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CMA NO.710 OF 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 12 / 04 / 2024

JUDGMENT DELIVERED ON: 30 / 04 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.710 OF 2014

... Appellant / Petitioner

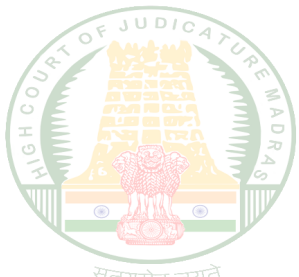
Vs.

... Respondent / Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 55 of The Divorce Act, 1869, praying to set aside the order dated 12.12.2013 passed in IDOP No.165 of 2003 on the file of Principal District Judge, Chengalpattu.

For Appellant : Mr.S.Shanmuganandam

For Respondent : Ms.N.Subha



J U D G M E N T

R.SAKTHIVEL, J.

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The husband is on appeal. Challenge is to the dismissal of his original petition on December 12, 2013 filed in IDOP No.165 of 2003 substantially on the ground of cruelty and desertion by the learned Principal District Judge, Chengalpattu.

2.For the sake of convenience, henceforth, the parties herein will be referred to as per their array in the Original Petition.

3.Brief facts of the case are as follows:

3.1.The parties got married on October 13, 1993 at C.S.I.Church, Mogalvadi, Madurantakam as per the Christian rites and customs, though the husband is originally a Hindu. It is the claim of the petitioner that, under the compulsion of the respondent, he converted to Christianity. They lived peacefully for two years. A male child was born out of their wed-lock on October 14, 1994, but the delivery of the child was not intimated to him. According to the husband, after the birth of



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child, he went to his in-law's house and called his wife home, however, she refused to join him. Her family members insisted him on setting up a separate living with his wife. The husband refused to set up a separate house since he is the elder son to his family having age old parents.

3.2. In the meantime, the wife lodged a complaint before the All Women Police Station, Kancheepuram and after enquiry, the Police compromised and suggested re-union. Subsequently, the petitioner and respondent lived together for quite sometime. Since his wife repeatedly insisted him on setting up a separate house for their living, differences of opinion arose between them.

3.3. Thereafter, the respondent/wife filed a Maintenance Case in M.C.No.49 of 1998 before the II Additional Principal Family Court at Chennai praying for maintenance for the child and the same was ordered on March 15th, 1999 and till now the petitioner / husband is complying the said order.

3.4. According to the petitioner / husband, due to the above cruel act of the respondent, he lost his peace of mind rendering him unable



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to continue his job. Consequently, both of them are living separately.

Hence, he filed a petition for divorce.

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3.5.The divorce petition was resisted by the respondent/wife contending that the birth of her child was informed to the petitioner/husband by her sister and she denied the allegation that the conversion of the petitioner from Hinduism to Christianity was under her compulsion. The respondent claims that the petitioner, on his own volition, converted from Hinduism to Christianity. After marriage, the petitioner and the respondent set their matrimonial home at Camp Road, Tambaram and both were living together happily. After two months, the parents of the petitioner accepted their love marriage and upon their consent, a reception was arranged inviting all the relatives. At the time of reception, the parents of the respondent / wife gifted seven sovereigns of gold jewels and some house hold articles as *Sridhana* properties and then they lived in the petitioner's house at Chitlapakkam. The parents of the respondent also celebrated the child warming ceremony which was held at the petitioner's house and thereafter, the respondent was taken to her parent's house for delivery. After the child birth, the petitioner showered love and affection



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on the child and used to visit the respondent regularly for about six months.

3.6. While so, the petitioner / husband slowly cut down his visits and subsequently, stopped coming to the respondent's house. In May 1995, the respondent went with her child to her in-law's house where the petitioner and his parents refused to meet and listen her. In June, 1995, she went to his work place and requested him to take her to his house and live with her along with the child. However, the petitioner refused to live along with the respondent. The respondent was starving without food and suffered for want of basic needs. She moved to her brother's house at Pallavaram and managed to get employed in the company where her husband was working. Everyday at work, she used to request the petitioner to take her with him, but all her efforts proved futile.

3.7. Therefore, in the month of May, 1996, the respondent lodged a complaint at All Women Police Station, Kancheepuram and after enquiry, they compromised the parties to live together. Though the petitioner had promised to take her back in a short span of time, he did not keep up his word. Therefore, with the help of Legal Services Authority,



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she filed a petition before the II Additional Principal Family Court at Chennai in M.C.No.49 of 1998 praying maintenance for the child Joshua, aged 3 ½ years then and the same was ordered.

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3.8.The respondent regularly and periodically contacted the petitioner and urged him to take her back as she is always ready and willing to join and live with her husband. Again in September 2003, she asked him to take her back but the same proved futile. Hence, she prayed to dismiss the original petition.

4.Upon hearing both sides and after perusing the materials available on record, the learned Family Court Judge framed the following point for consideration:

'Whether the petitioner is entitled to get divorce from the respondent as prayed for?'

5.At trial, the petitioner examined himself as P.W.1 and the marriage invitation and marriage certificate were marked as Ex-P.1 and Ex-P.2 respectively on his side. On the side of the respondent, the



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respondent herself was examined as R.W.1 and Tmt. Vasanthakumari, sister of the respondent was examined as R.W.2. No documents were filed on side of the respondent.

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6.After hearing both sides and analysing the oral evidence, the learned Family Court Judge dismissed the original petition on the ground that the petitioner has not made out a case for divorce and that he has deserted his wife without any valid reasons.

7.Feeling aggrieved, the petitioner / husband has come up with the present Civil Miscellaneous Appeal.

8.This Court has heard Mr.S.Shanmuganandam, learned counsel for the appellant and Ms.N.Subha, learned counsel for the respondent.

9.The learned counsel for the appellant has argued that after the child's birth, the respondent refused to live with the petitioner and thereby deserted him. Though the respondent did not take any steps to live with the petitioner, she filed a maintenance case against the petitioner in

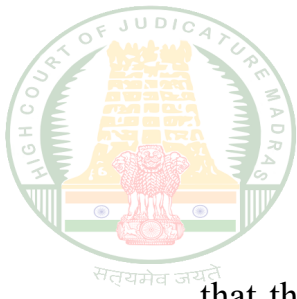


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M.C.No.49 of 1998. In the said case, the Court ordered a sum of Rs.450/-

as maintenance to the minor child. The petitioner is complying the said order without fail. He further argued that the petitioner and the respondent has been separated since 1996. Then the petitioner filed petition for decree of divorce under Section 10(1)(ix) and 10(1)(x) of Divorce Act. Further argued that as on date, petitioner and the respondent are living separately for nearly twenty years. The respondent lodged police complaint against the petitioner. The conduct of the respondent is something more serious than ordinary wear and tear of the marriage life. Hence, the marriage between the petitioner and the respondent has broken irretrievably. The learned counsel further argued that the Trial Court did not appreciate the evidence available on record and wrongly came to the conclusion that the petitioner has not proved the case. Accordingly, he prayed to allow this appeal.

9.1. In support of his submissions, learned counsel for the appellant relied on judgments of the Hon'ble Supreme Court in Mayadevi (Smt) Vs. Jagdish Prasad [2007 (3) SCC 136]; Geeta Jagdish Mangtani Vs. Jagdish Mangtani [2005 (8) SCC 177]; and Durga Prasanna Tripathy Vs. Arundhati Tripathy [2005 (7) SCC 353].



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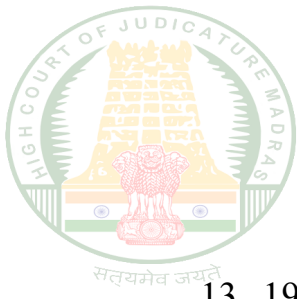
10. Per contra, learned counsel for the respondent submitted

that there is no evidence available on record to show that the respondent committed cruelty and deserted him. The respondent all along has tried to live with the petitioner, however, the petitioner refused to accept her. In fact, the petitioner only deserted the respondent for nearly twenty years, for the reasons best known to him. The respondent is ready and willing to live with the petitioner. The Trial Court, after appreciating the oral evidence available on record and after considering the facts and circumstances of the case, dismissed the original petition. Hence, there is no warrant to interfere with the judgment of the Trial Court. Accordingly, she prayed to dismiss the appeal.

Point for consideration

11. This Court has considered the submissions made on either side and perused the materials available on record.

12. The point that arises for consideration is whether the learned Principal District Judge is right in dismissing the original petition by concluding that the petitioner has deserted the respondent without any valid reasons.



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13. The petitioner and the respondent got married on October

13, 1993. Admittedly, the marriage is a love marriage. Out of the wedlock, minor son by name Joshua was born on October 14, 1994. The petitioner has averred in the original petition that the respondent did not inform the birth of the minor child to him. However, while examining himself as P.W.1 in Court, the petitioner has deposed that the respondent's sister, who was examined as R.W.2 informed him the child's birth over phone. Hence, the averment that the respondent did not inform the birth of the child is incorrect. P.W.1 in his evidence has deposed that in his own volition only, he converted from Hindu religion to Christian religion and married the respondent. Hence, the averment that on compulsion, the petitioner converted from Hinduism to Christianity is also not true.

14. The petitioner has deposed that the respondent gave a false complaint as if the petitioner demanded dowry. The said act of the respondent amounts to cruelty. However, the petitioner has neither produced the copy of the complaint nor has taken any steps to send for the complaint from All Women Police Station. On the other hand, the respondent in her evidence has deposed that in the month of May, 1995,



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she went to the petitioner's house along with her minor child. But the petitioner's family members refused to take them back and also did not allow her meet the petitioner. Further, in the month of May, 1996, the respondent approached the All Women Police Station, Kancheepuram and submitted a petition stating all her sufferings and the police officials summoned the petitioner and the petitioner also came to the police station and agreed and assured to take the respondent and her minor child back with him within a short span of time. However, he did not keep up his words. This Court is of the view that in the absence of proof that the respondent filed false dowry demand complaint, merely filing a complaint before All Women Police Station would not amount to cruelty. The petitioner has not proved that the respondent has filed a complaint under Dowry Prohibition Act. The respondent in her evidence has deposed that only with an intention to live together with the petitioner, she filed a complaint before All Women Police Station. Hence, this Court does not find any fault with the act of the respondent.

15. Further, the respondent/R.W.1 in her examination has deposed that the petitioner is ready and willing to live with the petitioner.

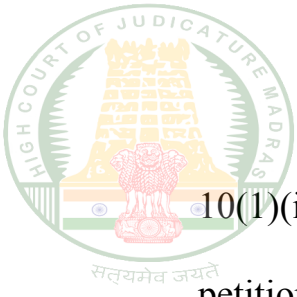


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The evidence of R.W.1 and R.W.2 would show that the respondent has tried to reconcile and live with the petitioner, however, the petitioner did not accept the respondent for the reasons best known to him.

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16. There is no sufficient evidence available on record to show that the respondent caused cruelty to the petitioner and to prove the version that the respondent insisted the petitioner to set up a separate living for them. While the petitioner stated that the respondent and her family members threatened him that they will give a complaint in dowry cell, there is no piece of evidence available on record to prove the said alleged incident. Further, in view of the evidence of the respondent, the petitioner miserably failed to establish '*animus deserendi*' of the respondent. In view of the facts and circumstances of the case, the case laws submitted by the learned counsel appearing for the appellant would not be applicable to the case on hand. Hence, this Court is of the view that the petitioner failed to prove that the respondent caused cruelty to him and that she alone deserted him. The learned Principal District Judge after considering the oral evidence and the pleadings, has come to the conclusion that the petitioner has not made out a case under Sections



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10(1)(ix) and 10(1)(x) of the Divorce Act, 1869 and dismissed the original petition, in which, this Court does not find any illegality or irregularity.

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Therefore, there is no warrant to interfere with the order passed by the Trial Court. Point is answered accordingly against the petitioner.

17.In fine, this Civil Miscellaneous Appeal is dismissed. No costs.

[R.S.M., J.]

[R.S.V., J.]

30 / 04 / 2024

Index : No
Internet : Yes
Neutral Citation : No
Speaking Order
TK

To

The Principal District Judge
Principal District Court
Chengalpattu.



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VERDICTUM.IN



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

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