

M.Thiyagarajan Vs. Geetha

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Court : Chennai

Decided On : Feb-21-2013

Judge : T.RAJA

Appellant : M.Thiyagarajan

Respondent : Geetha

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 02/2013 CORAM THE HONOURABLE MR.JUSTICE T.RAJA C.M.S.A.(MD).No.52 of 2011 M.Thiyagarajan ... Appellant vs. Geetha D/o Ragavan ... Respondent Memorandum of Grounds of Civil Miscellaneous Second Appeal under Section 28 of the Hindu Marriage Act read with Section 100 of the Civil Procedure Code, against the judgment and decree dated 19.01.2010 made in H.M.C.M.A.No.6 of 2009 passed by the learned Additional District Judge, (Fast Track Court), Dindigul, confirming the judgment and decree dated 12.11.2008 in H.M.O.P.No.42 of 2004 passed by the learned Principal Sub Judge, Dindigul. !For Appellant ... Mr.S.Alagarsamy ^For Respondent ... Mr.V.Sankaranarayanan :JUDGMENT The present civil miscellaneous second appeal is directed against the concurrent findings of both the Courts below, refusing to grant a decree for dissolution of marriage between the appellant and the respondent.

2. The facts in brief leading to the filing of the appeal are given as under: A brother and sister decided to solemnize the marriage of their own children, that is the

appellant's father being the real brother of the respondent's mother solemnized the marriage between the appellant and the respondent on 29.10.87 at Nagal Nagar, Dindigul and soon after the marriage, the husband and wife resided at SPIC Nagar, Tuticorin only for about three months. The respondent left for her parental home at Dindigul and after sometime, even though the respondent returned to the matrimonial home, she left the matrimonial home again and reached her parental home for delivery in the month of August, 1988 and a child was also born. Thereafter, the respondent-wife did not come forward to restore the matrimonial life with the appellant-husband. Even though many attempts were made to restore the matrimonial life between the husband and wife after the birth of the child, it was pleaded, all the efforts went in vain and in this process two years had gone by. It was again pleaded that a legal notice dated 6.10.89 was sent by the respondent-wife to the appellant stating that the appellant's parents must give an assurance letter, failing which she would not restore the matrimonial life with the appellant. A reply notice dated 16.10.89 was sent denying the allegations and to restore the matrimonial life, but there was no response. Again on 22.10.89 the appellant sent another notice to the respondent. A reply notice was sent by the respondent with various allegations. In the meanwhile, the respondent filed a petition in H.M.O.P.No.4 of 1992 for restitution of conjugal rights and in the said petition, the appellant made an endorsement promising to restore the matrimonial life. In spite of the said endorsement, it was pleaded that the respondent was adamant to get an assurance letter from her in-laws and that she would not restore the matrimonial life till then. Again on 31.12.93, a legal notice was sent by the respondent, during the pendency of the H.M.O.P.No.4 of 1992, stating that if the appellant failed to give the assurance, she would file an application for judicial separation. When the matter did not reach an amicable atmosphere for restoration of conjugal rights, the appellant finally sent a notice on 14.10.94 to the respondent to restore the matrimonial life based on the orders passed in H.M.O.P.No.4 of 1992. One another letter was also addressed through the counsel to advise her to restore the matrimonial life with the appellant. In the meanwhile, the respondent also filed a suit for maintenance and the same was also decreed.

3. It was further pleaded that in spite of all these efforts, when the matrimonial life was not restored by the respondent, the appellant filed a petition for divorce before

the learned Principal Sub Judge, Dindigul in H.M.O.P.No.18 of 1996, 13 years after the marriage on account of the disturbed matrimonial life, but the said petition was dismissed for non-prosecution by order dated 19.10.2000. After the dismissal of the petition for divorce, the appellant once again filed a fresh petition in H.M.O.P.No.42 of 2004 seeking for dissolution of marriage, again after four years. The trial Court dismissed the said petition by order dated 12.11.2008 on the ground that the appellant neither restored the earlier petition for divorce in H.M.O.P.No.18 of 1996, which was dismissed for non-prosecution on 19.10.2000, nor preferred any appeal as against the decree for maintenance passed in the suit. Aggrieved by the order of dismissal of the second petition for divorce, the appellant preferred an appeal in H.M.C.M.A.No.6 of 2009 before the first appellate Court. But the said appeal was also dismissed. Challenging the concurrent findings of the Courts below, the present civil miscellaneous second appeal has been preferred.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent.

5. The point for consideration is that when the appellant had earlier filed a petition for divorce in H.M.O.P.No.18 of 1996 and the said petition came to be dismissed for non-prosecution, without restoring the same, can a fresh petition for divorce be filed after a lapse of four years. The second question that needs an answer to the frustrated couple is that when they are not living together as husband and wife, except for a short span when a child was born, even after a decade ironing out all the wear and tear occurred in their matrimonial life, cannot the Court reach a conclusion that there has been an irreparable break down in the marriage between the appellant and the respondent? 6. Admittedly, in the present case, when the marriage between the parties took place on 29.10.87 and a child was born out of the wedlock, unfortunately, for more than 25 years, the parties, both husband and wife, are fighting in the Court forgetting the restoration of their normal family life. Ironically, the appellant's father and the respondent's mother are brother and sister. Even when the said close family bond between the appellant and the respondent had also failed to help the parties to restore their matrimonial life for about 25 years and a good part of their life had been consumed in the Court

litigation, it goes without saying that both parties did not like each other. When the appellant and the respondent have crossed the point of no return and the workable solution of re-union has also completely gone out of their hands for the last 25 years, naturally the parties cannot at this stage reconcile themselves and live together. Therefore, this Court has no other option except to allow the appeal by setting aside the orders of the Courts below. It must also be mentioned that when the appellant filed H.M.O.P.No.18 of 1996 seeking for divorce and the same was also dismissed for non-prosecution, it is not necessary for the appellant-husband to restore the said petition, for the reason that when he was finding it difficult to restore the strained relationship with his wife, though filed the H.M.O.P.No.18 of 1996 on the file of the Principal Sub Court, Dindigul seeking for divorce, for the reasons best known to him, may be that she was not agreeable for prosecuting the divorce petition or expecting some good gesture from his wife, deliberately allowed the matter to be dismissed for non prosecution thinking that his wife may return back to lead the matrimonial life. Even though the appellant waited for four more years waiting for his wife's return, as the same did not materialise, he thought to file the second petition without restoring the earlier petition. The learned trial Judge, after reaching the conclusion that the husband alone has deserted the wife, refused to consider the prayer for divorce. It is not in dispute that the wife filed O.P.No.3 of 1994, which was renumbered as O.S.No.72 of 1999, seeking for payment of maintenance. Only after the filing of the maintenance suit, it is true that the appellant has filed H.M.O.P.No.18 of 1996 seeking a decree for dissolution of marriage. However, the said petition came to be dismissed for non-prosecution. In view of that, the appellant having waited for long to have a matrimonial re-union, filed the second divorce petition. However, the learned trial Judge, solely and relying on hyper-technical ground that the husband failed to restore the earlier H.M.O.P.No18 of 1996 and wrongly filed a fresh divorce petition, refused to consider the prayer on the factual scenario existed before the Court.

7. In matrimonial matters, the Court cannot go strictly in accordance with the provisions of Civil Procedure Code, as the ultimate goal of the Court is to ensure the restoration of matrimonial life between the parties. In the present case also, not filing the restoration application and filing a separate divorce petition after four years by the appellant, cannot be found against the appellant. It must also be

mentioned that the family is a sacred institution in which when the father and mother give birth to a child, the child, after attaining the marriageable age, cannot drive away his/her parents for the sake of accommodating his married spouse. But in the present case, the adamancy of the respondent-wife in asking the parents of the husband to leave the matrimonial home, without which she cannot live with her husband, is nothing but destroying the very foundation of the institution of marriage and family.

8. As mentioned above, both parties are closely related. The appellant has married his father's sister's daughter. When they are so close, even after a gap of 19 years, both parties have failed to bring the couple together. This clearly shows that not only both parties, but also their close family relatives also had crossed the point of no return. Therefore, it is a most unfortunate case where both parties could not carry on their matrimonial ties beyond a period of few months from the date of marriage and they were not able to succeed to restore the matrimonial life of the couple for about two decades. When this aspect should not have been overlooked by the trial Court as well as by the first appellate Court, unfortunately, expected the parties, the appellant and the respondent, to again come back to the old marital relationship. Admittedly, when the parties are living separately for almost two decades, it means that there is an irretrievable break down of marriage and because of such break down of marriage, the marriage between the parties has been rendered a complete deadwood. When this vital fact was lost sight of by both the Courts below, the concurrent findings of both the Courts below are liable to be interfered with.

9. In this context, a reference to the judgment of the Apex Court in *Durga Prasanna Tripathy v. Arundhati Tripathi*, 2006-1-L.W.162 can be made, wherein it has been held as follows:- "29. The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning

hot." A similar view was also taken by the Apex Court in the subsequent judgment in Satish Sitole v. Ganga, 2008 (4) CTC 285. wherein it has been held as follows:-

"11. Having dispassionately considered the materials before us and the fact that out of 16 years of marriage the appellant and the respondent had been living separately for 14 years, we are also convinced that any further attempt at reconciliation will be futile and it would be in the interest of both the parties to sever the matrimonial ties since the marriage has broken down irretrievably." 10. In view of the above and for the reasons aforesaid, this Court has no hesitation to grant the decree of dissolution of marriage between the appellant and respondent. Accordingly, answering the points in favour of the appellant, the civil miscellaneous second appeal is allowed and the judgments and decrees of the Courts below are set aside, subject to the appellant paying to the respondent a sum of Rs.4,00,000/- (Rupees four lakhs only) by way of permanent alimony. No costs. ss To 1. The Additional District Judge (Fast Track Court) Dindigul 2. The Principal Subordinate Judge Dindigul

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