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CMA. SA. No.15 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.07.2026

Pronounced on: .07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMSA. No.15 of 2025

N.Karthik

Petitioner

Vs

J.Pushpalatha

Respondent

PRAYER: This Civil Miscellaneous Second Appeal is filed under Section 100 of CPC, to set aside the fair and decreetal order dated 27.02.2025 made in C.M.A. No.21 of 2024 on the file of the Principal District Judge at Tiruvallur by confirming the fair and decreetal order dated 31.08.2023 made in H.M.O.P. No.81 of 2023 by the learned Subordinate Judge, Ambattur.

For Petitioner : Mr.T.S.Baskaran

For Respondent : Mr.K.V.Ananthakrishnan

JUDGMENT

The husband is the appellant, challenging the concurrent findings of the Courts below, dismissing his application for dissolution of his marriage with the respondent.



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2. I have heard Mr.T.S.Baskaran, learned counsel for the appellant and Mr.K.V.Ananthakrushnan, learned counsel appearing for the respondent.

3. The above Civil Miscellaneous Second Appeal was admitted by this Court on 18.11.2025. On the following substantial questions of law:-

"1. Whether the Courts below failed to appreciate properly the Police Complaints given by the Respondent against the Appellant about the alleged Child Kidnap and the Police Complaint under Ex.P12 and Ex.P14 against the Appellant and his family members which establish the mental cruelty committed by the respondent against the appellant?"

2. Whether the Courts below, right after recording the fact that the Respondent left the matrimonial home on 26.05.2016 as per Ex.P5 and lived separately for several years would not constitute the act of desertion as against the appellant?"

3. Whether the Courts below right in holding that the Respondent persistently insisted on separating the appellant, abandoning his parent, and to constitute separate matrimonial home will not amount to cruelty?"

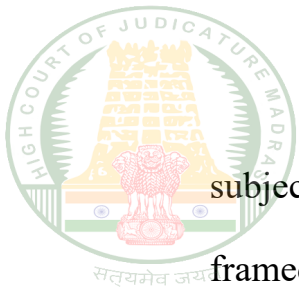


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4. Today, after hearing the learned counsel for the parties, especially the objections of Mr.K.V.Ananthakrushnan, learned counsel for the respondent regarding the very maintainability of the CMSA, I framed the following additional substantial questions of law:-

"Whether in the absence of a challenge to the decree passed for restitution of conjugal rights and when an appeal is filed only against the dismissal of the divorce petition, the CMSA is maintainable?"

5. Though, Mr.T.S.Baskaran, learned counsel for the petitioner as well as Mr.K.V.Ananthakrushnan, learned counsel for the respondent have made elaborate arguments on the merits and demerits of the respective cases of the parties, taking me through the pleadings as well as oral and documentary evidence on record, in view of the very maintainability of the CMSA itself being called in question, it would be appropriate to decide the additional substantial question of law first. In the event of the said question of law being answered in favour of the appellant, then it may be necessary for me to probe further and consider the other questions of law. In the event of my coming to the conclusion that the appeal is not maintainable, then it would be a futile exercise to go into the factual matrix and the legal issues that arise therefrom, which are



subject matter of the substantial questions of law that have already been framed.

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6. Mr.T.S.Baskaran, learned counsel for the appellant, meeting the objections of the learned counsel for the respondent, Mr.K.V.Ananthakrushnan, would state that no doubt, an appeal has not been preferred against the decree for restitution of conjugal rights. He would however contend that if the petitioner/appellant is able to demonstrate that the Court below had rendered perverse findings in dismissing the divorce petition, then the decree for restitution being only a consequence of the dismissal of the divorce petition, this Court can certainly grant a decree for dissolution, notwithstanding the fact that there is no separate appeal challenging the decree for restitution of conjugal rights.

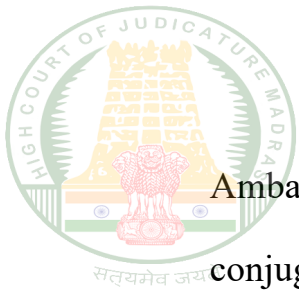
7. Per contra, Mr.K.V.Ananthakrushnan, learned counsel for the respondent would state that the non-filing of an independent appeal challenging the decree for restitution of conjugal rights is fatal to the case of the petitioner. He would also rely on the decision of the Hon'ble Division Bench of this Court in *Jeyanthi Vs. Saravanan*, in CMA



No.2853 of 2018 dated 24.01.2020, where the Hon'ble Division Bench of this Court held that failure to challenge one order despite two proceedings being trying together and common order having been passed would be fatal.

8. I have carefully considered the submissions advanced by the learned counsel on either side.

9. The petitioner and the respondent are admittedly husband and wife and they were married on 08.06.2015 and their marriage was also registered on 13.07.2015. A male child was also born to them on 27.03.2016. It is an admitted case of the parties that the wife left the matrimonial home on 26.05.2016 along with the child and started residing with her parents. Thereafter, the husband filed HMOP No.145 of 2017, seeking restitution of conjugal rights, which was subsequently, withdrawn by him and a divorce petition came to be filed in HMOP. No.347 of 2018. The said OP was re-numbered as HMOP No.81 of 2023 before the Subordinate Court at Ambattur. Pending the said divorce petition, the wife filed HMOP No.925 of 2022, which was later re-numbered as HMOP No.28 of 2023 before the Subordinate Court,



Ambattur. Admittedly, both the OPs for divorce and restitution of conjugal rights were jointly tried by the Subordinate Court at Ambattur and in and by a common judgment dated 31.08.2023, the restitution of conjugal rights petition filed by the wife was allowed and the divorce petition filed by the husband was dismissed.

10. Aggrieved by the dismissal of the divorce petition alone, the husband moved this Court in CMA. No.2771 of 2023. No appeal was preferred against the decree in O.P. No.925 of 2022, for restitution of conjugal rights. This Court held that the appeal before the Hon'ble Division Bench was not the proper remedy and gave liberty to the petitioner to move the competent Court. It is thereafter that the petitioner filed CMA No.21 of 2024, again challenging only the dismissal of the divorce application filed by him. Even at that point of time, the petitioner did not choose to challenge the decree for restitution of conjugal rights.

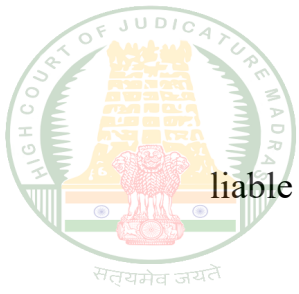
11. Though it is contended by the learned counsel for the petitioner, Mr.T.S.Baskaran, that if the petitioner succeeds on the ground of perversity in the appreciation of the pleadings and evidence by the Court below, then mere fact that the husband has not challenged the



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decree for restitution of conjugal rights, will not come in the way of the petitioner, entitling him to dissolution of the marriage. I am unable to countenance the said argument of the learned counsel Mr.T.S.Baskaran. When the OP for restitution of conjugal rights was jointly tried along with the OP for dissolution of marriage and a common order came to be passed, if aggrieved, the petitioner ought to have filed two independent appeals, one challenging the dismissal of the divorce petition and another challenging the decree for restitution of conjugal rights. Having not chosen to challenge the decree for restitution of conjugal rights, the decree has attained finality and it would clearly operate as *res judicata* against the petitioner from pursuing his challenge against the dismissal of his divorce petition.

12. The Hon'ble Division Bench of this Court in *Jeyanthi's* case (referred herein supra), in very similar circumstances, held that when an appeal was filed only against the dismissal of the restitution petition, without challenging the decree for divorce, then the appeal was not maintainable and liable to be dismissed. The ratio laid down by the Hon'ble Division Bench would squarely apply to the facts of the present case. In the light of the above, the CMSA itself is not maintainable and



liable to be dismissed.

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13. In fine, the appeal itself not being maintainable and in view of the additional substantial question of law being answered against the appellant, I do not find it necessary to decide the other substantial questions of law which would be of no consequence. In the result, Civil Miscellaneous Second Appeal is **dismissed as not maintainable.** No costs.

24.07.2026

rkp

Neutral Citation Case : Yes

Internet: Yes

Index : Yes

To:

1. The Principal District Judge, Tiruvallur.
2. The Subordinate Judge, Ambattur.



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P.B.BALAJI, J.,

rkp

Pre-delivery Judgment in
CMSA. No.15 of 2025

24.07.2026