

C.M.A(MD)No.65 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.06.2024

Pronounced on : 06.01.2025

CORAM :

JUSTICE N.SESHASAYEE
and
JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.65 of 2019
and
C.M.P(MD)No.697 of 2019

Syed Saleem Batcha

...Appellant/Respondent

Vs.

Devi

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, to set aside the fair and decretal order dated 14.08.2018, passed in Special Marriage O.P.No.16 of 2014 on the file of the Family Court, Tiruchirappalli.

For Appellants : Mr.J.Anandhavalli

For Respondents : Mr.K.K.Senthil

JUDGMENT

[Judgment was delivered by **L.VICTORIA GOWRI, J.**]

This Civil Miscellaneous Appeal is filed against the order dated



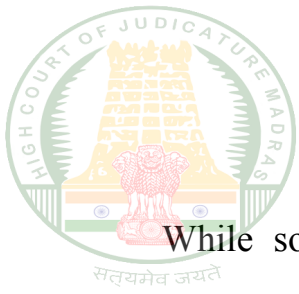
C.M.A(MD)No.65 of 2019

14.08.2018, passed in Special Marriage O.P.No.16 of 2014, on the file of the

Family Court, Tiruchirappalli.

2.The appellant herein is the husband of the respondent who challenges the order of the Family Court, Tiruchirappalli in Special Marriage O.P.No.16 of 2014 by which the learned Family Judge had dissolved the marriage between the parties.

3.The respondent had moved the Family Court alleging that she is a Hindu and the appellant herein is a Muslim and that, they chose to marry under the Special Marriage Act, 1954 and that, the marriage was solemnized on 22.10.1992. The core allegation has been that after marriage, the appellant/respondent had forced the respondent to convert to Islam and that, she was also forced to change her 'Thali'. While the respondent/wife was working as a Station Master, her husband was jobless. During marriage, the respondent was given 100 sovereigns of gold jewelry besides giving 5 sovereigns of gold jewelry the appellant as dowry. However, when the matrimony progressed, the appellant started to take alcohol and began beating his wife. In that process, the respondent was injured and she had also taken treatment in the hospital. In between, the couple begotten two children on 17.05.1993 and 12.11.1994.



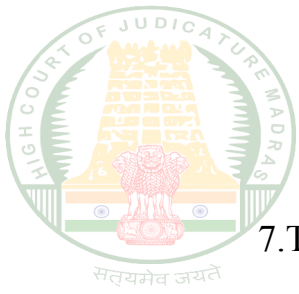
C.M.A(MD)No.65 of 2019

While so, the matrimonial discordance moved from bad to worst and the appellant started abusing her with reference to her caste as she belongs to a Scheduled Caste. The matter eventually reached the local jamaath. Before which, the appellant had executed a consent document that he would not disturb the appellant in any way. It is in these circumstances, the respondent had laid a petition for dissolution of marriage with the appellant on the ground of cruelty and desertion.

4.The allegation made in the counter affidavit is one of wholesome denial of the allegations in the petition. He pleaded that he had been meeting the educational expenses of his children.

5.The dispute went to trial before which the respondent was examined as P.W.1 whereas the appellant was examined as R.W.1. On the side of the respondent she produced documentary evidence, of which, Exs.P5 and P6 are critical.

6.After evaluating the evidence before it, the Family Court granted dissolution of marriage on both the grounds.



C.M.A(MD)No.65 of 2019

7.The line of reasoning of the trial Court is based reliance on Ex.P6 as

well as testimony of R.W.1. Ex.P6 is a document which was marked by the petitioner during the cross-examination of R.W.1, which is in Tamil.

Approximate translation of the relevant portion of it reads as below:-

“I have been maritally living with Saleema @ P.Devi for the past twenty years.

Now, due to the misunderstanding, the situation to separate arises.

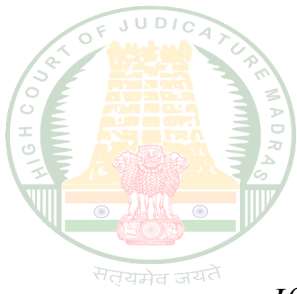
Therefore, I promise that, I have no connection and responsibility with regard to the ornaments and properties belongs the said Saleema @ Devi,

Moreover, I promise that I won't disturb her and there will not be any quarrel from my side.

If anything happened like that, I promise that I will definitely take the responsibility and I will abide by the action to be taken as per law.

Therefore, I will accept the action to be taken by Saleema @ Devi.

I tell that in future, there is no relationship and bond between me and her.



C.M.A(MD)No.65 of 2019

WEB COPY

If the said Saleema @ Devi wants to leave me, I give consent for that.....”

8.Turning to the testimony of R.W.1, it inferred that he has not been living with his wife and sons. This order of the Family Court is now under challenge.

9.Heard both sides.

10.The learned counsel for the appellant strongly canvassed the case for her client and contended that the petition was filed with considerable motivation. In the petition, the respondent/wife had alleged that she was brutally beaten by her husband and she had taken treatment in the hospital, but no documentary evidence was produced to establish the same. This apart, her evidence indicates that at no point of time, she had complained about her allegations that her husband had forced her to convert to Islam and that, he had been inflicted cruelty upon her. These two are the core allegations for constituting cruelty but when she had conceded in her cross-examination that she had took no steps to establish the contra, it becomes evident that she has not chosen to establish her allegation.

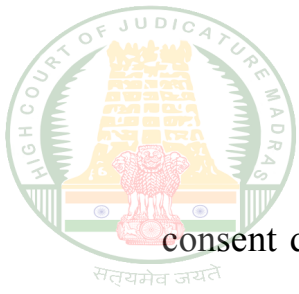


C.M.A(MD)No.65 of 2019

WEB COPY

11. Per contra, the learned counsel for the respondent/wife of the appellant would submit that the petition was filed on two grounds of which the acts of cruelty attracted is just a one and the other significant ground is one of desertion which both Ex.P5 and P6 taken together will establish. Ex.P5 is styled as a consent document wherein the appellant had even gone to the extent of consenting for a mutual divorce. Ex.P6 is an another document which is in the handwriting of the appellant. The learned counsel took the Court through Ex.P6, the contents of which had already been provided above. He added that the Court granted a decree not only on the ground of desertion but the mental agony that would be forthcoming as automatic consequence of familial neglect by the husband.

12. The appellant, who is the husband of the respondent, is a Muslim and the respondent wife is a Hindu belonging to Scheduled Caste community. The learned Trial Court had examined the wife as P.W.1 and the husband as D.W.1 respectively. On the side of the wife, 9 documents were marked as Ex.P1 to Ex.P9, no documents were marked on the side of the husband. The learned Trial Court proceeded to pass a verdict in favour of the wife on the basis of 3 material documents which were marked as Ex.P5, Ex.P6 and Ex.P8. Ex.P5 is a



C.M.A(MD)No.65 of 2019

consent deed executed by the appellant on 09.08.2013. Ex.P6 is a letter dated 20.11.2012, written by the appellant husband to his wife. Ex.P8 is a copy of the message sent by the appellant husband to the respondent wife from his cell phone bearing No.9443874374.

13.The marriage between the appellant and his wife was a love marriage, which was held on 22.10.1992, by registering the marriage under the Special Marriage Act before the Trichy Sub Registry. A careful perusal of the marriage certificate which was marked as Ex.P1, would reveal that the appellant had married the respondent without converting her into Islam and her name was recorded as P.Devi in the marriage certificate. The birth certificate of the appellant's and respondent's son Saddam Hussein has been marked as Ex.P3 and a careful perusal of the same would reveal that even in the certificate the name of the respondent is mentioned as P. Devi.

14.In a patriarchal society like that which prevails in India, marriage is a phenomenal experience for each and every married woman. If planting a fresh sapling is like growing a child, planting a tree would mean reforestation. A woman is uprooted completely from her matriarchal circle and replanted in her patriarchal circle afresh. Like a reforested tree, a woman will take her own time



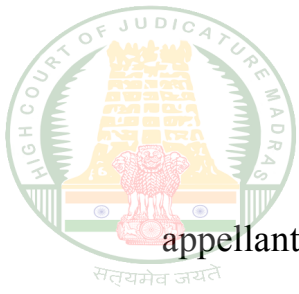
C.M.A(MD)No.65 of 2019

to get accustomed and accommodated in the new environment. That too, when

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a woman takes a big decision of marrying a man from another belief system, more particularly one belonging to another religion, the challenges faced by the woman are infinite. When two hearts fell in love and decide to live in unison by committing them to the relationship of marriage, they expect their mutual space to prevail all through their lives, following their own system of beliefs and their own way of socio-cultural traditions. In a love marriage, a woman marries her beloved only with a fond hope that her space will not be invaded and that her privacy will never be curtailed and her belief system will be appreciated, acknowledged and respected.

15. In the instant case, the appellant at the first instance, without requiring the respondent to convert into Islam had married the respondent belonging to Schedule Caste community, who is a Hindu and had registered their marriage in a marriage registry and the marriage certificate itself would reveal that the respondent had not converted herself to Islam at the time of marriage. The plight of the respondent which was complained by her in her petition for divorce elaborates the various harassments meted out to her by her husband in the name of religion compelling her to convert to Islam. Despite her remaining a Hindu, when she gave birth to two sons, she never interfered with the



C.M.A(MD)No.65 of 2019

appellant's privilege of naming his sons as Saddam Hussein and Yasser Arafat.

Nowhere in the petition for divorce, she had complained about the same and she had in fact respected her husband's privilege to name her sons with Muslim names as a father. The only botheration, which pained the respondent is that he even indulged in the day-to-day affairs of her beliefs of being a Hindu and whenever she was hurt as a woman who had hailed from a low caste, more particularly from one of the scheduled castes. Being a habitual drunkard, he had indulged in domestic violence by subjecting her to physical and emotional abuse continuously and consistently. Though the appellant is running a business of a furniture shop, he had never contributed anything towards the maintenance of the family or the upbringing of their children. That apart, in due course of time, he visited the respondent rarely and started residing with his sister, who is residing nearby his furniture shop. The appellant had even compelled the respondent to convert herself to Islam and also went to the extent of changing her name from P. Devi to Salima. This is proved by the consent deed marked as Ex.P5, in which the respondent's name is mentioned as Salima Beevi @ Devi. The respondent not able to withstand the cruelties meted out to her.

16.Lastly, took salvage with the Jamaat to which the appellant belonged to, seeking for reconciliation. However, the appellant had himself voluntarily



C.M.A(MD)No.65 of 2019

executed a consent deed which is marked as Ex.P5, expressing his consent for a separation from the respondent. The appellant and the respondent were living separately for more than 2 years and that can be understood from the letter written by the appellant on 20.11.2012, which is marked as Ex.P6, even in which he had referred his wife, that is, the respondent as Salima @ Devi. The emotional abuse and his critical views as well as perverted expressions with respect to the religion followed by the respondent is clearly proved by the respondent by marking the messages, which were sent by the appellant from his phone to her as Ex.P8.

17.A matrimony, which commenced with love and affection when it struggles to proceed with twists and turns by the beloved husband's attitude of compelling the Hindu wife to convert to Islam by renaming her as Salima from Devi and further compelling her to completely abandon her beliefs which she has been following from birth by heart, thereby, putting her on crossroads for the purpose of proselytization, would amount to abject cruelty. Forcible conversion means violence. The emotional abuse to which the respondent was subjected to by the appellant for converting herself to Islam from Hinduism would cause untold misery and psychological imbalance on the mind and soul of the respondent, which could never be expressed in normal words by any



C.M.A(MD)No.65 of 2019

victim of conversion. The learned Trial Court relying upon all those documents

which clearly proved that the appellant had been consistently indulging in his effort to proselytize his wife from Hinduism to Islam, had allowed the respondent's petition for divorce by dissolving the marriage between the appellant and the respondent, which was held on 22.10.1992 on the grounds of cruelty.

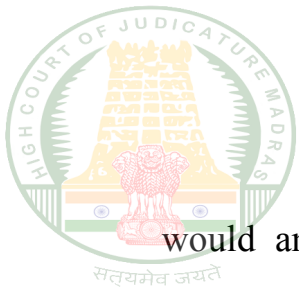
18. Article 25(1) of the Constitution of India guarantees to all persons freedom of conscience and the right freely to profess, practice and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution. In an inter-religious marriage registered under Special Marriage Act, 1954, without converting oneself into the other religion of the respective spouses, after marriage if any of the spouses are compelled to convert into the other religion to which the spouse belongs to, the same would amount to denial of the fundamental right to freedom of conscience and to profess, practice and propagate religion guaranteed by Article 25(1) of the Constitution of India. When a husband or wife in a matrimonial life is subjected to consistent and persistent cruelty compelling them to convert into the other one's religion to which one of the spouses belong to, such a circumstance would certainly amount to curtailment of life and liberty ensured by Article 21 of the



C.M.A(MD)No.65 of 2019

Constitution of India. Denial of right to freely profess and practice one's religion and compelling him or her to convert to the religion of the other, would deprive the victim of his/her life and personal liberty.

19.Right to life under Articles 21, 39(e), 39(f), 41 and 42 are meant to ensure a life with human dignity. When a man/woman is denied with a personal right to profess and practice their own religion, upholding their respective freedom of conscience and beliefs, the same would miserably affect the quality of life, resulting in a lifeless life without dignity. In this case, when the respondent wife refused to convert herself to Islam, the appellant had continuously indulged in abusing the Hindu gods and inflicted both emotional and physical abuse on the respondent, compelling her to convert to Islam in his heinous effort to proselytize her. In a country like India, religion is the essence of life and religion is the connect between a man and almighty. The faith, which fountains from the mind and soul is the basic strength on which a man or woman usually dwell in life. The institution of marriage under every personal law is a holy unison of two souls. Marriage system is treated as sacred and the same has to be preserved. But in the name of God, in the name of religion, when a woman in a marriage or a man in a marriage is compelled to convert herself/himself to the religion of other for the sake of securing the matrimony



C.M.A(MD)No.65 of 2019

would amount to shattering the foundation of the matrimony itself. Under

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Hindu Marriage Act, 1955, conversion of any of the spouses to another religion without the consent of the other spouse is a ground for divorce. Likewise, Section 10(1)(ii) of the Divorce Act, 1869, provides conversion as a ground for dissolution of marriage. But Section 27 of the Special Marriage Act, 1954, do not provide conversion to other religion as a ground for marriage.

20. Though the point for consideration in this case is not with respect to the conversion of one of the spouses to another religion, the point to be considered is as to whether compelling one of the spouse to convert himself/herself to another religion to which the other spouse belongs to would amount to cruelty.

21. The learned Trial Court has held in affirmative observing that, the respondent wife was subjected to grave cruelty by the appellant by consistently torturing her to convert herself from being a Hindu to Islam. We fully agree with the same. The respondent wife has sought for divorce on two grounds, that is, desertion as well as cruelty. The elements of desertion, includes *factum desirendi* and *animus desirendi*. The factual separation and physical withdrawal of the husband from the family atmosphere of the wife would amount to *factum*



C.M.A(MD)No.65 of 2019

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22.In the instant case, within a few years of marriage, the appellant gradually withdrew himself from the matrimonial companionship of the respondent and started staying in his sister's house. In due course of time, he rarely visited his wife and children and during 2012, he completely withdrew from his matrimonial life. The same is duly acknowledged by him by Ex.P5 and Ex.P6, which was written by him during 2012. The petition for divorce was filed by the respondent before the learned Family Court only during 2014. The physical withdrawal of the appellant from severing his family bond with the respondent wife and children has been duly proved by the respondent wife and his intention to desert the respondent wife permanently could be made clear from Ex.P5, Ex.P6 and Ex.P8. The reason for his withdrawal is too unreasonable and unjust that the respondent refused to convert herself to Islam. Thus, the elements of desertion, both *factum desirendi* and *animus desirendi* are duly proved by the respondent wife and we are of the considered opinion that the appellant had deserted the respondent without any reasonable cause or justification continuously for a period of 2 years.

23.The term “mental cruelty” is defined in Black's Law Dictionary (8th



C.M.A(MD)No.65 of 2019

edition, 2004) as follows:-

WEB COPY *“Mental cruelty - as a ground for divorce, one's spouse course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”*

24.The concept of cruelty has been summarized in Halsbury's Laws of England (Volume 13, 4th edition Para 1269) as follows:-

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that Rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints. accusations or taunts. In cases where no violence is awarded, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality, which renders them capable or incapable in all circumstances of amounting to cruelty: for it is the effect of the conduct rather than its nature, which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The Court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse in the mind of the other, weighing all incidents and quarrels between the spouses from that point of view: further, the conduct alleged must



C.M.A(MD)No.65 of 2019

be examined in the light of the complainants capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty, but it is an important element where it exists.”

25.In 24 American jurisprudence, second edition, the term “mental cruelty” is defined as follows:-

“Mental cruelty as a cause of unprovoked conduct towards towards one's spouse, which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse.”

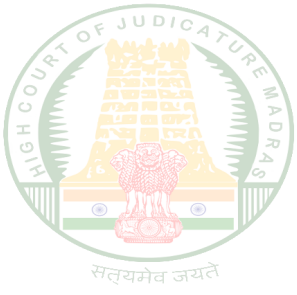
26.In the instant case, the respondent wife is working as a Station Master even during the time of her marriage in Southern Railways. The appellant husband had already divorced his first wife and this is a second marriage. In the name of love, he had love locked the respondent wife to fall for him in the name of marriage and had enticed her heart, which led her to commit with him in the relationship of marriage, though without converting herself to Islam. The same is evident from her marriage certificate and the birth certificate of her



C.M.A(MD)No.65 of 2019

elder son. She continued to remain a Hindu even during her marriage and even after the birth of her children, but the appellant with the wicked mind and with his continued perseverance, kept on pestering her to convert to Islam consistently and went to the extent of even changing her name from P. Devi to Salima. His conduct became too unendurable when he withdrew from the matrimonial environment and started staying in his sister's house and slowly avoiding visiting the respondent wife and his children. The appellant's course of conduct compelled her to take salvage before the Jamaat to which the appellant was attached for a reconciliation, which proved a damp squib and her efforts for a reconciliation miserably failed, resulting in the appellant executing a consent deed for separation. He even declared that the marriage has reached a point of no returns where the both of them cannot take forward their matrimony anymore.

27.In ***Rajani versus Subramanian*** reported in ***Manu/KE/001/1990***, the Court observed that “*the concept of cruelty depends upon the type of life, the parties are accustomed to and that or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society.*”



C.M.A(MD)No.65 of 2019

WEB COPY 28. The conduct inflicted by the appellant on the respondent wife had caused grave mental pain and suffering to the respondent wife compelling her to convert to Islam shattering her belief system and damaging her conscience, which in due course of time had evolved into a challenge to her life and personal liberty to live up to her conscience and belief system. Hence, we are of the considered opinion that this is a fit case for grant of divorce on the grounds of cruelty and desertion as well, categorically holding that not only conversion, but also effort to proselytize a spouse to the religion of another without their consent is nothing, but absolute violence.

29. In view of the above, the Civil Miscellaneous Appeal fails and the same is dismissed. There shall be no order as to costs. Consequently, miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
06.01.2025

Index : Yes / No
Neutral Citation : Yes / No
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C.M.A(MD)No.65 of 2019

To

- 1.The Judge, Family Court, Tiruchirappalli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.65 of 2019

N.SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

Mrn

Pre-delivery Judgment made in
C.M.A(MD)No.65 of 2019

06.01.2025