

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.08.2018	Delivered on 17.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1349 of 2017

Bhupesh Rajan ... Appellant

-vs-

K.Santhi @ Karthika Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and decreetal order in MOP.No.01 of 2015 dated 20.02.2017 on the file of the Judge of the Famil Court, Karaikal.

For Appellant : Mr.R.Thiagarajan

For Respondent : Mrs.Banumathy Baskaran

J U D G M E N T

R.SUBRAMANIAN, J.

The husband whose petition for divorce filed under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, seeking divorce on the ground of cruelty was dismissed by the Family Court, Karaikal is the appellant. The Original Petition in MOP No.1 of 2015 was filed by the appellant seeking divorce on the ground of cruelty. Originally the same was numbered as HMOP No.3 of 2012 and upon constitution of Family Court at Karaikal the same was renumbered as MOP No.1 of 2015.

The brief averments made in the Petition are as follows:

2. The marriage between the parties took place on 12.12.2010 at Mannarkudi, according to Hindu Rites and Customs. The appellant husband was working as Head of the Department, Department of Microbiology in RVS College of Arts and Science at Karaikal. The appellant and the respondent started the matrimonial life at Door No,33 North Street, Kovilpathu, Karaikal. The appellant learnt that the father of the respondent had lied with regard to the number of daughters he

had. When the parents of the appellant along with appellant visited his in-law's house at Mannarkudi, on 25.12.2010, the father of the appellant enquired as to why such a false statement was made about the number of daughters. However, the respondent's father did not come out with any direct reply. The matter was not taken seriously by the father of the appellant, but the appellant felt that the behaviour of the father of the respondent was very strange, inasmuch as taught it fit to suppress existence of two daughters at the time of marriage and the two daughters also did not attend the marriage.

3. In order to have clarity, the appellant raised the issue with his father-in-law, when he went to his house just before Pongal. The father of the respondent flared up and shouted at him. He also told him that he would beget even 10 daughters and that the appellant has no right to question him. This sent shock waves and the appellant felt deeply hurt by the conduct of the father-in-law. In spite of that the appellant visited the house of the father-in-law after 6 days to take back the respondent to Karaikal.

4. During later part of January 2011, the appellant happened to visit Mannakudi along with his friend to identify certain lands, which his friend Jaya Prabhu wanted to purchase. His friend suggested that they visit the appellant's father-in-law house, since he was staying in Mannarkudi, so that they could make some enquiries about the property. Therefore, the appellant along with his friend went to his father-in-law's house. To his shock and dismay, the respondent's father did not welcome the appellant and his friend, he even claimed that the appellant is causing nuisance by visiting the in-law's house. The appellant felt humiliated by the reaction of the father of the respondent. Since the appellant felt depressed about the happenings, he had sought the help of his paternal uncle Mr.Ajaykumar, who is a School Teacher in Karaikal, regarding the developments that had taken place in the home front and sought his advice. Since the paternal aunt of the appellant Mrs. Pavai, was related to the respondent's elder sister's husband, it appears that the said Mrs.Pavai had taken up the issue with the respondent's elder sister's husband, who in turn had enquired the respondent's father about his conduct. Enraged by the intervention of other relatives, who intervened with good intentions, the respondent's father called the grand uncle of the appellant Mr.Singaravel, who was residing at Thiruvavarur and claimed that he would see that his daughter is separated from her in-laws or he would take her to Manarkudi. These happenings had a direct bearing on the marital life of the appellant.

5. The father of the respondent induced her over phone to quarrel with the appellant and each time the respondent spoke to her father, she would immediately react in violent and insolent manner. There was a discrepancy in the date of birth of the respondent in the Horoscope and in the School Certificate, when the same was brought to the notice of the respondent, the respondent started fighting and abused the appellant.

6. The respondent is a Diploma holder in Pharmacy and the appellant wanted to secure an employment for her at Karaikal. He had required her to cancel the registration made with the employment exchange at Manarkudi and register herself at Karaikal. The respondent refused to cancel the employment registration at Mannarkudi. Upon enquiries, the appellant learned that though the respondent is actually residing at Karaikal, she has been claiming that she is the resident at Mannarkudi and she has been signing certain records for a Pharmacy at Mannarkudi. When the appellant objected to this, the respondent not only refused to stop the practice, but proclaimed that she would continue to do it. Even she refused to delete her name from the Ration Card of her father so that it could be included in the Ration Card of the appellant at Karaikal.

7. While things stood thus, the respondent's father arranged for the 'Thali Pirithu Poduthal' function. Strangely, the appellant was not invited for the said function. While leaving for the said function, the respondent took away all the jewels presented to her at the time of her marriage, including 5 sovereign gold chain gifted to her by the appellant's parents as well as the Gold Rings and Bracelet of the appellant. From 02.02.2011 till date of filing of the petition on 09.10.2011, the respondent has not returned to the matrimonial house. Sitting at Mannarkudi, the respondent and her father circulated several false stories about the appellant's family in the relatives circle. She even went to the extent of indulging in character assassination against the appellant's father. She referred to him in singular and used highly disrespectful language against the father of the appellant. She claimed that she has been treated as a housemaid and not as a daughter-in-law by the parents of the appellant. She made several false allegations against the appellant and his parents, which led to severe mental agony and pain. The elder sister of the respondent also induced her to misbehave with the appellant's relatives, particularly, the appellant's parents and see that they started living in a separate house away from the parents of the appellant. She also sent messages abusing the appellant calling him "முட்டாள், மாணங்கெட்டவனே, துரோகி"

8. After reaching her house at Mannarkudi on 02.02.2011, about two or three days later, the respondent called the appellant over phone and threatened him stating that her father was insisting that she should sign a complaint against the appellant and it is she, who has been delaying, and if she would sign the complaint, the same would put full-stop to the political career of the appellant and his family members. On 06.05.2011, she sent a SMS stating that “உன் கேவலமான புத்தி தெரியாமல் டிலே பண்ணிட்டேன்”. The respondent's elder sister also threatened the appellant's maternal aunt Tmt.Pavai, stating that they would come with police and see that the appellant and his parents are arrested. Because of the activities of the respondent, the appellant could not continue as a professor in R.V.S.College of Arts and Science, Karaikal. The appellant has been denied conjugal bliss for 7 months before the date of the filing of the petition. Several false statements had been made by the respondent and her father. On 28.08.2011 when some of the elders and relatives went to the respondent's house to effect the mediation, they were given a rude rebuff. The disappointed relatives informed the appellant and his parents that the respondent is not willing for any kind of conciliation. Left without any other alternative, the appellant sought for divorce on the ground of cruelty.

9. The respondent resisted the petition contending that the allegations in the petition are false. She would claim that her father-in-law, namely the father of the appellant tortured her by giving repeated hindrances to her privacy. Though, she had complained about such torture, the appellant did not take any action. She would also claim that she was treated as a housemaid than as a daughter-in-law. She was forced to live with her father because of the torture made by the father-in-law. She would also contend that in order to eke out a livelihood, she sought for a job and she is now employed as a Teacher in a School in Thiruvavur. The respondent would express her qualified readiness to live with her husband provided the husband sets up a separate residence.

10. The Family Court which tried the Original Petition, framed the following issues for determination:

1. Whether the respondent caused cruelty to the petitioner?
2. Whether the petitioner is entitled to divorce?

11. Before the Family Court, the petitioner examined himself as P.W.1 and examined P.Ws. 2 to 4 and marked Exs.P1 to P20. The respondent examined herself as R.W.1 and marked Ex.R1.

12. The learned Family Judge on a consideration of the evidence on record and overall assessment of the documents concluded that the appellant husband has not made out a case on cruelty and dismissed the Original Petition.

13. Aggrieved the appellant husband is before us by way of this Appeal.

14. We have heard Mr.R.Thiagarajan, learned counsel appearing for the appellant and since the respondent did not choose engage a counsel despite service, Mrs.Banumathi Baskar, was appointed as a legal aid counsel.

15. The Division Bench, which heard the appeal on 10.08.2018, directed the parties to appear on 14.08.2018. The appeal was listed on 14.08.2018, on the said date, the appellant husband was present, but the respondent was not present. The learned counsel for the respondent Mrs.Banumathi Baskar, (Legal Aid Counsel) submitted that the respondent had expressed her inability to come to Court for various reasons. However, she did not express any opinion about her desire to continue the matrimonial life or to agree for a divorce. We had recorded the same and we had adjourned the matter on 27.08.2018, with the direction to the counsel for the respondent to ascertain the factual situation and make an attempt for settlement. We had also directed the parties to appear before us on 27.08.2018. On 27.08.2018, Mrs.Banumathi Baskar, learned counsel appearing for the respondent submitted that the respondent had instructed her not to defend the appeal. She would also submit that the respondent has preferred a divorce.

16. Mr.R.Thiagarajan, learned counsel appearing for the appellant would submit that the respondent had in fact registered herself as being available for marriage with the Sozhiya Velalar Sangam, Thiruvavarur, on 07.01.2018, he also produced documents to show that such a registration has been made. Mrs.Banumathi Baskar, learned counsel appearing for the respondent wife does not controvert the said document. However, since the respondent had not chosen to appear before us, we could not ascertain her willingness to continue the marital bond.

17. We therefore, heard the appeal on merits on 29.08.2018. Upon hearing the counsels appearing on either side, the only point that arises for determination in this appeal is as to whether the appellant has proved that he has treated with cruelty, which would entitle him to get a decree for divorce, under Section 13(1) (i-a) of the Hindu Marriage Act.

18. Mr.R.Thiagarajan, learned counsel appearing for the appellant husband would contend that the very fact that the respondent had expressed a conditional consent for continuing the marital bond would show that she is not interested in resuming the married life. He would also submit that the conduct of the respondent and her father had been such, that it caused a great deal of mental cruelty to the appellant and his family members. Inviting our attention to the judgment of the

Division Bench of this Court in R.Seenu v. N.Porkodi, reported in 2018 (1) MLJ 336, Mr.R.Thiagarajan, learned counsel would submit that the conduct of the respondent and her father in abusing the appellant and his friends, when they visited Mannarkudi as well as their act of threatening the appellant's paternal Aunt Tmt. Pavai with dire consequences, if she chose to attempt to any mediation would amount to mental cruelty.

19. Mr.R.Thiagarajan, learned counsel would also draw our attention to the judgment of the Hon'ble Supreme court in K.Srinivas Rao v. D.A.Deepa, reported in 2013 (5) SCC 226, wherein, the Hon'ble Supreme Court had held that any kind of ill-treatment and harassment by way of proceedings under the criminal law, if found to be false would amount to cruelty per se. The learned counsel would rely upon the following portion of the judgment of the Hon'ble Supreme Court in Srinivas Rao's case, to contend that the conduct of the respondent and her father would amount to mental cruelty as propounded by the Hon'ble Supreme Court. While considering the scope of the term mental cruelty, the Hon'ble Supreme court in the said judgment had held as follows:

"10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

11. In Samar Ghosh this Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because each case presents it's own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case.

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put

up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.""

After referring to the various judgments regarding mental cruelty, the Hon'ble Supreme Court finally observed as follows:

"16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."

20. Mr.R.Thiagarajan, learned counsel would also invite our attention to the judgment of the Hon'ble Supreme Court in Narendra v. K.Meena, reported in 2016 (7) MLJ 726. While considering the question as to whether a demand by the wife for a separate residence leaving the parents of the husband would amount to cruelty, the Hon'ble Supreme Court has observed as follows:

"11. The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. In the instant case, upon appreciation of the evidence, the trial Court came to the conclusion that merely for monetary considerations, the Respondent wife wanted to get her husband separated from his family. The averment of the Respondent was to the effect that the income of the Appellant was also spent for maintaining his family. The said grievance of the Respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the Respondent wanted the Appellant to be separated from the family - the sole reason was to enjoy the income of the Appellant. Unfortunately, the High Court considered this to be a justifiable reason. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the Respondent husband. We do not see any reason to justify the said view of the High Court. As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'. "

21. Pointing out that the respondent even in her counter statement filed before the Family Court as well as her evidence as categorically stated that she is willing to live with the appellant provided the appellant sets up a separate residence,

Mr.R.Thiagarajan, would contend that the very demand for separate residence would amount to cruelty.

22. From the evidence of P.W.2 to P.W.4, it is seen that the claim of the appellant regarding ill-treatment of the appellant, his relatives and his friends by the respondent and his father has been taking place at very frequent intervals. P.W.2, the father of the appellant had deposed that the respondent demanded setting up a separate residence and objected to his son's income being used for maintenance of the parents. The letter dated 03.05.2011 which has been marked as Ex.P8 written by the appellant husband would show that the demand for setting up a separate residence was made by the respondent and her father also. P.W.3 Dr.Jaipraba, has filed a proof affidavit stating that when he along with the appellant went house of the respondent at Mannarkudi, the father of the respondent shouted at him saying “எங்க வந்தீங்க இப்ப. உங்களோடு பெரிய தொல்லையாப் போச்சு”, he would also add that when he attempted to explain the purpose of the visit, the father of the respondent again said “நிலத்தை பார்க்க வந்தால் அதை பார்த்துவிட்டுப் போக வேண்டியதுதானே. இங்கு ஏன் வந்தீர்கள் ”.

23. Nothing has been elicited in his cross-examination so as to discredit his testimony in the chief examination. P.W.4 one Mohan had deposed that the respondent and her father Kaliyamurthi had demanded that the appellant should not continue to live with his parents and he should set up a separate residence in Thiruvarur or Mannarkudi. This evidence has not been in any manner be-littled in cross examination. Even in cross examination P.W.4 has deposed as follows:

“நான் செல்லும் முன்பாக மனுத்தாரருக்கு வீட்டிலும் சமதானம் பேசிய விவரம் எனக்குத் தெரியும். அந்த பேச்சு வார்த்தையில் எதிர்மனுத்தாரர் வீட்டில் திருவாரூரில் தனிக்குடித்தனம் வைத்தால் பெண்ணை அனுப்புவதாக சொன்னார்கள் ”.

24. In the proof affidavit filed by her as R.W.1, the respondent has stated that the appellant is at the mercy of his father. It is also claimed that the very divorce petition has been engineered at the instance of the father. She would admit that the Cell Phone Number from which the abusive messages were sent was used by her only. She would also admit that she has been signing as pharmacist in one NRK Pharmacy in Mannarkudi, as it has to obtain a Certificate from a qualified pharmacist for carrying on business of pharmacy. She would also admit that she has been working in a School in Thiruvarur between 15.06.2011 and 30.04.2012 and from 01.06.2012 to 13.02.2013. While she has denied that the contents of the CD which has been marked as Ex.P12 she has refused to undergo a voice test. She would also complain that her father-in-law woke her up between 5 and 6 am

and according to her, the same amounted to cruelty. Though, she would admit that she had received Ex.P8 letter written by the appellant requesting her to come to Thiruvavarur, so that they can talk to each other and decide on the future, she would also add that she had not gone to Thiruvavarur, pursuant to the request made by the appellant. She would also accept that she has not file an application seeking restitution of conjugal rights.

25. From over all reading of the evidence of the respondent, it is seen that she is more interested in blaming the appellant and his parents. She also admitted that despite conciliation by the Family Court as well as this Court during the pendency of the transfer petition filed by her in this Court, she had not taken any step to resume any matrimonial relationship. The very fact that she had demanded a separate residence would by itself show that the respondent was not willing to resume the marital life at Karaikal.

26. A reading of the evidence let in by the parties, leads to a definite conclusion that the respondent wife was responsible for the separation and her demand for setting up a separate residence at Thiruvavarur, without any justifiable reason would by itself amount to cruelty. As observed by the Hon'ble Supreme Court in Narendra v. K.Meena,'s case, cited supra, a demand for separate residence without any justifiable reason would amount to cruelty.

27. In the case on hand, apart from the demand for separate residence there are also other materials to show that the respondent and her father were lying on even the number of daughters the respondent's father had. Though that may not constitute a ground for divorce on the ground of misrepresentation that would definitely have a bearing on the character of the people. A person who puts a false message regarding the number of daughters he has, by itself would show his character. A cumulative effect of the evidence on records would show that the appellant had suffered mental cruelty. This coupled with the fact that the demand has been made for a separate residence would definite amount to cruelty within the meaning of Section 13 (1)(i-a) of the Hindu Marriage Act.

28. We are therefore of the considered opinion that the Family Court was not right in rejecting the petition on the ground of absence of cruelty. Though the Family Court had referred to the Judgment of the Hon'ble Supreme Court in K.Srinivas Rao v. D.A.Deepa's cited supra, the Family Court had not adverted to the discussions of the Hon'ble Supreme Court regarding mental cruelty made in the said judgment. The Family Court would however, conclude that the Hon'ble Supreme Court had proceeded to grant divorce in the case that may be on the ground that the parties were living separately for 16½ years.

29. We are therefore constrained to conclude that the Family Court's dismissal of the petition for divorce is erroneous and it seeks our interference. In fine the Appeal is allowed, the judgment and decree of the Family Court are set aside, the Petition in MOP No.1 of 2015 will stand allowed, granting a decree for divorce on the ground of mental cruelty. We however make no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

jv

To

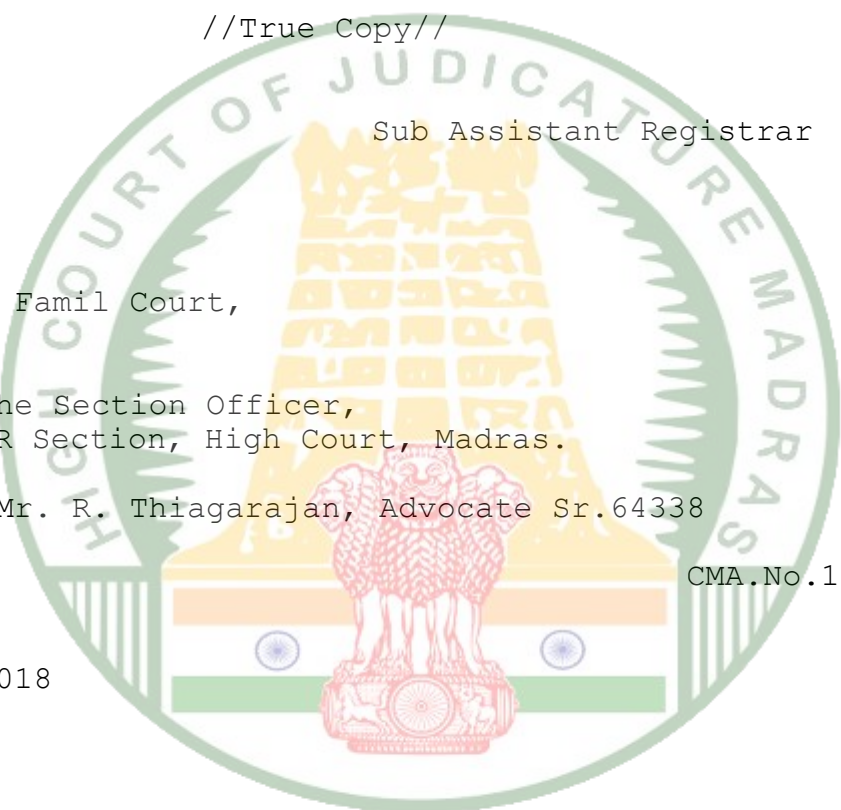
The Judge, Famil Court,
Karaikal.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. R. Thiagarajan, Advocate Sr.64338

CMA.No.1349 of 2017

SSI(CO)
EU 30/10/2018

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant. The entire emblem is set against a background of horizontal stripes (orange, white, green) with blue wheels. The text "HIGH COURT OF JUDICATURE MADRAS" is written in a circle around the emblem. Below the emblem is the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate).

सत्यमेव जयते

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