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C.M.A.Nos.1105 and 1108 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2025

PRONOUNCED ON: 08.04.2025

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA.No. 1105 and 1108 of 2022

Dr.K.Gopalakrishnan

...Appellant in both CMAs

-Vs-

Tamizh Elakkiya

.. Respondent in both CMAs

Prayer in both C.M.As:- Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act against the Common fair and decreetal order dated 15.03.2022 passed in O.P.Nos.307 and 308/2020 by the learned Family Court, Perambalur.

For Appellant :Ms.V.Ambika

For Respondent : Mr.S.Thamizharasi



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COMMON JUDGMENT

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J.NISHA BANU, J.

Both these Civil Miscellaneous Appeals have been directed against the Common fair and decretal order dated 15.03.2022 passed in O.P.Nos.307 and 308 of 2020.

2. The learned Judge, Family Court, Perambalur, dismissed the Original Petition filed by the appellant/husband, which was filed for dissolution of the marriage under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 and allowed the Original petition filed by the respondent/wife seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

3. The case of the appellant/husband is that the marriage between the appellant and the respondent was solemnized on 01.06.2014. He is working as a doctor in Government hospital at Cuddalore. As a result of the wedlock, a girl child named Darshini was born on 27.06.2015. At the time of marriage,



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the respondent/wife's parents gave 75 sovereigns of gold jewellery to her.

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Also, made a deposit of Rs.7,00,000/- in his name and the appellant/husband gave the respondent/wife of about 5.5 sovereigns of gold jewellery and both of them were leading a happy life. Thereafter, several upheavals in the matrimony surfaced within few days. Later on 12.12.2015, the respondent/wife took back all of the things given to her, by issuing a receipt to the appellant. From then the respondent/wife had been harassing the appellant for no reasons.

4. It is also the case of the appellant/husband that respondent/wife had been forcing him to set up a separate house for them to live, for which the appellant had also agreed and both of them moved into a house located in Velmurugan Nagar, Pathirikuppam, Cuddalore where they had been living since 01.11.2015.

5. Despite the appellant/husband fulfilling all the requirements of the the respondent/wife, she had threatened the appellant in attempting to

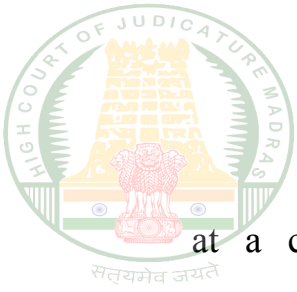


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commit suicide. The respondent/wife had never performed her duties as wife and that she even threatened to give poisoned food to the appellant. Despite the appellant/husband's efforts to change the behaviour of the respondent, his attempts were in vain. Therefore, the appellant/husband having no other recourse, had filed the petition seeking divorce under Section 13(i-a)((i-b) of the Hindu Marriage Act, 1955.

6. During the pendency of this Original petition, the respondent/wife also filed O.P.No.307 of 2020 under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights.

7. The brief averments in the O.P filed by the respondent/wife is that on the day of marriage, a 2 sovereign gold bracelet was given to the appellant/husband, and the entire cost of the marriage was accepted by the respondent/wife's parents. They also gave her 75 sovereign gold ornaments, and the marriage was conducted at a cost of Rs.7,00,000/-. Additionally, her parents purchased all the household appliances etc. It is stated that the brass utensils and furniture were given as per the request of the appellant/husband



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at a cost of Rs. 2,00,000/-. After the marriage, she lived with the appellant/husband's parents as a joint family in Neyveli, as his father was working there. After that, the appellant had a separate residence at Egmore, Chennai for five months due to his work and diploma studies. During that time, the respondent/wife's father regularly provided the necessary household items every month.

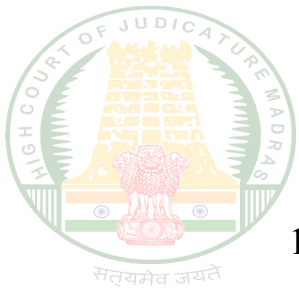
8. The Appellant's parents were not willing to take the respondent and the child back home. At that time, arrangements were being made for appellant's brother's remarriage. Since the respondent/wife was in poor health and had a two-month-old baby, she refused to attend the said wedding. However, she was forced to attend the marriage and was asked to speak badly about the appellant's brother's first wife, which she refused to do. Furthermore, it is stated that the appellant's parents and his maternal uncle, Rajendran, were not liking the togetherness of the appellant and the respondent as husband and wife.



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9. It is alleged that there was no conflict between the respondent and the appellant. However, the appellant's parents did not treat the respondent properly. When the respondent/wife got conceived for the second time, the appellant's parents, who did not like it, insisted on aborting the pregnancy because the second wife of the appellant's brother was not pregnant. The respondent/wife refused, but the appellant/husband allegedly had terminated the pregnancy without even considering her health condition.

10. It is stated that the appellant/husband left the respondent/wife at her parents' house and later did not take her and the child back home. Meanwhile, the appellant's parents are actively looking for a woman to remarry the appellant. Despite the respondent/wife's attempts to reunite with the appellant have not been fruitful. Consequently, the respondent/wife has filed the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 as she wants to live together with the appellant/husband.



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11. A detailed counter affidavit has been filed by both the appellant/husband and the respondent/wife denying all the averments in the respective O.Ps filed by them.

12. The trial court, took up both the matters together and after analysing the evidence adduced on both sides, negated the case of the appellant/husband for divorce and dismissed the same, whereas, accepting the case of the respondent/wife, allowed the petition for restitution of conjugal rights.

13. Aggrieved by the common impugned order passed by the Family Court, the appellant/husband has filed the above appeals.

14. The learned counsel for the appellant/husband submits that he had been suffering cruelty at the hands of the respondent and that she was in the habit of threatening the appellant of suicide calls and attempts. It is submitted that when there is specific plea to the effect that appellant was subjected to cruelty of suicide attempts and threats by wife and the same being not



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specifically denied by her in the counter and not disputed, the trial court ought to have considered the prayer sought for by the appellant and allowed the same.

15. It is also submitted that as per Exhibit A1, the respondent had taken away all the jewels and other things which has been given at the time of marriage and thus she deserted the matrimonial home herself voluntarily on 12.12.2015 as per Ex.B1. Therefore, considering the above aspects, it is prayed that the marriage shall be dissolved for the mental cruelty caused by the respondent/wife and that the Section 9 application filed by her ought to have been dismissed as no case is made out.

16. The learned counsel for the respondent would submit that the appellant has come to this court challenging the well reasoned impugned fair and decreetal order made by the Family Court refusing to grant a decree for divorce and directing both the parties to resume marital life. It is alleged that the appellant had left the respondent along with child in her parent's home in December 2015 and thereafter, the appellant avoided talking to her over



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phone. Further, when the respondent/wife came to the appellant's house, appellant's mother and elder brother driven her out, for which the appellant convinced the respondent to stay at her parent's house for some time and then he would take the respondent along with their child. But instead, had filed a divorce case and therefore the respondent counsel prayed for dismissal of appeals filed by the appellant/husband.

17. Heard both sides counsel submissions and perused the impugned order carefully.

18. It is noticed that the wife has also alleged cruelty inflicted upon her by her in-laws and neglect by the appellant. The appellant/husband citing the reason of December 2015 flood and her poor health condition, asked the respondent/wife to stay with her parents and therefore, from 2015 December, the appellant and the respondent are staying separately.

19. The learned Judge, Trial court pointed out that the appellant's husband himself admitted in the cross examination that he himself sent the



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respondent/wife to her parents house on 12.12.2015 and filed the petition for divorce only on 10.01.2017. Furthermore, the appellant/husband failed to prove that the wife had subjected him to cruelty. Therefore, when the husband has not established his case both on ground of desertion and cruelty, the conclusion arrived at in the impugned order passed by the Family court, cannot be interfered with.

20. In our considered view, unless cruelty is established by way of evidence, a decree of divorce cannot be granted. The appellant has not made out a case for dissolving the marriage on the ground of cruelty. Therefore, the CMA's filed by the appellant/husband are dismissed. The impugned orders passed in Judgment and Decree dated 15.03.2022 in H.M.O.P.Nos.307 of 2020 and 308 of 2020 is confirmed. No costs.

[J.N.B.J.]

[R.S.V.J.]

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Index: Yes/No
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and

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To

1.The Judge, Family Court, Erode.

Judgment in

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