



CMA.No.2685 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 19.09.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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A.Ravichandran,
S/o.Arulanandam,
No.24, (Old No.25), Kalingarayan Street,
Old Washermanpet, Chennai – 600 0021.

Formerly residing at No.5,
Robinson park colony, II Street,
Old Washermanpet, Chennai – 21.

... Appellant/Petitioner

/versus/

Uma Maheswari,
D/o.Udya Kumar,
No.21/2, Kalingarayan Street,
Old Washermanpet, Chennai – 600 021.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 96 of Civil Procedure Code read with Section 28 of the Hindu Marriage Act, 1954, pleaded to set aside the fair and decreetal order dated 15.12.2015 made in O.P.No.2917 of 2006 on the file of the Principal Judge, Family Court, Chennai by allowing the appeal and to grant an order of divorce on the ground of desertion as prayed in the Original Petition No.2917 of 2006 on the file of the Principal Judge, Family Court, Chennai.



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For Appellant : Mr.A.Thayaparan.

For Respondents : Mr.V.Anil Kumar.

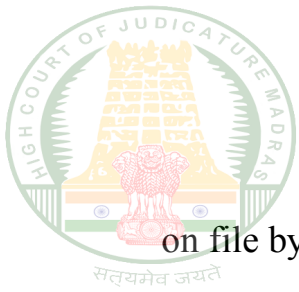
JUDGMENT

(Order of the Court was made by G.Jayachandran, J.)

The appeal is directed against the dismissal of the divorce petition filed by the husband on the ground of desertion.

2. The short point involved in this matter is that the parties to the proceedings got married on 07.05.1991 and a female child was born to them on 22.10.2021. The contention of the appellant is that the respondent left the matrimonial home and deserted him. Even after much persuasion, she did not return to join for the Diwali and Pongal festival. During September 1995, the respondent gave a complaint against the appellant, which has led to the registration of criminal case.

3. Contending that the respondent had wilfully deserted the matrimonial life and permanently living separately along with her daughter, the petition filed under Section 13(1)(b) of the Hindu Marriage, Act and same take



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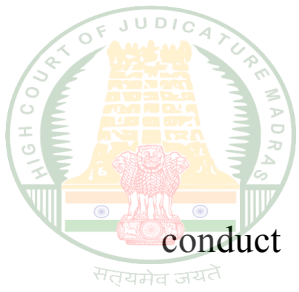
on file by the Family Court, Chennai in O.P.No.2917 of 2016.

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4. The respondent herein contested the matter, particularly pleading that the appellant abandoned her after suspecting that she was suffering from Tuberculous. Her attempts to join him did not fructify. He had developed intimacy with one lady by name Gunasundarai, with whom he was living as husband and wife and through her child, born on 17.09.1996. In this connection, after coming to know of the said bigamous marriage, she was forced to give the criminal complaint, which has led to conviction of the appellant.

5. Before the trial Court, the parties have examined as P.W1 and R.W.1 respectively. 14 documents on behalf of the petitioner/appellant and three documents on behalf of the respondent were filed.

6. The trial Court taking note of the fact that the appellant herein had married Gunasundari and a child by name Vicky, born to them which is proved through Ex.R1 and further the petitioner has also settled the ancestral property in favour of Gunasundari, which is proved through Ex.R2, held that the respondent herein been forced to leave the matrimonial home by the



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conduct of the appellant herein and therefore, she cannot be faulted for desertion. Having held so, the trial Court has dismissed the petition for divorce filed on the ground of desertion.

7. The present appeal is filed on the ground that the Family Court erred in dismissing the divorce petition by holding that the appellant has not proved the desertion, despite the fact that it is admitted by the respondent, she has got separated from her husband even before the birth of the child.

8. The Learned Counsel for the appellant submitted that female child was born to the parties and they have been living separately for more than 30 years. It is further contended that the marriage has broken irretrievably. While so, the trial Court, without any proof, had observed that in the month of October 1991, the appellant and respondent reunited and lived together till 1994.

9. The Learned Counsel for the appellant submitted that the conviction in the criminal case was challenged by the appellant herein and the same was set-aside. The Appellate Court held him not guilty, though further appeal has been preferred by the complainant/respondent and pending.



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10. Further, it was contended by the Learned Counsel for the appellant that the appellant is taking care of the daughter and the relationship between him and his daughter is very cordial. He further, contended that the respondent for the reasons best known, unwilling to rejoin the appellant and resume the matrimonial relationship.

11. Per contra, the Learned Counsel for the respondent submitted that the appellant, after engaging himself in extra-marital affair and maintaining parallel family, expect the respondent to condone his misconduct and live with him. The trial Court, having found that the extra-marital relationship of the appellant has led to the child birth in the February 1996, held that there is no reason or justification on the part of the appellant to allege desertion against his wife. Having committed the grave crime of bigamy, the appellant cannot take advantage of his own wrong. Contending that the birth certificate of child, marked as Ex.R1 is clear proof of the marital offence committed by the appellant, the respondent has sufficient cause for the desertion. Therefore, the appellant cannot take advantage on his own fault and seek for divorce.



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12. This Court, on perusal of the records and the rival submissions,

find that the marriage was solemnized in May 1991 has suffered breakdown soon after the child born. Though there is conflicting claim regarding reunion after the child birth, the fact remains that in the year 1996, the respondent has given criminal complaint against her husband for bigamous marriage, even before filing of the divorce petition by her husband. The documents relied by the respondent further indicate that the family property had been settled in favour of Gunasundari, with whom the appellant is allegedly in marital relationship. It is stated that there is civil dispute is pending regarding the property.

13. As far as the appeal against the trial Court order, the ground raised for seeking divorce is desertion. The Act says that desertion must be wilful. When due to the conduct of the husband the cordial co-living is denied to a dignified wife, it is reasonable and justifiable for the wife to desert. No person is expected to tolerate an extra marital relationship while living with her husband. It is a clear case, the appellant, having entertained an extra-marital relationship and maintained a parallel family has made allegation that the respondent deserted him without sufficient reason. However, the facts and evidence discloses that the respondent had sufficient reason and justification for



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the desertion. Therefore, the trial Court has rightly dismissed the divorce

petition.

14. This Court has no plausible other alternate reason to interfere with the findings of the trial Court. Hence, confirm the judgment of the Principal Judge, Family Court, Chennai passed in O.P.No.2917 of 2006, dated 15.12.2015.

15. As a result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

[Dr.G.J., J.] & [M.J.R., J.]
19.09.2025

Index : Yes/No
Internet : Yes/No
bsm

To

1. The Principal Judge, Family Court, Chennai.



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