



C.M.A.No.3246 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 28.01.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.3246 of 2019

M.Arutselvi

... Appellant/Respondent

-VS-

S.Sellakannu @ Dhaksina Moorthy

... Respondent/Respondent

Prayer: Appeal is filed under Section 19 of the Family Courts Act, 1984 to set aside the order dated 30.10.2018 made in H.M.O.P.No.7 of 2015 on the file of Subordinate Court, Attur.

For Petitioner : Mr.P.Tamilavel

For Respondent : Mr.R.Nalliappan

J U D G M E N T

(By J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed, seeking to set aside the order dated 30.10.2018 made in H.M.O.P.No.7 of 2015 on the file of Subordinate Court, Attur, in and by which, the Subordinate Court, Attur has declined to dissolve the marriage held between the appellant and the respondent herein.



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Background of the case is as follows:

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2. The marriage between the appellant/wife and the respondent/husband was solemnized on 27.05.1998 as per Hindu rites and customs in a Temple at Pelur in the presence of friends and relatives. Out of their wedlock, four children, namely, Haripriyan, aged 16, Kishareprakash, aged 13, Aaksarashi, aged 7 and Ishwarya, aged 7 were born. The respondent/husband, who is a drunkard, is not employed anywhere and he has been wandering like a vagabond. The respondent/husband caused mental agony and inflicted cruelty on the appellant and her children.

3. The appellant / wife averred in the petition for divorce that the respondent tortured her to bring household articles and jewels from her parents' house and he also suspected her fidelity. On account of the unbearable torture meted out at the hands of the respondent / husband, the appellant/wife was forced to go to her parental house in most of the time and even after reunion with the intervention of elders, there was no change in the attitude of the respondent / husband and hence, the appellant filed a



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petition for divorce. The Subordinate Court refused to grant the decree of divorce, holding that there was no material evidence produced to invoke the provisions of Section 13(1)(i-a) of the Act. Challenging the said order, the appellant / wife is before this Court.

4. Learned counsel for the appellant/wife submitted that the appellant/wife is not inclined to lead matrimonial life with the respondent/husband. Learned counsel for the appellant/wife further submitted that the children are being taken care by the appellant / wife and in M.C.No.2 of 2017, the respondent / husband was directed to pay maintenance by an order dated 25.07.2017 passed by the Judicial Magistrate No.1, Attur, pursuant to which, the respondent / husband has paid maintenance upto 02.03.2021. Learned counsel for the appellant / wife also submitted that the appellant/wife is not inclined to claim any further maintenance from the respondent / husband for herself and children and has filed a memo to that effect. In the memo, the appellant / wife has stated that she has filed two suits, namely, O.S.No.89 of 2019 on the file of District Munsif, Vazhapadi, filed by the wife, challenging the cancellation of



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settlement deed executed in her favour by the respondent, as null and void and O.S.No.82 of 2015 on the file of the Subordinate Court, Attur, filed by the children for partition. Thus, learned counsel for the appellant/wife prays for setting aside the order of the Subordinate Court, Attur, without prejudice to the above cases pending before Courts.

5. The respondent / husband is present before this Court today. He would state that he is unable to pay maintenance to the appellant / wife. He is agreeable for grant of divorce to the appellant / wife, provided she does not claim any maintenance from him.

6. Heard the learned counsel on either side and perused the evidence and material available on record.

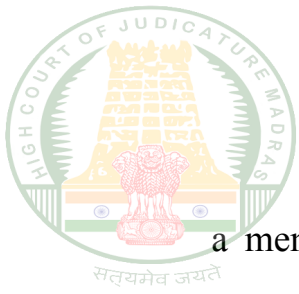
7. The marriage of the appellant with the respondent was solemnized on 27.05.1998 and four children were born to them. Subsequently, due to difference of opinion arisen between them in the year 2015, the appellant and the respondent started living separately for almost a



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decade. As per Section 13(1A) of The Hindu Marriage Act, 1955, prolonged separation can be one of the grounds to file a petition for divorce. The Hon'ble Supreme Court in the case of **Rakesh Raman vs. Kavita**, reported in **AIR 2023 SC 2144**, categorically held that inspite of refusal by the wife to live with her husband, compelling her to join her husband will amount to cruelty.

8. However, the Subordinate Court, Attur came to the conclusion that there was no documentary evidence adduced on the side of the appellant/wife to establish that there was a cruelty attributed to her by the respondent / husband and therefore, the petition filed by the appellant / wife for divorce was negatived. It has to be borne in mind that the appellant and the respondent separated in 2015 itself. Now, almost 10 years, they are separated. Even before this Court, learned counsel for the appellant / wife strenuously argued that that there is a remote chance of reunion and if the parties live together, it would be injurious and harmful for both of them. Now, the learned counsel for the respondent / husband would state that the respondent is not able to pay the maintenance. The appellant / wife has filed



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a memo to the effect that she will not claim any maintenance from the respondent for herself and for the welfare of children. Hence, we are of the view that the judgment and decree passed by the Subordinate Court, refusing to dissolve the marriage warrants interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is allowed and the order dated 30.10.2018 made in H.M.O.P.No.7 of 2015 by the Subordinate Court, Attur is set aside. The marriage between the appellant and the respondent solemnized on 27.05.1998 at Thanthondreeswarar Temple at Pelur, is hereby dissolved by granting a decree of divorce. This order is without prejudice to the rights of the appellant in the pending suits in O.S.Nos.89 of 2018 and 82 of 2015. The memo dated 28.01.2025 filed by the appellant/wife shall form part of this judgment. No costs.

(J.N.B.J.,) (R.S.V,J.,)
28.01.2025

Speaking order/Non-speaking order
Index: Yes / No
Internet: Yes / No
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To:

The Subordinate Judge,
Attur.



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and
R.SAKTHIVEL,J.
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