

**G. Ramesh Vs. A. Vimala**

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**Court :** Chennai

**Decided On :** Aug-22-2012

**Judge :** The Honourable Mrs. Justice R. Banumathi & R. Subbiah

**Appeal No. :** CIVIL MISCELLANEOUS APPEAL NO. 812 OF 2011

**Appellant :** G. Ramesh

**Respondent :** A. Vimala

**Advocate for Pet/Ap. :** For the Appellant: R. Gopalakrishnan, Advocate. For the Respondent: T.N. Sugesh, Advocate.

**Judgement :**

(Prayer: Civil Miscellaneous Appeal filed under Section 28 of Hindu Marriage Act and Section 19 of the Family Courts Act against the Order dated 05.12.2010 made in O.P.No.1729 of 2007 on the file of II Additional Family Court, Chennai)

**JUDGMENT**

**R. BANUMATHI,J**

1. This appeal arises out of the order in O.P.No.1729 of 2007 (05.12.2010) allowing the divorce petition filed by the respondent-wife and dissolving the marriage between the appellant-husband and the respondent-wife solemnized on 24.03.2006 and also directed the appellant-husband to pay a sum of Rs.2,00,000/-

towards permanent alimony within a period of three months from the date of the order.

2. Brief facts are that appellant and the respondent got married on 24.3.2006 at 'Arulmigu Sri Subramaniya Swamy Thirukovil' at Thiruchendur according to Hindu rites and customs in the presence of elders and relatives. After the marriage, the appellant and respondent resided near Manali in Chennai. The appellant was employed in Santro Oils owned by his uncle as Supervisor. Later the appellant and the respondent resided at the parents house of the respondent at No.4/29-A, Kumaran Nagar, 80 feet road, Peravallur, Chennai-82. There are no issues out of the said wedlock.

3. Case of respondent-wife is that ever since the date of marriage and during the few months they had lived together, appellant-husband treated the respondent with cruelty. Appellant found fault with the respondent on some pretext or the other and often picked up quarrels with her and was in the habit of using abusive and vulgar language against the respondent and her family members and that the appellant often used to insult her and caused her immense mental agony and hardship. Appellant was also perverted in his sexual behaviour and appellant did not take care of her interest or welfare and failed to provide any money for livelihood and that respondent had to depend on her family members. Despite such acts of cruelty, the respondent has been discharging her marital obligations. However, all the efforts were ended in vain.

4. Further case of respondent is that in August, 2006 the appellant left for his native stating that he is not willing to live with the respondent any longer. According to respondent, appellant is duty bound to pay for her maintenance. Appellant is well employed and was getting salary of Rs.7000/- per month. Hence, respondent-wife filed petition for divorce on the ground of cruelty and also seeking permanent alimony of Rs.7,00,000/- to her.

5. Resisting the petition, appellant-husband filed counter contending that at no point of time respondent performed matrimonial conjugal rights to the appellant as dutiful wife and that there was no sexual relationship with the appellant. While staying with the respondent at Manali, the appellant was subjected to cruelty at the

hands of the respondent for simple reasons. Respondent invented new reasons and found fault with the appellant one way or the other and at times respondent openly told the appellant that appellant is not a matching partner for the respondent. Subsequently the spouses shifted to Tuticorin where the appellant's parents were residing. When they were residing in Tuticorin, the mother of the respondent along with her relatives came and informed the parents of the appellant that they are taking the respondent along with them and also requested the appellant to give permission so that they would send her back Tuticorin after ten days. Believing their words, appellant sent the respondent along with them and thereafter, there was no response from them. After ten days, when the appellant called the respondent's mother over phone and asked the respondent's mother to send the respondent back to Tuticorin, the respondent's mother did not send back the respondent to Tuticorin. Case of appellant is that at no point of time, appellant subjected the respondent for cruelty and hence, no question of cruelty will arise.

6. Before the Family Court, respondent-wife examined herself as P.W.1. Exs.P1 and P2 were marked. Appellant-husband examined himself as R.W.1. No document was produced on the side of appellant.

7. Accepting the evidence of P.W.1 that appellant treated the respondent with cruelty and picked up frequent quarrel with the respondent and also in the habit of using abusive language, Family Court held that both parties make allegations and counter allegations against each other and both of them are having difference of opinion with one another and that the marriage was irretrievably broken down. Family Court granted divorce finding that respondent has established her case under Section 13(1)(i-a) of Hindu Marriage Act. Insofar as permanent alimony, pointing out that appellant is getting the monthly income of Rs.3,000/- per month, Family Court ordered permanent alimony of Rs.2,00,000/- to the respondent.

8. Challenging the decree of divorce and also permanent alimony granted to the respondent, appellant-husband preferred this appeal. Even though in the Memorandum of appeal various grounds are raised, when the appeal came up for hearing, learned counsel for appellant made an endorsement that appellant is not pressing the appeal granting divorce and that the appeal is restricted only as

against the permanent alimony.

9. Insofar as permanent alimony, learned counsel for appellant contended that appellant is working as a coolie and that the Family Court failed to consider that wages of appellant is only Rs.3,000/- per month and that the Family Court misapplied the facts and erred in ordering Rs.2,00,000/- as permanent alimony. It was further submitted that at the time of marriage, appellant has given three sovereign of gold chain to the respondent and that the same is in the custody of the respondent and the same was not taken into consideration by the Family Court.

10. In her evidence, respondent stated that appellant was employed as Supervisor in Santro Oils, owned by his uncle and was getting monthly salary of Rs.7000/- per month. Per contra, appellant stated that he is only working as a coolie in mosaic company and earning Rs.3000/- per month. Neither the respondent nor the appellant produced any evidence to substantiate their evidence regarding income of the appellant. Appellant is aged 33 years and has capacity to earn and therefore, from any kind of employment he can earn not less than Rs.3000 - Rs.5000/- per month.

11. According to appellant he has given three sovereign of gold chain to the respondent and admittedly, the respondent is having the said gold chain. According to respondent, at the time of marriage, an amount of Rs.25,000/- was given to the appellant. While determining the permanent alimony, the articles/money gifted to each other should be kept in view.

12. Today (22.08.2012) when the matter is taken up for hearing, appellant-Ramesh and the respondent-Vimala were present in Court. Appellant-Ramesh stated that he is working in Prabhakaran Mosaic Company at Tuticorin and is getting salary of Rs.3,000/- per month. Admittedly, three sovereign of gold chain is with the respondent. Appellant would also consent that the said three sovereign of gold chain may be retained by the respondent herself. Appellant also admits that at the time of marriage, an amount of Rs.25,000/- was given to the appellant by the respondent's family. Considering the avocation of the appellant and taking into account that the respondent is retaining three sovereign of gold chain, in our

considered view, it is appropriate to reduce the permanent alimony by Rs.50,000/-. Thus the permanent alimony of Rs.2,00,000/- awarded by the Family Court is reduced to Rs.1,50,000/-.

13. In the result, the order in O.P.No.1729 of 2007 dated 05.12.2010 on the file of II Additional Family Court, Chennai granting divorce on the ground of cruelty is confirmed. The respondent-wife is permitted to retain three sovereign of gold chain. Insofar as permanent alimony of Rs.2,00,000/- awarded by the Family Court, the same is reduced to Rs.1,50,000/- payable by the appellant to the respondent and the appeal is disposed of.

Earlier, as per the order in M.P.No.1 of 2011 dated 06.04.2011, appellant deposited Rs.50,000/- to the credit of O.P.No.1729 of 2007. Appellant shall pay the balance amount of Rs.1,00,000/- in two instalments. First instalment of Rs.50,000/- is payable within a period of six weeks from the date of this order and the second instalment of Rs.50,000/- is payable within six weeks thereafter. On failure to pay the instalments within the time fixed, the permanent alimony amount shall carry interest at the rate of 12% per annum payable by the appellant to the respondent.

Respondent-wife is permitted to withdraw Rs.50,000/- deposited by the appellant lying in O.P.No.1729 of 2007 on the file of II Additional Family Court, Chennai immediately after the receipt of copy of this judgment.

Consequently, connected M.P. is closed. There shall be no order as to costs in this appeal.

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