



C.M.A.Nos.2768 & 2769 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

C.M.A.Nos.2768 & 2769 of 2016

P.Sivasubramaniam

.. Appellant in both appeals

Vs.

Rathimenaka

.. Respondent in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 19 of the Family Courts Act, to set aside the fair and final order passed in H.M.O.P. No.57 of 2011 and H.M.O.P. No.775 of 2012 on the file of the learned Principal Judge Family Court, Coimbatore dated 30.09.2016 by allowing this appeal.

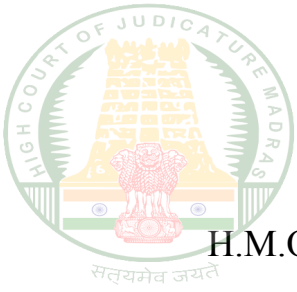
For Appellant in both appeals : Mr.I.Abrar Md.Abdullah

For Respondent in both appeals : Mr.N.Manokaran

COMMON JUDGMENT

[Order of the Court was made by Dr.G.JAYACHANDRAN., J.]

The Civil Miscellaneous Appeal have been filed by the appellant/husband seeking to set aside H.M.O.P.No.57 of 2011 and



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H.M.O.P. No.775 of 2012 on the file of the learned Principal Judge, Family Court, Coimbatore dated 30.09.2016.

2. The petition filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, seeking a decree of divorce on the ground of cruelty. The marriage between the parties was solemnized on 07.07.2008 as per the Hindu rites and customs. Both parties are graduates, well educated and employed. The husband alleged that the wife, within four months of the marriage, without any information left the matrimonial home and in spite of several requests, she did not turn back to the matrimonial home.

3. It is further contended by the husband that he came to know that his wife conceived and got admitted in the hospital for delivery. However, even after delivery of a male child, wife did not return back to the matrimonial home and join with him. The husband also stated in the divorce petition that he had constructed a new house and invited his wife for the housewarming ceremony fixed on 07.09.2009. The wife, however, refused to attend the function and without her presence housewarming ceremony

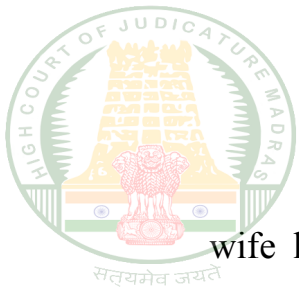


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was celebrated. Later during the month of November 2011, in the presence of elders, a compromise talk was held, wherein efforts were made for the wife to rejoin the petitioner. However, she failed to do so. Citing these instances along with a few other allegations of cruelty, the husband filed the petition for divorce and contested.

4. The wife, who is the respondent herein specifically denied the allegations of cruelty. She asserted that in fact her husband failed to take care of their child, who was suffering congenital illness. She further contended that despite her and the child being unwell, the husband compelled to attend the housewarming ceremony. Even after she informed about the tonsuring and ear-boring ceremony of the child, the husband and the family members did not attend and no steps were being taken by the husband to call her back to the matrimonial fold. Instead based on a false allegations of cruelty, he filed the petition seeking divorce.

5. While H.M.O.P.No.57 of 2011, the petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, filed by the husband pending,



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wife had filed petition under Section 9 of Hindu Marriage Act, seeking restitution of conjugal rights, which was taken on file in H.M.O.P.No.775 of 2012. The Family Court at Coimbatore, conducted a joint trial and passed a common order, dismissing the divorce petition filed by the husband and allowed the petition for restitution of conjugal rights filed by the wife.

6. Being aggrieved, the husband filed C.M.A.No.2768 of 2016 challenging the dismissal of his divorce petition in H.M.O.P.No.57 of 2011 and C.M.A.No.2769 of 2016 challenging the judgment and decree passed in favour of his wife in H.M.O.P.No.775 of 2012.

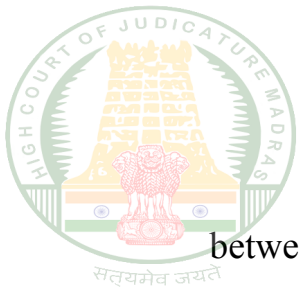
7. The learned counsel appearing for the appellant/husband submitted that the trial Court failed to take note of the fact that the wife's willful refusal to attend the housewarming ceremony and her failure to intimate about the tonsuring and ear-boring of their child, tantamount to mental cruelty. The respondent, in the cross-examination, admitted that in a panchayat held in the presence of the elder by name Shanthalingam, she agreed to reunion with the husband, but the reasons best known refused to



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reunion her husband. Her willful desertion also has to be construed as cruelty. Though a specific plea for desertion had been raised in the divorce petition, the trial Court failed to appreciate it properly. He further submitted that even after succeeding in the petition for restitution of conjugal rights, wife did not make any steps to enforce the decree or revive the matrimonial relationship instead she has filed a partition suit through her son, which would clearly show that her intention not to resume marital life.

8. On relying the judgment of Hon'ble Supreme Court rendered in *Samar Ghosh Vs. Jaya Ghosh* reported in **2007 (4) SCC 511**, the learned counsel appearing for the appellant submitted that the marriage, which was solemnized in the year 2008, had completely broken within two years. For the past 15 years, the spouses have been living separately and no attempt has been made for reunion. Therefore, taking note of the subsequent fact that even after getting a decree of restitution of conjugal rights, for more than eight years, the respondent has not made any attempt for joining her husband. Therefore, taking note the long-standing separation as irretrievable breakdown of the marriage, the appeals to be allowed and the marriage



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between the petitioner and the respondent on 07.09.2008 to be dissolved by a decree of divorce.

9. Per contra, the learned counsel appearing for the respondent/wife submitted that no iota of evidence placed by the appellant to prove the act of cruelty. A valid reason for not attending the housewarming ceremony placed before the Court below and same has been accepted and held against the appellant. While the petition filed for divorce on the ground of cruelty and no material evidence adduced by the appellant to substantiate the said allegations. He cannot seek for dissolution of marriage taking advantage of his own fault by claiming that his wife refused to cohabit.

10. The learned counsel further submitted that the judgment of the Hon'ble Supreme Court in *Samar Ghosh Vs. Jaya Ghosh* cited supra will not apply the facts of the present case. Whereas, the judgment of the *Darshan Gupta Vs. Radhika Gupta*, reported in (2013) 9 SCC 1 will apply to the facts of the case. He also submitted that the “fault theory” propounded

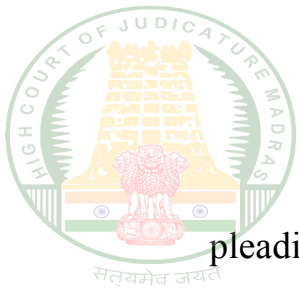


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in the judgment to be applied in this case. The pleadings and evidence in this case clearly show that the fault is on the part of the appellant/husband and not on the respondent/wife. When the husband himself is responsible for the state of affairs, the wife cannot be mulcted with burden of divorce. Morefully, when she desires to rejoin her husband on all earlier occasions.

11. The learned counsel for the respondent/wife referring to the portions of the pleadings in her affidavit filed in support of the petitioner for restitution of conjugal rights and the counter filed by the husband submitted that the admission of the husband is sufficient to hold that the breakdown of the marriage was due to his own fault. Therefore, applying the dictum laid down in ***Darshan Gupta Vs. Radhika Gupta*** case, the appeals are liable to be dismissed.

12. This Court has given its anxious consideration and rival submissions, particularly the contention raised by the learned counsel for the respondent/wife, which alleges that the separation was purely due to the fault of the husband. For better appreciation, the relevant portion of the



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pleadings filed by the wife is extracted as below:

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“VIII. The petitioner further humbly submits that the respondent and his parents and family members did not take steps to keep name for the child and they did not take any steps to call back the petitioner and child to their house. Totally they ignored the petitioner and the child. From 07.09.2009 onwards the respondent without any reasonable excuse and with a view to break the matrimonial life was not coming to see the petitioner and the child. The petitioner's parents and their relatives several times met the respondent and this parents and requested the respondent and his parents to call back the petitioner and the child to their home, but they had turned their deaf ears.”

and to this plea of the wife, the husband in his counter has stated as

below:-

“7.The respondent further stated that she was having with guilty intention, the petitioner had not come and attend the house warming



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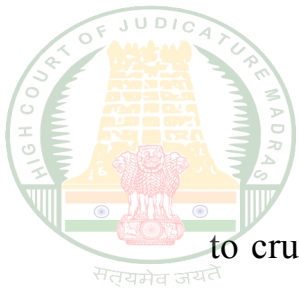


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function. The respondent did from up and came to the petitioner's house. Since the petitioner was not came to the respondent's house, the respondent had refused to went to the petitioner's house for the Deepavali festival also.”

13. A combined reading of the accusation made against each other, it is obviously clear that the wife is also equally at fault for not making any attempt to rejoin her husband after she left her matrimonial home for delivery. When the responsibility for resolving their differences lies equally on both the parties, even after the disposal of their respective petitions by the Family Court in the year 2016, no attempt for reunion reflects a lack of intent to revive their relationship. Instead, the situation was further aggravated by acts such as the alleged alienation of family property of the father-in-law, depriving the grandson of his rightful share and filing of suit for declaration and partition, pending as O.S.No.475 of 2024, on the file of the Principal District Court, Coimbatore.

14. Therefore, the peculiar facts of the present case shows that the withdrawal from the matrimonial companion for a flimsy reason tantamount



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to cruelty. That apart failure to take any attempt for reunion and even after getting a decree for restitution of conjugal rights indicates the marriage has broken irretrievable.

15. In the said circumstances, the marriage solemnized between the appellant and the respondent on 07.08.2008 has come to a dead end when the respondent/wife left the matrimonial home on 11.06.2009, hardly 11 months after the marriage. It has now been over 16 years since the parties have been living separately. Even during the pendency of these appeals, the attempt made to resolve the dispute through mediation, did not yield any result. In the said circumstances, following the dictum laid down in ***Samar Ghosh*** case, this Court finds that it is appropriate to allow the appeals.

16. Accordingly, the C.M.A.No.2768 of 2016 is allowed. The order passed by the Family Court in H.M.O.P.No.57 of 2011, dismissing the divorce petition is hereby set aside. The marriage solemnized between the appellant and the respondent on 07.07.2008 stands dissolved by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.



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C.M.A.No.2769 of 2016 is allowed. The order passed by the Family

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Court in H.M.O.P.No.775 of 2012, allowing the petition for restitution of conjugal rights filed by the respondent/wife, is set aside. There shall be no order as to costs.

[Dr.G.J., J.] & [M.S.K., J.]
26.09.2025

rpl

To

The Principal Judge Family Court, Coimbatore



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Dr.G.JAYACHANDRAN., J.
and
MUMMINENI SUDHEER KUMAR., J.

rpl

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