



C.M.A.No.2849 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 05.07.2024**

**PRONOUNCED ON : 16.07.2024**

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU  
AND  
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**C.M.A.No. 2849 of 2022**

Kalaiselvi

... Appellant

vs.

Karthikraja

... Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, to set aside the award passed by the Family Court Judge, Perambalur by its Decree and Judgment dated 17.12.2021 made in H.M.O.P.No.181 of 2020.

For Appellant : Mrs.Sangamithrai  
for M/s.C.Vidhusan

For Respondent : Mr.P.Mani



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## **JUDGMENT**

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(Judgment of the Court was made by P.DHANABAL,J.)

This Civil Miscellaneous Appeal has been preferred as against the fair and decretal order passed in H.M.O.P.No.181 of 2020 on the file of the Family Court, Perambalur, dated 17.12.2021, wherein the appellant herein has filed a petition for divorce as against the respondent and the same was dismissed.

2. The pleadings of the appellant-petitioner in the HMOP is that the marriage between the appellant and respondent was solemnised on 22.01.2010 at Arulmigu Valleeeswarar Temple, Valikandapuram, Perambalur District as per the Hindu Rites and Customs. Out of the wedlock, a female child namely Pugalini was born. The respondent very often with a drunken mood abused the appellant and assaulted her and also driven her out from the matrimonial house. The parents of the appellant used to pacify the matter with the help of panchayat and she was living with the respondent. But the respondent failed to take care of her needs and did not give any monetary assistance for the education of the child. According to the appellant, the respondent beaten her and again driven her out from the matrimonial house.



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Since the appellant was unable to live with the respondent who used to abuse her, being left with no financial support, she filed the petition for divorce.

3. In the counter filed by the respondent before the trial court, it is submitted that the respondent was affected by paralysis, but the appellant did not take care of him and left the matrimonial home. She failed to perform her duties in the matrimonial home and she refused to come back even after repeated request to join with the respondent.

4. Before the Trial Court, on the side of the appellant/petitioner, PW.1 to 3 were examined and also marked one document as Ex.P1. On the side of the respondent, RW.1 and 2 were examined and no documents were marked.

5. The Trial Court after analysing the evidence adduced on both sides, dismissed the petition for divorce filed by the wife. Aggrieved by the said order, the appellant has filed the present civil miscellaneous appeal raising various grounds.

6. The learned counsel appearing for the appellant would contend that the trial court erroneously dismissed the petition for divorce without



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appreciating the pleadings and evidence placed before it. He would further submit that it would be difficult to restore harmony between them. Therefore, the learned counsel prayed this court to set aside the order passed by the Family Court and sought to allow the present appeal.

7. The learned counsel appearing for the respondent would contend that the appellant filed the OP before the trial court with false allegations as if, the respondent caused cruelty to her. The Trial Court after taking into consideration the evidence adduced by both sides, correctly dismissed the OP. Therefore, the present civil miscellaneous appeal is liable to be dismissed.

8. This Court heard both sides and perused the records. The point for determination in this appeal is as follows:-

(i) Whether the appellant is entitled to decree for divorce on the ground of cruelty?

9. **Point**:- In this case, there is no dispute in respect of the relationship of the parties and the child born to them. According to the appellant, the



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respondent very often assaulted the appellant and he sent her out from the matrimonial house, so, she is now residing in her parent's house. There is no chance for union. It was pleaded that because of assault and torture, there is a threat to her life and because of such misbehaviour and cruelty, it would be difficult for her to stay with the respondent and maintain marital relations. Therefore, the appellant sought for divorce on the ground of cruelty. In order to prove the said cruelty, before the Trial Court, the appellant was examined as PW.1 besides PWs.2 and 3. She deposed about the cruelty caused by the respondent.

10. The evidence of PW.1 clearly proved the cruelty caused to her by the respondent. Therefore, the appellant is entitled to decree for divorce on the ground of cruelty. In our considered view, the Trial Court failed to consider the evidences adduced by the appellant/petitioner in a proper and perspective manner and failed to grant divorce on the ground of cruelty. Therefore, the order passed by the Trial Court is unsustainable and the same is liable to be set aside. The point is answered accordingly in favour of the appellant.



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**11. In the result,**

(i) The Civil Miscellaneous Appeal is allowed. The order passed by the Trial Court in H.M.O.P.No.181 of 2020, dated 17.12.2021 is set aside. The petition in H.M.O.P.No.181 of 2020 is allowed. The marriage between the appellant and the respondent solemnised on 22.01.2010 at Arulmigu Valleeeswarar Temple, Valikandapuram, Perambalur District is dissolved by granting decree of divorce.

(ii) There shall be no order as to costs.

**(J.N.B.J.) & (P.D.B.J)**  
**16 .07.2024**

dm/nvsri

Internet : Yes/No  
Index : Yes/No  
Neutral Citation : Yes/No

To

The Family Court,  
Perambalur.



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**J.NISHA BANU,J**  
**and**  
**P.DHANABAL,J**

dm/nvsri

**Judgment**  
**made in C.M.A.No.2849 of 2022**

**16 .07.2024**