



C.M.A.(MD).No.1156 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 15.11.2023 : Pronounced on 23.02.2024

**CORAM:**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN  
AND  
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.1156 of 2023  
and  
CMP(MD) No.15485 of 2023**

J.Lakshmanan

... Appellant/ Petitioner

Vs.

K.Sasikala

... Respondent/Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Courts Act, 1984 against the Judgment and Decree passed by the Family Court, Theni in HMOP.No.357 of 2022, dated 17.10.2022.

For Appellant : Mr.R.Santhanam

For Respondents : Mr.S.Malaikani

**J U D G M E N T**

**RMT.TEEKAA RAMAN, J.**

The unsuccessful husband is the appellant herein. The appellant filed a petition for divorce on the ground of cruelty under Section 13(1)



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(ia) of the Hindu Marriage Act in H.M.O.P.No.49 of 2018 before the Sub Court, Periyakulam, Theni and later, it was transferred to Family Court, Theni and renumbered as H.M.O.P.No.357 of 2022.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. The short facts leading to the filing of this appeal are as under:

3.1. The marriage between the parties was solemnized on 12.06.2002 at. Vasuki Thirumana Mahal, Periyakulam and initially, they set up their matrimonial home at Murugamalai. Subsequently, they have shifted the family to Poosaripatti. Out of the wedlock, two children were born, namely, Kaviasri and Vasikaran.

3.2. The husband alleged that the wife has not co-operated to lead the matrimonial home and used to utter false words and thereby, he was subjected to mental cruelty. The husband was working as a tailor at the time of the marriage and at the instance of the wife, they shifted the matrimonial home to Poosaripatti, where, the wife refused to perform the duties and he supported her in contesting as ward councilor in the said



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Panchayat and thereafter, he got a job in the Transport Corporation and the respondent was not behaving like a dutiful wife and hence, he has filed the application for dissolution of marriage on the ground of cruelty.

3.3(a) A counter statement of the wife was filed before the Family Court. The factum of the marriage and the son and daughter born to them were admitted.

3.3(b) It is the specific plea of the wife in the counter statement that at the instance of the husband, the mother of the wife has purchased a land and availed a bank loan and constructed a house at the cost of Rs. 10,00,000/-

3.3(c) The wife also contested the election for the ward member and she was elected as a councillor. Since the husband was not behaving properly with the fellow councillor, it has created a ruckus and created unpleasantness, while she was discharging her duty as a councillor and because of that, she has moved over to Poosaripatti, wherein, the husband came in contact with one lady by name, Nagaratnam and thereafter, the petitioner/husband was not living with the said Panchayat and thereafter, he got a job in the Transport Corporation and the respondent was not



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respondent/wife.

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3.3(d) Resultantly, the respondent/wife filed a complaint before the Nilakottai All Women Police Station and sensing the same, the husband has sent a notice (Ex.P.3), dated 14.01.2016 for restitution of conjugal rights and invited her to live with him, for which, the wife has also sent a reply (Ex.P.4) dated 25.01.2016.

3.4. After the petitioner/husband got a Government job in the Transport Corporation, he decided not to live with the respondent but intended to remarry another lady of his choice and hence, he filed H.M.O.P.No.23 of 2016 for restitution of conjugal rights and the same was dismissed for default, which was marked as Ex.P.2 and thereafter, having left with no other option, the respondent/wife filed maintenance case in M.C.No.9 of 2017 on the file of the learned Judicial Magistrate, Nilakkottai and also filed G.W.O.P.No.41 of 2019 on the file of the Principal District Court, Theni for visitation rights of the minor child and in order to avoid the maintenance, the husband filed the present petition and hence, she prayed for dismissal.

4. During the trial, the petitioner/husband examined himself as



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PW.1 and also examined PW2 and PW3 and marked Ex P1 to Fix P.12 On the side of the respondent/wife, she examined herself as R.W.1 and also examined another person RW-Andavar (independent witness) and no document was marked.

5. On consideration of both oral and documentary evidence, the Family Court has come to the conclusion that neither the physical cruelty as stated by the petitioner nor the cruelty of any shock was exhibited by the wife against the husband and consequently, dismissed the same and hence, the appeal.

6. Heard the learned counsel for the petitioner/husband and the learned counsel for the respondent/wife.

7. The point for consideration is whether filing of maintenance case under Section 125 of Cr.P.C., before the learned Judicial Magistrate. Nilakkottai and filing of G.W.O.P.No.41 of 2019 before the learned Principal District Court, Theni would amount to false accusation and filing of a criminal case, warranting divorce on the ground of a cruelty as defined under Section 13(1)(ia) of the Hindu Marriage Act?



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8(a). From the evidence of P.W.1 and R.W.1, it is disclosed that initially, the husband has filed H.M.O.P.No.23 of 2016 on the file of the Sub Court, Periyakulam for dissolution of marriage and the same was dismissed for default. An explanation is being advanced that there was a mediation and in the mediation, it is decided not to prosecute the said O.P. Had there been any such mediation, it should have been withdrawn and not allowed to be dismissed for default. Be that as it may, since the earlier order in H.M.O.P.No.23 of 2016 was dismissed for default, the same is not on merits and the same does not amounts to *res judicata*. It is to be stated that P.W.2 has spoken about certain loans said to have been raised by the petitioner in construction of the house.

8(b). R.W.1-wife, in her evidence, has categorically stated that on the date of the marriage, i.e., 12.06.2002, the petitioner was working as a Tailor and her parents have purchased the plot in her name at the instance of the husband and they also availed loan from Dindigul Mahendra Bank and constructed a house. Thereafter, the father of the wife has purchased an Auto and he drove the Auto for some time and subsequently, he sold the same and remained unemployed at home.



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8(c). It is the specific evidence of the wife that with the consent of her husband, she had contested for a ward councillor post in the panchayat election and as the husband is picking up quarrel with the other councillor and the ward members, they decided to go back to Murugamalai Town. Thereafter, she has spent Rs.3,00,000/- in getting the husband, the post of driver in the Tamil Nadu State Transport Corporation and by pledging the jewels in Nilakottai Pandian Rural Bank, she has mobilized some funds to meet the demands of the husband in order to secure a job in the Transport Corporation.

8(d). Yet another specific evidence of R.W.1 (wife) is that the petitioner/husband has developed illicit relationship with one Nagaratnam which resulted in the husband living separately with her and hence, she filed a complaint before the All Women Police Station, Nilakottai. He has agreed that after Pongal, he will come and restore the marital life. However, without doing so, the husband has filed H.M.O.P.No.23 of 2016 for restitution of conjugal rights and the same was dismissed. Subsequently, M.C.No.19 of 2017 for maintenance filed by the wife was closed. The husband lived for only one month.

Subsequently, he taken her to the Sub Registrar Office at Periyakulam



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and asked her to settle the property in his name in respect of Poosaripatti village house for which, she was not willing and she was subjected to physical cruelty and therefore, she came to her parental house.

8(e). It is the pleading and specific evidence in her chief examination and in respect of the version of R.W.1, certain answers had been elicited during the cross examination of P.W.1. We are of the considered opinion that the husband has admitted the averments made by the wife, which reads as under:

□எதிர்மனுதாரர் ஊரில் நான் இருக்கும் வீட்டிற்குரிய இடமானது எனது மாமியார் எதிர்மனுதாரருக்கு தானமாக கொடுத்த இடம் என்றால் சரிதான். அங்கு கட்டியுள்ள வீட்டிற்கு எதிர்மனுதாரர் பெயரில் மகேந்திரா லோன் பைனான்சில் லோன் வாங்கி வீடு கட்டினேன் என்றால் வீடு கட்டி முடித்த பிறகுதான் லோன் வாங்கினேன்.

.....

மேற்படி வீட்டுக்கடனுக்குரிய தவணைகளை எதிர்மனுதாரர்கள் கட்டிமுடித்தார் என்றால் நான்தான் கட்டி முடித்தேன். தவணை கட்டியதற்கான ரசீதுகள் என்னிடம் இல்லை. எதிர்மனுதாரரிடம் உள்ளது. அந்த சமயத்தில் எதிர்மனுதாரர் ஊராட்சி தேர்தலில் நின்று வாட்டு கவுன்சிலராக தேர்ந்து எடுக்கப்பட்டார் என்றால் சரிதான்.

.....

நான் எதிர்மனுதாரர் ஊரில் உள்ள மற்றொரு கவுன்சிலருடன் ஏற்பட்ட தகராறு மற்றும் சிலருடன் ஏற்பட்ட



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தகறாறு காரணமாக அங்கு குடியிருக்க முடியாமல் என் ஊரான முரகமலை நகருக்கு எதிர்மனுதாரை அழைத்து வந்து குடியிருந்தேன்.

.....

எதிர்மனுதாரர் ஊரில் நாகரத்தினம் என்ற பெண்ணை எனக்கு தெரியும். எதிர்மனுதாரர் என்னை தகாத வார்த்தையில் திட்டி கொடுமைப்படுத்துவதாகவும் சேர்ந்து வாழ மறுக்கிறார் என்று பொய்யாக கூறுகிறேன் என்றால் சரியல்ல. என் மீது எதிர்மனுதாரர் அந்த நாகரத்தினம் என்ற பெண்ணுடன் எனக்கு கள்ளத்தொடர்பு உள்ளதாகவும் நான் சேர்ந்து வாழ மறுப்பதாகவும் நிலக்கோட்டை அனைத்து மகளிர் காவல் நிலையத்தில் புகார் கொடுத்தது உண்மைதான். போலீசார் என்னை அழைத்து எதிர்மனுதாரருடன் குடும்பம் நடத்த சொல்ல கூறினார்கள். நான் தனியாக வீடு பார்த்து திரும்ப வந்து அழைத்து செல்வதாக கூறிச்சென்றேன். அதன்பிறகு வீடு எதுவும் பார்க்காமல் எனது வழக்கறிஞர் மூலம் 16.01.2016 அன்று சேர்ந்து வாழக்கோரி நோட்டீஸ் அனுப்பினேன். அந்த அறிவிப்புக்கு எதிர்மனுதாரர் தரப்பில் எப்போதும் சேர்ந்து வாழ தயார் என்று கூறி பதில் அறிவிப்பு அனுப்பினார்கள். ஆனால் நான் திரும்ப அழைத்து வந்து குடும்பம் நடத்தாமல் எச்.எம்.ஓ.பி. 23-16 என்ற வழக்கை சமூகம் நீதிமன்றத்தில் தாக்கல் செய்தேன்.

.....

இதற்கிடையில் நிலக்கோட்டை நீதித்துறை நடுவர் நீதிமன்றத்தில் எம்.சி.9-17 ஜீவனாம்சம் கோரி என் மீது எதிர்மனுதாரர் வழக்கு தொடுத்தார். மேற்படி ஜீவனாம்சம் கொடுக்க பயந்து கொண்டு சேர்ந்து வாழக்கோரும் மனுவில் சமரசமாக பேசி சேர்ந்து வாழ்வதாக கூட்டிச்சென்று 30-11-17 முதல் 22-6-18 வரை முரகமலை நகரில் இருவரும் வாழ்வதாக



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குடும்பம் நடத்தினோம். இதுவரை ஜீவனாம்சம் கோரி தாக்கல் செய்த வழக்கு திரும்ப பெறவில்லை என்றால் அதுபற்றி தெரியாது. எதிர்மனுதாரர் பெயரில் உள்ள வீட்டை விற்பதற்கு பவர் பத்திரம் பதிந்து கொடுக்க சொல்லி பெரியகுளம் சார்பதிவாளர் அலுவலகத்திற்கு எதிர்மனுதாரரை அழைத்து வந்து கட்டாயப்படுத்தி பதிந்து கொடுக்க கூறினேன் என்றால் சரியல்ல.

.....

நான் தாக்கியது சம்பந்தமாக எதிர்மனுதாரர் பெரியகுளம் காவல் நிலையத்தில் புகார் கொடுத்தார். மேற்படி புகார் சம்பந்தமாக விசாரித்ததில் குடும்ப பிரச்சனை என்பதால் நீதிமன்றம் மூலம் தீர்த்துக்கொள்ளுங்கள் என்ற அறிவுறுத்திவிட்டனர் (emphasis supplied)

9(a). Thus, this Court finds that in the cross examination, P.W.1-husband has admitted that the mother of the wife gave a settlement of the land and the wife has constructed the house by raising the loan and further, he alone repaid the amount and the wife was elected in the panchayat board election as ward councillor and the dispute between the husband with the other ward councilor was also admitted and further, he also admitted that he knows the person by name. Nagaratnam and also admitted the complaint given by the wife before the Nilakottai All Women Police Station. The nature of the complaint is that the petitioner had illicit relationship with the said Nagaratnam, resulted in the



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complaint, the police have advised them to have a peaceful life and furthermore, exchange of legal notice. filing of H.M.O.P.No.23 of 2016 and M.C.No.19 of 2016 as averred by the wife in her pleadings and evidence of R.W.1 are duly admitted in the cross examination of P.W.1.

9(b). Furthermore, with regard to the physical assault said to have been made by the husband on the wife, which resulted in registration of the complaint before the Nilakottai All Women Police Station, the same was also admitted by P.W.1 in the cross examination and thus, this Court finds that the version of the wife both in her pleadings as well as in her evidence as R.W.1 are for living separately was due to the fact that the husband was not treating the wife properly and he was maintaining an illicit relationship with one Nagaratnam and subsequently, filing of the criminal complaint and filing of HMOP and filing of the maintenance case, withdrawal of the case at the instance of the family members and compulsion made by the husband and causing physical injury upon the wife for non-registration of the house in his name, resulting in filing of the complaint before the Nilakottai All Women Police Station would clearly demonstrate that the wife was not given a congenial atmosphere at the matrimonial home and thereby, she was forced to go back to her mother's house to live separately. When the



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wife has made such an attempt for reunion to restore the matrimonial life with the husband, it appears from the evidence that P.W.1 (husband), is having his own emotions of life and also having an illicit relationship with one Nagaratnam and hence, in such circumstances, a legally wedded wife cannot be expected to live with her husband along with a woman of his choice under the one and the same roof.

9(c). In such circumstances, the wife is justified in leaving her husband. Such an action cannot be termed as refusal for restitution of conjugal rights. It is a duty cast upon the legally wedded husband to provide a congenial atmosphere at the matrimonial home to the wife so as to live a peaceful life. In the instant case, by way of admission in the cross examination, it is elicited that the husband has not at all provided any congenial environment for the wife to live in the matrimonial home and action of the appellant as narrated supra would demonstrate that he is exhibiting male chauvinism and unable to stomach the fact that her wife has been elected as a panchayat ward councilor and wanted to sell the property given by the wife's mother, in which, she had constructed the house by availing loan from a private bank and repaid the same and hence, we find that the action of the wife in filing the maintenance case and also filing the Guardian O.P. stands legally justified and the same



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cannot be termed as cruelty.

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9(d). The wife is exercising a legal right. It is not a case of falsehood. But it is a case to protect her right as enshrined in various women's laws and hence, on the above factual matrix as could be seen from the evidence, the action of the wife is fully justified and the husband, taking advantage of the separate living of the wife, has come forward with this case for remarrying another person of his choice as could be seen from the examination of P.W.1.

9(e) Hence, none of the actions of the respondent amount to cruelty as envisaged in Section 13(1)(ia) of the Hindu Marriage Act and however, on evidence, it appears that the husband alone has committed the same against the wife and thus, the case of the wife stands established from the cross examination of P.W.1 and R.W.2 and thus all is not well with the husband and he, with an eye to remarry another person, appears to have filed this H.M.O.P. and we find that there is no cruelty committed by the wife. The husband is not entitled for dissolution of marriage.

10. Accordingly, this Civil Miscellaneous Appeal is devoid of merits and it is dismissed with cost of Rs.5,000/- to be payable to the



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High Court Legal Services Authority, Madurai Bench of Madras High Court, Madurai, within a period of eight (8) weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

**(T.K.R.,J.) (P.B.B.,J.)**  
**23.02.2024**

NCC : Yes/No  
Index : Yes/No  
sjj

To

1.The Family Court, Theni.

2.The Section Officer,  
V.R.Section, Madurai Bench of Madras High Court,  
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**AND**  
**P.B.BALAJI, J.**

**SJI**

**Pre-Delivery Judgment made in  
CMA(MD) No.1156 of 2023**

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