



C.M.A(MD)Nos.649 of 2019 & 70 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)Nos.649 of 2019 & 70 of 2020
and
C.M.P(MD)Nos.7968 of 2019 & 1175 of 2020

C.M.A(MD)No.649 of 2019

Reguvathi

... Appellant

Vs.

Ramkumar

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the Fair and Executable Order dated 26.06.2019 in H.M.O.P.No.217 of 2018 on the file of the Family Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.S.Vishik Ali
For Respondent : Mr.J.Barathan



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C.M.A(MD)No.70 of 2020

Ramkumar

... Appellant

Vs.

Reguvathi

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Court Act, 1984 to call for records and set aside the Clause No.4 of the Fair and Executable Order dated 26.06.2019 in H.M.O.P.No.217 of 2018 on the file of the Family Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.J.Barathan
For Respondent : Mr.S.Vishik Ali

COMMON JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J**)

Since both the appeals arise out of the same judgment and decree, both are heard together and disposed of by this common Judgment. For the purpose of clarity, the parties are referred to as per their rank before the Family Court.



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2. The petitioner is the husband and the respondent is wife. The petitioner filed the petition for divorce as against the respondent on the ground of cruelty. The petition has been filed under wrong provision as Section 13(B) of the Hindu Marriage Act, 1955, which relates to the mutual consent, however, the body of the allegations shows that the divorce sought for on the ground of cruelty.

3. The husband filed the petition on the ground of cruelty against the wife in H.M.O.P.No.217 of 2018 on the file of the Family Court, Kanniyakumari District at Nagercoil. The petition was dealt with by the learned Judge, Family Court. After enquiry, divorce was granted on the ground of cruelty. In addition, visitation right has been given to the wife and also permanent alimony of Rs. 10,000/- was ordered. Challenging the relief of divorce granted by the Family Court, the wife has filed the appeal before this Court in C.M.A(MD)No.649 of 2019 and challenging the visitation right as well as permanent alimony, the husband has filed the appeal in C.M.A(MD)No.70 of 2020. As already stated, both the appeals arise out of the same judgment and decree, both are heard together and disposed of by this common Judgment. For the purpose of clarity,



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the parties are referred to as per their rank before the Family Court.

4. The brief facts of the case mentioned by the husband in the petition for divorce before the Family Court are that the marriage between the petitioner and the respondent was solemnized on 18.01.2013 as per the Hindu Rites and Customs. During the marriage, the petitioner's parents have given 21 sovereigns of gold ornaments to the respondent and also provided 7 sovereign of Thali chain and all the marriage expenses were met by only the parents of the petitioner. Even for the reception also, they only met the expenses. After the marriage, the petitioner and the respondent started to live as husband and wife at the house of the parents of the petitioner. Out of their wedlock, the respondent gave birth to a female child, by name, Durga Devi, on 14.06.2014. While so, the respondent insisted the petitioner to pledge the jewels one by one and received money from the petitioner and gave to her parents and due to which they could not lead their peaceful life and even they do not have enough money to lead life and hence they went to the house of the petitioner's parents and they took themselves to live with them as joint family. Due to which, as the respondent's hands were tied up, the respondent was unable to get money from the petitioner to give to her family



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members. Hence, without having any reason, the respondent started quarrelling and creating problem with the petitioner and his parents. On 02.07.2017 without intimating to either the petitioner or his parents, the respondent took the child and went to her parent's house situated at Vadakkusoorankudy. The child could not go to the school, in which, she was admitted. Hence, the petitioner approached the respondent on various occasions directly and through mediators and tried his level best to pacify the respondent to come to Paramarthalingapuram, which is situated very near to school, wherein the child was studying. Since the respondent plainly refused to come to the matrimonial home and the child could not go to the school from the parent's house of the respondent, the father of the petitioner purchased a swift *dzire* care for a sum of Rs.9,50,000/- and appointed a driver by fixing a monthly salary of Rs.10,000/- and made arrangement to send the child to the school. However, the respondent did not send the child to the school regularly and the school authorities also informed about the child's irregularity. When the same was questioned, the respondent threatened the petitioner that she would give poison to the child, take the child's life and also take her life. Therefore, the petitioner preferred a complaint against the respondent before the Superintendent of Police, Nagercoil. The Inspector of



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Police, All Women Police Station, Kanyakumari on enquiry called the petitioner and the respondent. Since it is a matrimonial dispute, they advised to live together. Once again the petitioner took the respondent to his parent's house at Paramarthalingapuram. Again the respondent started creating problems at the petitioner's house by threatening the petitioner and their parents saying that she would commit suicide after issuing a false handout. The respondent has no love and affection and affinity towards the petitioner and the child. Whenever the petitioner approaching the respondent for sexual compromise, she refused to accept the same. The respondent also used to threaten the petitioner by saying that she would fix a micro camera in the bed room and exhibit the compulsion of the petitioner to have sexual contact with her. Since the respondent caused mental cruelty, the petitioner has no other option except to file the petition for divorce on the ground of cruelty.

5. The brief facts of the case of the respondent/wife as mentioned in the counter statement are that the marriage is admitted and they gave birth to a female child, is also admitted. Even though prior to the marriage, the petitioner's family members promised that they do not demand any dowry and other household



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articles, soon after the marriage, they shown their real colour and started to demand. The petitioner went to the extent of assaulting the respondent and driven to their parental home. The parents of the petitioner also co-operated for the demand of the petitioner. The petitioner both physically and mentally gave tortures to the respondent. The petitioner gave all the jewels, which were provided to the respondent, to his parents and pledged the jewels and started the business. When the respondent was at the stage of eight months pregnancy, the petitioner has not taken any steps to take baby-shower ceremony and he also beaten the respondent and he refused to perform the baby-shower ceremony. Further, the petitioner hit the respondent on her stomach during the pregnancy period. After the birth of a female child, the same was informed to the petitioner, however, he never turned up to visit the child. After 70 days of the birth of the child, the respondent's parents pacified the respondent and left her in the house of the petitioner with child. During that time, the petitioner and his parents have not provided food and shelter to the respondent and her child. When they were residing in the rental house, the petitioner had illicit intimacy with the landlady one Rajeswari. When the same was questioned by the respondent, the petitioner threatened her and also assaulted her. Since the petitioner had illicit intimacy



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with the landlady, the respondent shifted the child to the nearby parent's house. Even at the advice, the petitioner did not leave his illicit intimacy with the landlady. When the same was intimated to the brother of the petitioner, he gave a false complaint against the respondent and her family members before the All Women Police Station. Though they pacified and sent them to the matrimonial home, even thereafter, he did not leave the illicit intimacy with the landlady. When the parents of the respondent came to the matrimonial home, the petitioner misbehaved with the respondent by pulling her top and threatening her and also demanding dowry. He then drove the respondent to the parental home. Therefore, the allegations levelled against the respondent for cruelty are false and hence, the petition is liable to be dismissed.

6. After completion of the pleadings, during the enquiry, on the side of the petitioner, the petitioner was examined as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4 and 18 documents were marked as Exs.P.1 to P.18. On the side of the respondent, the respondent was examined as R.W.1. Besides, R.W.2 and R.W.3 were examined and two documents were marked as Ex.R1 and Ex.R2.



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7. After completion of evidence, while hearing the arguments, the Family Court taken the following points for consideration:

“1. Whether the petitioner-husband proved the plea of cruelty against the respondent-wife?

2. Whether the petitioner-husband is entitled for the relief of divorce as prayed for?

3. To what other relief the petitioner-husband is entitled?”

8. After hearing the arguments and considering both the oral and documentary evidence, the Family Court held that the respondent/wife caused the cruelty towards the petitioner/husband and therefore, the petition for divorce was allowed, however, considering the age and gender of the child, visitation right was given to the respondent and permanent alimony of Rs.10,000/- per month was also ordered. Challenging the same, the respondent/wife has filed the appeal in CMA(MD)No.649 of 2019 and the petitioner/husband has filed CMA(MD)No. 70 of 2020.

9. The learned counsel for the respondent/wife vehemently contended that



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the petitioner/husband has not proved the cruelty alleged to have been committed by the respondent. The petitioner's pleading is that the respondent caused the cruelty on the ground of making false allegation of extramarital relationship with the landlady Rajeswari when they resided in the rental house. However, the petitioner has not stated anything about the allegation made by the respondent regarding the extramarital affair which caused the mental cruelty. Hence, without pleading, no amount of evidence can be let in and even if it is let in, the Court need not look into that. However, the learned Judge, Family Court, has given finding on the ground that the respondent has made a bald allegation of an extramarital affair allegedly led by the husband, which amounts to cruelty by referring the citations of the Hon'ble Supreme Court and granted divorce. He would further submit that it is settled preposition of law that there is no straight jacket formula tested to determine the ground of mental cruelty granted in all cases and it differs from fact to facts, social status of the parties, educational qualification, family background etc.,. In the present case, the whole evidence on record only reveal, it is only a normal wear and tear between the spouses in their matrimonial life and there is no evidence to prove the allegation of mental cruelty to the husband. Except the averments in the petition, the petitioner failed to



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prove the ground of cruelty in the present case. The pleadings regarding allegations levelled by the respondent against the petitioner regarding his character were denied by the respondent in her evidence. However, the findings of the learned Judge in para 37 of the present case is completely without any evidence. The Judgments relied on the side of the petitioner before the learned Judge are all cases, where there are evidences on record to prove mental cruelty, whereas in the present case, there is no oral and documentary evidence to prove the allegation of cruelty as alleged by the petitioner. There is no corroborative evidence on record to prove the allegation that the respondent threatened the petitioner that she will commit suicide. The Family Court ought not to have granted divorce simply on the ground that a statement of a wife making comment on the character of the petitioner constitute the ground of cruelty and more so there is no evidence to prove such allegations. He would further submit that the petitioner failed to prove that the respondent refused to have sexual intercourse because of her sexual weakness and as such the decree of divorce granted on the ground of mental cruelty is unsustainable. When the Court below specifically stated that those allegations are not proved to the conscience of the Court and in such circumstances, the grant of divorce on the ground of mental cruelty is



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unsustainable in law. Therefore, the appeal filed by the respondent/wife is liable to be allowed and the divorce granted by the learned Judge, Family Court, on the ground of cruelty is liable to be set aside.

10. The learned counsel for the petitioner/husband would submit that the respondent/wife made a false allegation against the petitioner that he had illicit intimacy with the landlady, however, there is no material to prove the said allegation. Further, the respondent has admitted that she has stated the allegation in her counter. Though she has stated in her counter statement that the petitioner was leading an illicit intimacy with the landlady, the extramarital relationship with the another was not proved by the respondent. Therefore, once without any iota of evidence or materials, assassinating the character of the husband by alleging that he was leading extramarital life with another woman, which itself caused the mental cruelty. The Hon'ble Supreme Court in catena of decisions has stated that the bald allegation without any materials about the character assassination/extramarital affairs with someone, amounts to cruelty. Therefore, the Family Court rightly granted the divorce on the ground of cruelty and there is no merit in the appeal filed by the respondent/wife. He would also submit that



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the respondent/wife acted against the interest of the minor child and she has not given any care not only the petitioner but also the child and without considering the welfare of the child, she took the child and left the matrimonial home and went to the parental home which is far away the school in which, the child was studying. Even though the parents of the petitioner purchased a car by spending about Rs.10 lakhs for the purpose of sending the child from the parental home of the respondent to the school, in which, the child was studying, even then the respondent did not send the child regularly to the school, which itself shows that the respondent was acting against the interest of the child. Though the custody of the child was refused to the respondent, however, considering the age of the child, she was given visitation right which is liable to be set aside. Further, one of the main contentions of the petitioner/husband is that the respondent never asked permanent alimony. Even pending the petition for divorce, the respondent did not file any application under Section 24 of the Hindu Marriage Act for interim alimony. The respondent never filed any application under Section 25 of the Hindu Marriage Act for permanent alimony. The learned Judge, Family Court, failed to consider the provisions of either Sections 24 or 25 of the Hindu Marriage Act, without any materials or evidence, the learned Judge, Family



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11. Heard the rival submissions of both the learned counsel and perused the entire materials available on record.

12. The admitted facts are that the marriage between the petitioner and the respondent are not in dispute. Out of their wedlock, they begotten a female child, which is also not in dispute. After marriage, initially, they lived the matrimonial home and subsequently, they took a rented house and also lived together.

13. According to the petitioner, the respondent caused mental cruelty by refusing to give consent for cohabitation and also she did not attend to any care either for petitioner or the child and she often threatened the petitioner by saying that she would commit suicide and she would also take the child by administering poison. The respondent without any iota of evidence made a false allegation that



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the petitioner has illicit intimacy/extramarital relationship with one Rajeswari, who is the landlady, in whose house they resided on rent. Therefore, she caused mental cruelty. Hence, the petitioner filed the petition for divorce.

14. The case of the respondent is that though initially the petitioner did not demand dowry, subsequently, after marriage, they started to demand the dowry and ill-treated the respondent and also went to the extent of physical assault and also kicked her even in the stomach during the pregnancy and refused to perform the baby-shower ceremony. Further, the petitioner driven the respondent with child to the parental home. After the advice of the All Women Police Station and the elders of the family, though initially the petitioner took the respondent, he continued his harassment, and therefore, she was driven away by the petitioner and never voluntarily left him to go to her parental home. The allegations levelled in the petition were not proved by adducing oral and by producing documentary evidence. However, the learned Judge, without considering the pleadings, only took up the allegation mentioned in the counter affidavit and granted divorce. It is settled proposition of law that since the husband has filed the petition for divorce on the ground of cruelty, he has to prove the allegation as



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mentioned in the petition for divorce and he cannot take advantage of the weakness of the respondent. Whatever the decisions referred by the petitioner before the Family Court are not applicable to the present case on hand. In those cases, the allegations levelled in the petition were proved by the petitioner by means of oral and documentary evidence. Whereas, in this case, the petitioner has not even made an allegation that the respondent caused cruelty towards the petitioner by making false allegation of extramarital life of the petitioner with someone. Therefore, the Judgment of the Family Court is liable to be set aside.

15. Now, considering the facts and circumstances of the case, this Court, has to see (1) whether the divorce granted by the Family Court as against the respondent is correct? and

(2) As to whether the Family Court is correct in granting visitation right and in awarding the permanent alimony in the absence of any relief sought for by the respondent?

Point No.1

16. As far as point No.1 is concerned, the marriage is admitted and the



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relationship of the parties is also admitted. According to the petitioner, the respondent caused mental cruelty. According to the respondent, the petitioner has not proved the allegation of cruelty as alleged in the petition. A perusal of the petition filed by the petitioner/husband and the counter filed by the respondent/wife would show that each made serious allegations against others, however, both sides also, apart from them as witnesses, they have examined the other witnesses. Both of them have also examined only the relative witnesses and they have not examined any independent witnesses. However, a perusal of the counter affidavit filed by the respondent shows that she made a serious allegation against the petitioner that while they were residing in a rental house, the petitioner had extramarital relationship with the landlady of the said house. Though the respondent has pleaded the said allegation in the counter, she has not produced any reliable evidence. Prior to the filing of the petition for divorce, the petitioner sent a legal notice to the respondent for mutual consent levelling the certain allegations. The said notice was marked as Ex.P4. Admittedly, the respondent has not sent any reply. Subsequently, after filing the petition for divorce, the respondent/wife filed the counter affidavit, in which, she levelled certain allegations against the petitioner/husband stating that her husband had



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extramarital relationship with the landlady, in whose house they resided on rent. However, no material has been produced. Therefore, under these circumstances, the learned Judge, Family Court relied on the decisions of the Hon'ble Supreme Court and held that without any materials or evidence, if any of the spouses levelled allegation against the other spouse regarding the extramarital relationship, which amounts to cruelty. Therefore, a reading of the counter filed by the respondent/wife, it is seen that the respondent levelled an allegation against her husband that he had extramarital relationship with the landlady one Rajeswari. Since the first Appellate Court is the final Court of fact finding Court, this Court while re-appreciating the entire evidence, finds that though the person who filed the petition for divorce, can mention any number of allegations and can take any number of grounds, and however, for granting divorce, all the allegations and all the grounds need not be substantiated by evidence. If any one of the allegations levelled or any of the grounds is substantiated or proved, they are entitled to get decree of divorce on that specific ground proved by the petitioner. Therefore, in this case, admittedly, the petitioner has sent a legal notice prior to the filing of the petition and the same was marked as Ex.P4 and the respondent has not sent any reply. However, in the counter filed by the respondent/wife to the



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petition for divorce filed by the husband, she has stated that the petitioner was having extramarital relationship with the landlady of the house, in which, they resided on rent. Therefore, this Court also finds that without any proof, assassination of the character of the opposite spouse amounts to the cruelty. Therefore, this Court does not find any reason to interfere with the finding given by the Family Court for granting divorce on the ground of cruelty. Therefore, the appeal filed by the respondent/wife is dismissed.

Point No.2

17. As far as point No.2 is concerned, since the relationship of the parties is not in dispute and the child was born out of their wedlock was also admitted. At the time of the filing of the petition for divorce by the petitioner, the respondent was residing in the parental home, which was also admitted and the child was with the petitioner was also admitted. Though the learned Judge, Family Court while granting divorce, granted consequential relief of visitation right and also maintenance. The main contention of the petitioner is that the respondent has not filed any petition for interim alimony under Section 24 or for permanent alimony under Section 25 of the Hindu Marriage Act. At this juncture, it would be useful



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to refer Sections 24 and 25 of the said Act, which read as follows:-

“24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable.

2 [Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall 3 * * * pay to the applicant for her or his maintenance and support such gross



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sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant 4 [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, 5 [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”

18. As per the above said provisions, either the husband or the wife, if they want to alimony, they have to file an application and produce the materials and



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the financial status of the parties has to be established. The alimony is granted in favour of whom, has to be pleaded about their economic status and the Court must satisfy that their inability to maintain them and then if the spouse has sufficient means and the opposite spouse does not have any sufficient means, then only, the maintenance can be ordered. Whereas, in this case, the respondent has not filed any application and the Court out of the interest without considering the statutory provisions, ordered maintenance, which is against the provisions of law.

19. It is seen from the records, the Family Court made observations that the respondent was not residing with the husband/petitioner at the time of filing the petition for divorce and the minor child is a girl child and completed age of 5 years as on 14.06.2019 and from 2017, the minor child was under the care and maintenance of the petitioner and no attempt has been made by the respondent to see her daughter and bring back and she did not show any interest or care to know whereabouts the child. Therefore, if the custody of the child was handed over to the respondent, it will definitely affect the future of the child and hence, the Family Court refused to grant the custody, however, she was given visitation right.



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20. Further, the Family Court observed that it is the obligation of the petitioner/husband to maintain the wife. As already stated, the other allegations levelled against the wife were not proved, however, taking into consideration the fact that the wife made certain allegations in the counter, but the said allegations were not proved by the respondent. Therefore, this Court finds that the said act of the respondent amounts to cruelty and hence, divorce is granted.

21. As far as alimony is concerned, in order to prove the income of the petitioner, the Manager, Tamilnad Mercantile Bank, Rajakulamangalam was examined as P.W.3 on the side of the respondent and the saving bank account statement for the period from 20.01.2023 to 04.10.2023 was marked as Ex.R2. On the basis of Ex.R2, the Family Court, come to the conclusion that the petitioner had some source and therefore, it is not the case of the petitioner that he does not have any financial source. From the materials and even as per the statement of the petitioner, it is seen that the father provided all the jewels and also they met out the marriage expenses and other reception expenses and also for the interest of the child, immediately, he purchased a car for Rs.10 lakhs. Therefore, in such situation, it cannot be stated that the petitioner has no source at



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all. However, the petitioner has not stated that the respondent was financially sound and she was working woman and she has any personal source for maintaining her. Therefore, the learned Judge, Family Court, considered the said facts and ordered alimony of Rs.10,000/- per month.

22. A reading of the Section 25(2)(3) of the Hindu Marriage Act shows that change of circumstances, the parties always can move the Court and get an order to be modified. As on date, no material shows that the respondent/wife had means to maintain herself and she had independent source to lead her life, when the divorce was granted, the Court in the interest of the justice, cannot ignore the pathetic situation of the wife also. Though whatever the reason or the wrong committed by the wife, she is suffering with the punishment of divorce, she has to lead rest of her life in the dignified manner. However, no disqualification has been established. While disposing of this matter, in the interest of justice and in order to avoid the future litigations and multiplicity of proceedings, the order of the Family Court in respect of the permanent alimony is not out of the scope. Therefore, this Court as the first appellate Court, while re-appreciating the entire evidence and also going through the Judgment of the Family Court, does not find



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any reason to interfere with it.

23. In the result, both the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[P.V.,J.] [K.K.R.K.,J.]
29.09.2024

skn

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

To

1.The Judge, Family Court, Kanyakumari at Nagercoil.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

P.VELMURUGAN, J.

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