21 & 22 of 2023

WEB COPY

11. That apart, admittedly the appellant and the respondent have been living separately since 2014. The appellant has denied consent for mutual separation for the reasons best known to her. The marriage is irretrievably broken down. It is well settled that refusal to sever a strained relationship itself leads to mental cruelty. The relevant portion in the case of **Samar Ghose** 's case (cited supra) of the Hon'ble Supreme Court reads as under:

“101(xiv). Where there has been a long period of continuous separation, it may 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.”

12. In a recent judgment of the Hon'ble Supreme Court in **Roopa Soni**'s case (cited supra), it was held as follows:

“19.The Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the



C.M.S.A.(MD) Nos.21 & 22 of 2023

decree of divorce. It is not as if the Respondent-Husband is willing to live with the Appellant-Wife. The allegations made by this against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together.”

13. The facts in this case reveal that incompatibility has been established and the appellant and the respondent have been living separately for more than 10 years and that the relationship right from the inception was strained. The instances of cruelty has been established by the respondent. In such circumstances, as held by the Kerala High Court in **Beena M.S**'s case (cited supra), the very fact that the appellant is withholding her consent for mutual separation is a ground for cruelty. Considering the above facts and the fact that the instant appeals do not raise any substantial question of law, this Court is not inclined to entertain these appeals.

14. In the result, these Civil Miscellaneous Appeals are dismissed by confirming the judgments of the Lower Appellate Court. No costs.



C.M.S.A.(MD) Nos.21 & 22 of 2023

Consequently, connected miscellaneous petition is closed.

WEB COPY

28.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



WEB COPY



C.M.S.A.(MD) Nos.21 & 22 of 2023

SUNDER MOHAN,J

apd

To

- 1.The Additional District and Sessions Judge, Palani, Dindigul.
2. The Principal Sub Judge, Palani.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.S.A.(MD) Nos.21 & 22 of 2023

28.10.2024