



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**C.M.A(MD)Nos.450 of 2019 and 560 of 2020
and
C.M.P(MD)No.5864 of 2020**

C.M.A(MD)No.450 of 2019

Jasmine ... Appellant/Respondent

.Vs.

Sheeju Selva Roji ... Respondent/Petitioner

C.M.A(MD)No.560 of 2020

S.Sheeju Selva RojiAppellant/Petitioner

.VS.

JasmineRespondent/Respondent

PRAYER in C.M.A(MD)No.450 of 2019: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, against the fair and decretal order made in I.D.O.P.No.157 of 2018, dated 27.03.2019, on the file of Family Court, Kanyakumari at Nagercoil.



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PRAYER in C.M.A(MD)No.560 of 2020: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act read with Section 55 of the Indian Divorce At against the judgment and decree made in I.D.O.P.No.157 of 2018, dated 27.03.2019, on the file of Family Court, Kanyakumari at Nagercoil.

C.M.A(MD)No.450 of 2019

For Appellant : No appearance

For Respondent : Ms.M.Nandhini Priyadharshini
for M/s.D.Geetha

C.M.A(MD)No.560 of 2020

For Appellant : Ms.M.Nandhini Priyadharshini
for M/s.D.Geetha

For Respondent : No appearance

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
K.K.RAMAKRISHNAN,J.

Sheeju Selva Roji and Jasmine got married on 18.01.2002 at CSI Home Church, Nagercoil. At the time of marriage Sheeju Selva Roji was working as Assistant Professor in a private college at Thovalai. Later, he got appointment as Assistant Professor in Anna University College of



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Engineering at Nagercoil. Two male children were born to them in the course of their wedlock. From the year 2010, spouse were at logger-head with frequent quarrel and separation. On 29.01.2012, the respondent has left the matrimonial home along with two children, leaving a note that she is not interested to be with the husband. In the said circumstances, Sheeju Selva Roji has filed G.W.O.P.No.535 of 2014 in Family Court, Kanyakumari at Nagercoil seeking custody of the children and for the reason stated in his petition alleging cruelty and wilful desertion, filed I.D.O.P.No.47 of 2017, on the file of District Court, Nagercoil seeking divorce. Later, the said ID.O.P was transferred to the file of Family Court, Nagercoil and renumbered as I.D.O.P.No.157 of 2018. The divorce petition was strongly contested by the wife Jasmine mainly on the ground that her husband had extra-marital affair with several other ladies and did not show any affection or love towards her or towards children and he had deserted her in the year 2013 and having his own way of life. The Family Court, after considering the pleadings as well as evidence let in by the parties, primarily relying upon the note left by the wife Jasmine, dated 29.01.2021, wherein, she has expressed that she is not interested to live with him and have a separate life (எனக்கு உங்களோடு வாழ விருப்பமில்லை. எனவே இருவரும் பிரிந்தே வாழ்வோம்).



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2. Upon considering that it is a wilful desertion on the part of the wife taking away the children and her non-cooperation for the marital life, amounts to cruelty. It is also noted by the Family Court that after the birth of the second son, Jasmine has got appointment as Assistant Surgeon in the Government Veterinary Clinic in Ambasamudram. Thereafter, her attitude and behaviour changed. Relying upon the catena of judgments of this Court dealing with the various form of cruelty and long period of separation, allowed the divorce petition and also directed the appellant/Sheeju Selva Roji to pay a sum of Rs.10,000/- each to the two minor children till they complete their education or got employment whichever is earlier. Further, the visitation rights to see the two minor children in the custody of Jasmine, to the husband/Sheeju Selva Roji on all sundays in the Church, is ordered in G.W.O.P confirmed. Aggrieved by the decree of dissolution of marriage, wife has preferred C.M.A(MD)No.450 of 2019. Against the direction to pay maintenance at the rate of Rs.10,000/- each to the two minor children, the husband has filed C.M.A(MD)No.560 of 2020.

3. When the matter is taken up for final hearing today, the learned counsel for the wife/Jasmine, the appellant in C.M.A(MD)No.450 of 2019



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and the respondent in C.M.A(MD)No.560 of 2020 reports "no instruction".

The learned counsel for Sheeju Selva Roji present and made her submission supporting and justifying the decree passed by the Family Court dissolving the marriage and challenging the maintenance amount of Rs.10,000/- each for the two minor children.

4.Perusal of the records and the deposition, we find that admittedly from the year 2013, the parties are living separately and they have not shown any sign of interest for reunion. Uncharitable allegations are made against each other including extra-marital affairs. In fact, Jasmine has left a note before breaking marital bond expressing her displeasure in living with her husband. In the said circumstances, this Court finds no reason to interfere with the decree passed by the Family Court, Kanyakumari at Nagercoil dissolving the marriage solemnized between them. As far as the grant of maintenance of Rs.10,000/- each to the two minor sons, again this Court finds that the Family Court has considered the earning capacity of the father, who has gainfully employed as Assistant Professor in an Engineering College, has reasonably fixed the maintenance amount at Rs.10,000/- each to the two minor children. Therefore, there is no justification in reducing the said maintenance amount. This Court finds no merit in both



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5.As a result, both the Civil Miscellaneous Appeals are dismissed.
There will be no order as to costs. Consequently, connected Civil
Miscellaneous Petition is dismissed.

[G.J.,J.] [K.K.R.K.,J.]
10.02.2023

Index : Yes / No
Internet : Yes / No
NCC :Yes/No
vsn

To

- 1.The District Judge,
District Court,
Kanyakumari at Nagercoil.
- 2.The Judge,
Family Court,
Kanyakumari at Nagercoil.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN,J.

vsn

COMMON JUDGMENT MADE IN
C.M.A(MD)Nos.450 of 2019
and 560 of 2020
and
C.M.P(MD)No.5864 of 2020

10.02.2023