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C.M.S.A.No.42 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.S.A.No.42 of 2024
AND CMP NO. 12106 OF 2024

Kandeeswaran Poornamathi

Appellant(s)

Vs

Eswaran Vijayakumar

Respondent(s)

PRAYER: Appeal filed under Order XLIII Rules 1 and 2 read with 100 of the Code of Civil Procedure Code to set aside the Fair and Final order dated 06.08.2018 passed in CMA No.35/2017 on the file of the learned IV Additional District Judge, Coimbatore reversing the order Fair and Final order dated 31.08.2017 passed in H.M.O.P.No.227/2013 on the file of the learned Subordinate Judge, Pollachi.

For Appellant(s): Ms.Rohini Ravikumar

For Respondent(s): Mr.K.Doraisami,
Senior Counsel
for Mr.Kandan Duraisamy

JUDGMENT



The present Civil Miscellaneous Second Appeal has been filed by the appellant/wife, Dr. Kandeewaran Poornamathi, challenging the Judgment and Decree passed in C.M.A. No.35 of 2017 dated 06.08.2018 by the learned IV Additional District Judge, Coimbatore, wherein the Appellate Court allowed the husband's appeal and granted a decree of divorce, setting aside the dismissal of H.M.O.P. No.227 of 2013 by the learned Subordinate Judge, Pollachi.

2.The facts giving rise to this appeal are as follows:

The marriage between the appellant/wife and the respondent/husband was solemnized on 11.12.2005 at Sri Appathalswamy Temple, Koorapalayam, Erode, and the same was registered at the Sub Registrar Office, Pollachi. After the marriage, the parties lived together for a short period in India and thereafter went to the United Kingdom, where both were employed as Doctors.

3.The husband filed H.M.O.P. No.227 of 2013 before the Sub Court, Pollachi, seeking divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The main allegation was that the wife had caused



mental and physical cruelty and, in particular, had poured hot coffee on his face without any provocation during their stay in the U.K., compelling him to leave the matrimonial home. He also alleged that she used abusive language, humiliated him before others, and was non-cooperative in the marital relationship.

4.The wife, in her counter, denied all allegations of cruelty and contended that it was, in fact, the husband and his parents who subjected her to mental and physical harassment demanding dowry. She further pleaded that she had financially supported the husband and his family, transferring large sums of money from her earnings abroad for purchasing property in India. She also raised a preliminary objection that the Pollachi Sub Court had no territorial jurisdiction to entertain the petition, as the couple had lived together only in the U.K., and the entire cause of action arose there.

5.The Trial Court, on consideration of pleadings and evidence, found that both the petitioner and the respondent were living abroad and that the Pollachi Sub Court lacked jurisdiction to entertain the petition. The Trial Court further



held that the allegations of cruelty were not proved by acceptable evidence.

Consequently, the petition for divorce was dismissed on 31.08.2017.

6. Aggrieved by the dismissal, the husband preferred C.M.A. No.35 of 2017 before the IV Additional District Judge, Coimbatore, under Order XLIII Rule 1 CPC. The Appellate Court, on hearing both sides, perused the entire records and formulated the main point for consideration, “Whether the order of the Subordinate Court dismissing the petition for divorce was sustainable in law?.”

7. The Appellate Court first addressed the issue of territorial jurisdiction. It observed that although the parties were residing in the United Kingdom, they continued to be Indian citizens (Non-Resident Indians), whose permanent residences were in Erode, India for the husband and Pollachi for the wife. Since the marriage was registered in Pollachi and the wife’s permanent home was situated there, the Appellate Court held that the Pollachi Sub Court possessed valid territorial jurisdiction under Section 19 of the Hindu Marriage Act, 1955. The Appellate Court held that even a short period of cohabitation in India is



sufficient to confer jurisdiction, and that residence abroad for employment purposes does not extinguish the parties' permanent domicile in India. The next issue considered was whether cruelty had been established. The husband examined himself as P.W.1 and his father as P.W.2, both corroborating the incident of the wife pouring hot coffee on his face and her continued acts of disrespect and humiliation. On the other hand, the wife examined herself as R.W.1, but failed to appear for cross-examination, despite sufficient opportunities being granted. The Appellate Court observed that incomplete testimony has no evidentiary value, and therefore, her entire deposition and documentary evidence could not be relied upon. The Appellate Court emphasized that matrimonial cruelty cannot always be proved through medical documents or direct evidence, as the nature of the relationship and the sensitivity of the acts differ among couples. It held that the husband's evidence, corroborated by his father, was reliable and consistent, and there was no reason to disbelieve their testimony.

8.The Appellate Court further noted that the wife's counter statement



contained serious allegations of dowry demand and harassment against the husband and his family. Since she did not subject herself to cross-examination to substantiate those allegations, the Court drew an adverse inference that the allegations were false and malicious, which themselves constituted another instance of mental cruelty toward the husband. The Court also observed that the parties had been living separately since April 2013, and repeated attempts at reconciliation had failed. The long separation and loss of mutual trust indicated that the marriage had irretrievably broken down, although such a ground is not independently provided under the statute. Nevertheless, the Court viewed this prolonged estrangement as corroborative of the cruelty alleged.

9. After analysing the oral and documentary evidence made of either side, the Appellate Court found that the husband had proved his case of cruelty under Section 13(1)(ia) of the Hindu Marriage Act and that the dismissal of the petition by the Sub Court was erroneous and unsustainable. Accordingly, the Appellate Court set aside the order of the Trial Court and granted a decree of divorce dissolving the marriage solemnized on 11.12.2005, while making no



order as to costs. Aggrieved by the grant of divorce, the wife preferred the

present Civil Miscellaneous Second Appeal before this Court, contending that the Appellate Court misread evidence, ignored jurisdictional facts, and wrongly concluded that cruelty was proved.

10.The learned counsel appearing for the appellant/wife submitted that the marriage between the appellant/wife and the respondent/husband was solemnized on 11.12.2005 at Erode, and the same was registered at the Sub Registrar Office, Pollachi. The appellant is a British Citizen and the marriage alone was happened in India. After the marriage, the parties lived together for a short period in India and thereafter went to the United Kingdom, where both were employed as Doctors. Therefore, the Trial Court has no jurisdiction to entertain the petition. The same was properly considered and dismissed the divorce petition filed by the husband by the Trial Court. The Lower Appellate Court has picked the hole from the counter filed by the wife and burden was shifted on the wife which is legally not permissible and that the intention of the husband is to grab the money which was hard earned by the wife who is Doctor in U.K. The same is revealed from the



Bank Statement. Further, he would submit that the allegations in respect of cruelty

there is no averments made either in the petitioner or proof affidavit filed by the husband except one point that the wife has poured coffee on the face of husband and the same also a concocted story and not proved. Further, when the wife deposed Chief examination, it is the duty of the husband to raise cross examination on the same day or she would have been cross examined next hearing but no cross examination was made.

11. Further, the learned counsel for the appellant/wife would submit that both of them purchased a house property in U.K. and lived as husband and wife happily. However, the husband harassed the wife and always demanded more jewels. Therefore, the wife gave a complaint where the police came in U.K. and the police advised them and the husband also agreed not to make any further by demanding like dowry. For the purchase of house, the wife has contributed more money. Besides the husband has some problems for that, medical test was conducted. Therefore, the findings of the Appellate Court is liable to be set aside.



12.Per contra, the learned counsel for the respondent/husband submitted that the Appellate Court had appreciated the entire evidence correctly, that the wife's failure to submit to cross-examination rendered her testimony unreliable, and that no substantial question of law arose for consideration in this second appeal. Several mediations have been held between them and the issues were not settled. Therefore, there is no possibility of reunion and they have no issues also. No harassment was made by the husband because her parents lived in India. The Court has every much jurisdiction to decide the issues.

13.As per the directions issued to the parties, they appeared before this Court through Video Conferencing Mode from U.K. This Court enquired the wife and the husband. The wife stated that she always intends for reunion. Both the parties are now residing in the same place and she attempted to have a frequent contact with him, but they have not taken separate steps by filing a restitution of conjugal rights. The wife expressed her willingness to live with her husband at the time of enquiry. By way of reply, he replied that he is Doctor by profession and due to misunderstanding, he is not interested to live together. Due to strained relationship,



there is no possibility of reunion. Further, he would state that the wife made a false complaint against him to the police and on many occasions, the police warned them in U.K. Therefore, he is not inclined to live with her and he consented to give the entire house to the wife though he has also made contributions to buy the house. The marriage was solemnized between them in 2015, due to the sperm issue, they have no child. Both of them have not taken any step for reunion all these years, though they contend that they are living in the same house. Apart from that, both were thrown several allegations against them. Admittedly, both of them Doctors. Further, it shows that there is no love and affection between them to lead the matrimonial life. Hence, there is no scope to keep the matrimonial life alive. Therefore, this Court came to a conclusions that there is no possibility for reunion in the matrimonial life between the husband and wife as it is irrevocably break down.

14. Accordingly, the Civil Miscellaneous Second Appeal stands dismissed.

The Judgment and Decree dated 06.08.2018 passed by the learned IV Additional District Judge, Coimbatore, in C.M.A.No.35 of 2017, is confirmed. Divorce is



granted to the appellant and the respondent. The marriage between the appellant and the respondent held on 11.12.2005 stands annulled by granting a decree of divorce. In respect of house property, the respondent/husband agreed to give the house property to the appellant/wife. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

17-07-2025

mps

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The IV Additional District Judge,
Coimbatore.

2.The Subordinate Judge,
Pollachi

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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T.V.THAMILSELVI, J.

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