



*C.M.S.A.(MD)No.7 of 2016*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 08.12.2023**

**PRONOUNCED ON : 06.03.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**C.M.S.A.(MD)No.7 of 2016**

P.Kandasamy

... Appellant / Appellant / Petitioner

Vs.

M.Lalitha

... Respondent / Respondent/ Respondent

**PRAYER:** Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with U/S 100 of CPC, to set aside the Judgment and decree dated 07.01.2016 made in C.M.A.No.11 of 2014 on the file of the Principal District Judge, Karur confirming the fair and final order dated 07.11.2014 made in H.M.O.P.No.57 of 2010 on the file of the Sub Judge, Kulithalai.

For Appellant : Mr.K.Maharajan

For Respondent : No appearance



*C.M.S.A.(MD)No.7 of 2016*

## **JUDGMENT**

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This Civil Miscellaneous Second Appeal has been preferred against the Judgment and decree dated 07.01.2016 made in C.M.A.No.11 of 2014 on the file of the Principal District Judge, Karur confirming the fair and final order dated 07.11.2014 made in H.M.O.P.No.57 of 2010 on the file of the Sub Judge, Kulithalai.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The petitioner is the husband and the respondent is the wife. The petitioner / husband filed a petition under Section 13 (1) (ia) and (1) (ib) of Hindu Marriage Act, 1955, seeking to dissolve the marriage between the petitioner / husband and the respondent / wife by decree of divorce on the grounds of cruelty and desertion.

4. The case of the petitioner:

(i) The marriage between the petitioner and the respondent was held



*C.M.S.A.(MD)No.7 of 2016*

on 09.02.1992 at Veeragoundampatti at the residence of the petitioner, in the presence of the family members and elders of the respective parties, friends and relatives as per Hindu Rites and Customs. At the time of marriage, the petitioner was serving as a Constable in the Central Reserve Police Force. The couple was blessed with a son in the year 1994 and he was named Venkudu Samy. Since the petitioner was working in North India / distant place, every year he used to visit his native for 10 to 20 days. At times, he even availed one month leave for visiting his native. Since the petitioner was placed in North India at the time of marriage, the respondent never resided in the petitioner's house along with his parents at Veeragoundampatti. On the other hand, the petitioner usually visited the respondent in her maternal home, whenever he arrived to his native during vacation. Considering the fact that the petitioner had been in a far away place for his job, he also never objected to the respondent's attitude of staying in her maternal home. However, every time he requested the respondent to visit his parents very often.

(ii) The petitioner had regularly sent money to the respondent and had directed her to give a proposition of the same to his parents. However, the respondent neither visited his parents nor gave any money which he



*C.M.S.A.(MD)No.7 of 2016*

had sent for them. That apart, whenever the petitioner's parents came to the respondent's maternal home for visiting their grandson, the respondent spoke filthy language and chased them away from her maternal home. All these attitudes of the respondent caused mental agony to the petitioner. To the culmination of the all during February 1993, the respondent lodged dowry complaint as against the petitioner before the Trichy All Women Police Station at Mannarpuram. On proper enquiry by the Inspector of Police at All Women Police Station which was concluded that the petitioner had not committed any mistake and on that basis, the complaint of the respondent was closed. However, on request made by the respondent all the dowry including Thali Chain was handed over to the respondent before the All Women Police Station and the home appliances belonging to her were also returned and on receipt of the same, the respondent duly gave in writing and continued to live in her maternal home. Even after such a situation, the petitioner had been very patient with the respondent. The respondent had never treated him with kindness and respect whenever he visited during vacation. While the petitioner was serving at Arunachal Pradesh, he initiated a conciliation through friends and relatives, so as to take the respondent and his child along with him to Arunachal Pradesh. However, the respondent even refused to accept such proposal and



*C.M.S.A.(MD)No.7 of 2016*

continued to live in her maternal home at Kaatur.

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(iii) In due course of time, the respondent eventually poisoned in her son's mind and created inimical attitude in the little mind of his son Venkudu Samy and in due course of time, the child began to behave inimically with the petitioner. After serious thought, the petitioner for the sake of his matrimonial life decided to resign his job and duly resigned from his job on June 2007 and came back to Veeragoundampatti. On his return to Veeragoundampaati, after his hectic efforts, he approached the respondent and his son and called them to their matrimonial home. His son Venkudu Samy was joined in Karungulam Government Higher Secondary School in 7<sup>th</sup> standard. However, within 15 days of commencing a fresh life in Veeragoundampatti without intimation, the respondent left from the matrimonial home and went to her parents house. When the petitioner immediately visited the respondent's maternal home and called her back, she scolded with the unparliamentary words and along with her father assaulted the petitioner with broom and chased away the petitioner. However, within a period of 20 days, the respondent voluntarily came back to Veeragoundampatti and started to live with the petitioner again. While so, the respondent received an amount of Rs.1,00,000/- (Rupees One Lakh



*C.M.S.A.(MD)No.7 of 2016*

only) from the petitioner and gave to her father. However, the petitioner did not take it seriously for the sake of his family well being.

(iv) Despite the same, the respondent neither cooked properly nor did her work properly, she even indulged in abusing the petitioner with unparliamentary words causing untold mental abuse. Due to the continuous depression in mind from September 2007, the respondent is undergoing treatment with a psychologist at Trichy. The petitioner continued to bear with the respondent for the sake of his son Venkudu Samy. To the culmination of all on 08.02.2008, the respondent and her father with their henchmen assaulted the petitioner's father and broke his hip bone, though he was not living with them. The reason behind the issue is nothing but the refusal of the respondent to live with the petitioner and to settle all the family properties of petitioner in favour of the respondent. It is only when the respondent and her father tried to assault the petitioner, his father became a victim. However, for the sake of family name and well being neither the petitioner's father nor the petitioner gave police complaint with respect to the said incident. On 09.02.2008, the petitioner's father was hospitalized at doctor Kalaiarasan Hospital at Manaparai for 3 days, when the petitioner duly attended his father and returned home on 11.02.2008.



*C.M.S.A.(MD)No.7 of 2016*

(v) The respondent had taken away her son along with her father and told the petitioner that they would never allow him to live until and unless his property and pension comes to the hands of the respondent. They went to the extent of declaring the Venkudu Samy is not at all the son of the petitioner. However, they are utilizing only the initial of the petitioner's name. Such unexpected events caused grave mental agony to the petitioner. While so, the respondent once again gave a false complaint as against the petitioner and his parents before the Kuzhithalai All Women Police Station. However, in the enquiry was concluded that there was no mistake on the part of the petitioner and his family. However, the respondent refused to live with the petitioner and she left to her maternal home from where his son Venkudu Samy went to school at Karungulam Government Higher Secondary School. Despite the petitioner's direct request on 01.03.2008 to return home, the respondent along with her father assaulted the petitioner declaring that they would kill if he resorted to call her again. Hence, the petitioner filed a petition for restitution of conjugal rights in H.M.O.P.No. 28 of 2008 before the Kuzhithalai Sub Judge. However, since there was no change in the respondent's attitude the petitioner not pressed the same on 25.03.2008 and filed this petition in H.M.O.P.No.57 of 2010 seeking divorce under the grounds of cruelty and desertion.



*C.M.S.A.(MD)No.7 of 2016*

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5. The case of the respondent:

(i) The respondent had filed a counter refuting each and every allegations put forth by the petitioner in his divorce petition. Admitting that the marriage between the petitioner and the respondent was held on 09.02.1992 at Veeragoundampatti at the residence of the petitioner, in the presence of the family members and elders of the respective parties, friends and relatives as per Hindu Rites and Customs. She also admitted that at the time of marriage, the petitioner was serving as a Constable in the Central Reserve Police Force and they were blessed with a son in the year 1994 namely Venkudu Samy. The respondent contented that while the petitioner was serving in North India, she lived with the petitioner in his quarters. However, the petitioner inflicted serious domestic violence as against the respondent. After a certain period of time, they started living in their shared matrimonial home at Veeragoundampatti. The petitioner never sent any money for household expenses, as a result of which, the respondent suffered along with her minor son to meet her day to day expenses. That apart, the petitioner's parents abuse the respondent mentally and physically by demanding more and more dowry. It is not true that the petitioner allowed the respondent to live in her maternal home. It is only on the



*C.M.S.A.(MD)No.7 of 2016*

incident of the petitioner's parents chasing her away from their matrimonial home, she was compelled to live in her maternal home without any other option.

(ii) The allegation of disrespecting the petitioner's parents whenever they visited their grandson and the allegation of causing mental and physical abuse by the respondent and her father whenever the petitioner visited them in her maternal home was completely denied as false. On 1993, when the respondent lodged a dowry complaint before the All Women Police Station, the petitioner was duly summoned and enquired and directed to lead a peaceful matrimonial live with the respondent. However, the same was denied by the petitioner. The allegation that the respondent failed to behave as a dutiful Hindu wife to the petitioner, whenever he came during vacation was absolutely false. On the other hand, whenever he visited, he abused the respondent mentally and physically by demanding more money as dowry. The allegation of poisoning the mind of their child is not true. The contention of the petitioner is that after 2007, he resigned his job for the welfare of his wife and son and requested the respondent to come back of their matrimonial home was denied by the respondent. The allegation of respondent having received Rs.1,00,000/-



*C.M.S.A.(MD)No.7 of 2016*

(Rupees One Lakh only) from the petitioner and giving the same to the respondent's father was absolutely false. The respondent was leading her life with much difficulty by engaging herself in coolie works.

(iii) The contention of the petitioner that it is only because of the respondent continuous attitude of moving away had resulted in withdrawal of H.M.O.P.No.28 of 2008 on the file Sub Judge, Kuzhithalai was denied as false. It is only when the respondent made up her mind for reconciliation, restitution of conjugal rights with her husband, the petitioner withdrew the said case. That apart, the respondent has filed in M.C.No.8 of 2008 seeking maintenance as against the petitioner for herself and her son and the same has been allowed. Despite the same, the petitioner had never maintained the respondent and her son. All the efforts taken by the respondent to live with the petitioner did not work. Even in the M.C.No.8 of 2008, the respondent in her proof affidavit had expressed her willingness to live with the petitioner. The respondent is always willing to live with the petitioner and by all means she is not ready for divorce and sought dismissal of the petition seeking divorce.

6. The learned Trial Court had framed one issue. Following which,



*C.M.S.A.(MD)No.7 of 2016*

three witnesses including the petitioner were examined as P.W-1 to P.W-3 and Ex.A-1 to Ex.A-7 were marked on the side of the petitioner. The respondent was examined as R.W-1 and no document was marked on the side of the respondent.

7. The factum of marriage, place of marriage and the date of the child birth and that the petitioner worked in the Central Reserve Police Force came to be proved by his evidence as P.W-1. That apart, one Balasubramanian and one Singaram were examined as P.W-2 and P.W-3 and they have deposed their evidence to the effect that on one day in the year 2010, they visited Kuzhithalai Taluk Office, wherein the respondent forcefully fought with the petitioner in the mid road before the Taluk Office. Yelling that, by all means, the respondent would succeed in getting his pension by pulling his shirt in the mid road. It is only the P.W-2 and P.W-3 who interfered and brought an end to the dispute on that day. However, in the cross examination of P.W-3, he deposed that he is conducting a partition suit before the Trichy Court, for which the petitioner's Counsel has appeared for P.W-3 in his partition suit and that the suit is pending for the past 3 years.



*C.M.S.A.(MD)No.7 of 2016*

8. The learned Trial Court on the basis of the said evidence has proceeded to conclude that the petitioner and P.W-3 are known persons through a common advocate and came to the conclusion that P.W-2 and PW-3 are not reliable witnesses. The petitioner had contended that he even resigned his job with the fond hope of living with the respondent and even subsequently filed H.M.O.P.No.28 of 2008, that is, a petition for restitution of conjugal rights had the respondent truly intended rejoining with her husband, she would have objected when he withdrew, H.M.O.P.No.28 of 2008, the petition for restitution. However, the learned Trail Court recording the fact that the respondent always wanted to live with her husband proceeded to conclude that the petitioner / husband had miserably failed to prove that the respondent inflicted cruelty on him. Assailing the same, the petitioner / husband preferred in C.M.A.No.11 of 2014 before the District Judge, Karur.

9. The learned First Appellate Court framed one issue. Observing that the petitioner had filed a petition for divorce on the grounds of cruelty and desertion, the learned First Appellate Court sorted out the various allegations putforth by the petitioner to substantiate his claim of cruelty as follows:



*C.M.S.A.(MD)No.7 of 2016*

(i) The respondent left to her maternal home, while the petitioner was serving in North India.

(ii) The respondent failed to take care of the petitioner's parents when he was serving in North India.

(iii) Whenever the petitioner visited to his native, the respondent failed to discharge her duties as a dutiful Hindu wife and to take care of the petitioner.

10. Thereafter, the learned First Appellate Court proceeded to observe that the petitioner did not examine his parents as witnesses to prove that the petitioner never demanded any dowry. Though the petitioner had examined P.W-2 and P.W-3 as evidence to prove the respondent's cruel attitude towards the petitioner, on the basis of the admission of P.W-2 both the petitioner and P.W-2 were known persons and the admission of P.W-1 in his evidence that he lived with the respondent only for 1 ½ years, the learned First Appellate Court proceeded to conclude that, within such short span of time, it would not have been possible to inflict cruelty on the petitioner by the respondent. Discussing the evidence deposed by P.W-2



*C.M.S.A.(MD)No.7 of 2016*

and P.W-3 with respect to the quarrel by the respondent with the petitioner before the Kuzhithalai Taluk Office, the learned First Appellate Court recording the admission made by the P.W-2 and P.W-3 in the cross examination as to the fact of one single advocate conducting the partition suit and that of the petitioner's suit, the learned First Appellate Court proceeded to conclude that the said witnesses were not reliable. That apart, the appeal has been preferred only in the year 2010 obviously even if the respondent quarrelled with the petitioner in the year 2010, it would have been with respect to the pending Appeal. Hence, the learned First Appellate Court proceeded to conclude that the petitioner failed to prove the first ground of cruelty.

11. As far as the second ground of desertion is concerned, the petitioner both in his pleadings and in his evidence categorically submitted that he resigned his job during June 2007 and started living in Veeragoundampatti. However, in his cross examination when the question as to the place of respondent's residence was made, the petitioner replied that he neither knew where the respondent was residing nor where his son was studying. That apart, he further submitted in the cross examination that even if the respondent was willing to live with him he is not further



C.M.S.A.(MD)No.7 of 2016

will be willing to live with her anymore. The learned First Appellate Court proceeded to conclude that it is only at his own violation, he is living separately and it is not the respondent who deserted the petitioner. On that basis, the learned First Appellate Court had dismissed the C.M.A.No.11 of 2014. Challenging the same, the present Civil Miscellaneous Second Appeal came to be filed.

12. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent. Carefully perused the materials available on record.

13. The substantial question of law framed in this CMSA are as follows:

*“(i) Whether the judgment and decree of the Lower Appellate Court is in conformity with the Order 41 Rule 31 of C.P.C. Wherein the Lower Appellate Court has not framed necessary issues for determination and failed to render finding on each issue separately?”*

*“(ii) Whether the Lower Appellate Court is justified in holding that the continuous period of more than 2 years for desertion is necessary to grant divorce?”*



C.M.S.A.(MD)No.7 of 2016

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*(iii) Whether the findings rendered by the Lower Appellate Court is in judgment will justify the conclusion?*

*(iv) Whether the voluntary is also amounts to mental cruelty or not?"*

14. The grant of divorce on the ground of cruelty and desertion is based on the manner in which the petitioner had filed the petition for divorce, thereby diligently proving the various allegations pleaded by him in his petition by proper oral and documentary evidence. In the instant case, the petitioner / husband has sought for divorce on the grounds of cruelty and desertion. Having worked in Central Reserve Police Force, the petitioner himself in his pleadings had admitted that only with his permission the respondent stayed in her maternal home during the period he worked in North India. However, the allegations with respect to the respondent's ill behaviour, disrespecting the petitioner and his parents to the extent of threatening him along with her father has been levelled by the petitioner as against the respondent.

15. That apart, the petitioner had pleaded that during February 1993,



*C.M.S.A.(MD)No.7 of 2016*

the respondent lodged a complaint as against the petitioner before the All Women Police Station, Trichy and on 18.02.2008, the respondent lodged a complaint as against him and his parents before the All Women Police Station, Kuzhithalai. However, both the incidents in Karur were not duly proved by the petitioner by examining the officials of Trichy All Women Police Station and Kuzhithalai All Women Police Station. The other allegation with respect to the respondent poisoning the mind of the child so as to instigate the child to behave inimically to the petitioner was also not proved before the learned First Appellate Court by cohesive evidence. Though the petitioner had marked the complaint with respect to Karur Police Station, the other details as to the enquiry conducted the respondent on the said complaint was not duly proved by the petitioner in his evidence.

16. That apart, he has not pleaded anything with respect to his complaint which he lodged before the Karur Police Station as against the respondent in his pleadings other than in the cause of action. The allegation of the petitioner that on 11.02.2008, the respondent and her father threatened him was also not duly proven. Though his contention that he had withdrawn his petition for restitution of conjugal rights in



*C.M.S.A.(MD)No.7 of 2016*

H.M.O.P.No.28 of 2008 on the file of Sub Judge, Kuzhithalai and that the same was not objected by the respondent, I am of the considered view that if at all the petitioner had any intention to lead a peaceful life with his wife and her son, he would have brought his wife and son back to his home, immediately when the respondent filed her proof affidavit before the Judicial Magistrate Court in the maintenance case wherein she voluntarily expressed her willingness to rejoin with the petitioner. The petitioner ought to have taken necessary steps to bring back his wife and son or at least complied with the order of the Judicial Magistrate Court by contributing proper maintenance towards the respondent and her son. On the other hand, a careful perusal of the materials available on record would reveal that the petitioner had foisted unbounded allegations of cruelty and desertion as against the respondent without any supporting material facts and evidence as against the respondent.

17. That apart, it is his own admission in his pleadings and evidence that with his own permission, the respondent lived with her parents when he worked in North India and that she came back to her maternal home once he resigned his job and started living in Veeragoundampatti. All the allegations of mis behaviour by the respondent to petitioner was not duly



*C.M.S.A.(MD)No.7 of 2016*

proved. His attempt of bringing his known witnesses as P.W-2 and P.W-3 to prove that the respondent had picked up quarrel with the petitioner before the Taluk Office was held not reliable by both the Courts for the sole reason that the said witnesses were known to the petitioner by their introduction to each other in a common advocate office utilizing the services of a common advocate for their respective suits in various Courts. The petition for divorce was filed in the year 2010. However, the petitioner had pleaded that he came back to his native during June 2007 resigning his job. He had admitted that the respondent lived with him in his shared matrimonial home at Veeragoundampatti. Though he pleaded that within 15 days she left to her maternal home, he had pleaded in para 10, she came back to her matrimonial home within 20 days.

18. That apart, even during February 2008, the respondent lived with the petitioner at Veeragoundampatti till 11.02.2008 when she left with her father to her maternal home. That apart, all the allegations were denied by the respondent in her counter and in her evidence and she had categorically stated that since the petitioner failed to maintain her and her son, she had engaged herself in coolie works to meet her day to day expenses. Struggling due to inadequate resources to maintain herself and her son, she



*C.M.S.A.(MD)No.7 of 2016*

filed M.C.No.8 of 2018 on the file of Kuzhithalai, Judicial Magistrate seeking maintenance. In her proof affidavit filed in the said case, she duly deposed before the learned Sub Court, she is always willing to live with her husband. Even after the learned Judicial Magistrate was pleased to allow the maintenance petition, the petitioner had never taken due steps to join with the respondent and her son. On the other hand, he had proceeded to withdraw the H.M.O.P.No.28 of 2008 which he had filed at Kuzhithalai Subordinate Judge's Court seeking restitution conjugal rights. The respondent has duly deposed in her evidence only on disclosing her willingness to rejoin with the petitioner, the petitioner had withdrawn the said H.M.O.P.No.28 of 2008 on the file of Principal Sub Court, Kuzhithalai and had filed this petition for divorce. Even in the cross examination, she categorically deposed that she is willing to rejoin the petitioner. Under the circumstances, I do not find any necessary to interfere with the concurrent findings of the learned Judges Court at Karur in C.M.A.No. 11 of 2014 and H.M.O.P.No.57 of 2010.

19. The Hon'ble Apex Court in the case of Vishwanath Agrawal .Vs. Sarla Vishwanath Agrawal reported in (2012) 7 SCC 288 has dealt with the



C.M.S.A.(MD)No.7 of 2016

case of concurrent findings by the Trial Court and the First Appellate court and has held that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. The relevant portion of the same is extracted as follows:

*“36. In Major Singh v. Rattan Singh it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.*

*37. In Vidhyadhar v. Manikrao it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in Abdul Raheem v. Karnataka Electricity Board.”*



*C.M.S.A.(MD)No.7 of 2016*

20. Fully fortified by the judgment by Hon'ble Apex Court and fully satisfied by the concurrent findings of the learned Trial Court Kulithalai and the learned District Court, Karur and holding that the decisions of both the lower Courts are fully supported by the evidence, I am not inclined to interfere with the Judgment and decree passed by the learned District Judge in C.M.A.No.11 of 2014 and H.M.O.P.No.57 of 2010.

21. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs.

**06.03.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
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*C.M.S.A.(MD)No.7 of 2016*

To

- 1.Principal District Judge,  
Karur.
- 2.The Principal Subordinate Judge,  
Kulithalai.

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*C.M.S.A.(MD)No.7 of 2016*

**L.VICTORIA GOWRI, J.,**

Sml

**C.M.S.A.(MD)No.7 of 2016**

**06.03.2024**