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CMSA No. 27 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-08-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMSA No. 27 of 2025

AND

CMP NO. 12768 OF 2025

Umamaheswari,
D/o.K.S.Kandasamy, No.9/317-C, Revenue Nagar,
Bodipatti Village, Udumalipet Tk, Tirupur Dt.

Appellant(s)

Vs

Vadivel Murugan,
No.228, Ganeshapuram,
S.V.Mills Post, Kannakampalayam Village,
Udumalipet Taluk, Tirupur Dt.Off at Teacher, Govt.
Panchayat Union Primary School, at Venkatareddiyar
Pallakattaipudhur, Andhiyur Tk, Gopichettipalayam,
Erode Dt.

Respondent(s)

PRAYER

To set aside the judgment and decree 04.03.2025 in C.M.A.No.11 /2021 on the file of the IV Additional District Judge, Udumalaipettai confirming the Decree and Judgment Dt.11.02.2021 made in H.M.O.P.No.66/2015 on the file of the Sub Judge, Udumalaipettai by allowing the above Second Appeal.



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For Appellant(s): Mr.K.Sridhar

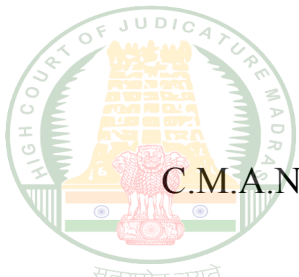
For Respondent(s): No Appearance

JUDGMENT

Challenging the concurrent findings of the courts below rendered in judgment and decree passed in C.M.A.No. 11 of 2021 dated 04.03.2025 on the file of IV Addl. District Judge, Udumalaipettai confirming judgment and decree rendered in H.M.O.P.No.66 of 2015, dated 11.02.2021 on the file of Sub-Judge, Udumalaipettai, the respondent wife preferred this C.M.S.A.

2. For the sake of convenience, the parties are denoted as per the ranking in the petition.

3. Before the trial court, the respondent husband viz., Vadivel Murugan, filed a petition in H.M.O.P.No. 66 of 2015 praying for a divorce under Sec. 13(1)(a)(ia)(ib) of Hindu Marriage Act, to dissolve the marriage solemnised between them on 20.02.2005. She has also contested the petition. On hearing both sides, the trial judge has allowed the petition filed by the husband by granting divorce. Challenging the same, she preferred an appeal in



C.M.A.No.11 of 2021 before the IV Addl. District Judge, Udumalipettai and the

same was dismissed by the first appellate court confirming the findings of trial court. Challenging the said findings, she had preferred this Civil Miscellaneous Second Appeal.

4. Brief facts of the case is as follows :-

On 20.02.2005 the arranged marriage was performed between the appellant and respondent. At the time of marriage, the appellant wife was a P.G.Assistant at the High School at Kudimangalam and the respondent husband is also employed as a Teacher in a Middle School at Chinnaveerampatti. They have started their matrimonial home at Sivasakthi colony, Udumalaipettai Taluk. Out of their wedlock, she gave birth of female child on 04.04.2006 and another female child was born on 24.08.2012. In spite of children, the appellant wife failed to give her salary and with the help of her father, she always ill-treated him, however, at the intervention of elder people, they were compromised. Thereafter, they have purchased a house plot and constructed a house by availing loan from Bank of India and income of appellant wife was not given to



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the family. At the instigation of her parents, she has not even prepared food and other amenities to her husband and always scolded him with unparliamentary words and also insisted to buy a car by borrowing loan, when he refused, she started to fight with him and gave a false complaint before All Women Police Station, Udumalaipettai. She also used to go to travel with another person in a bike and forcibly left the matrimonial home by picking up car key from him along with children. When he was met with small accident and admitted in hospital, she is not even inclined to take care of him and as a wife, she failed to discharge her duty and also ill-treated him, thereby the attitude of wife caused cruelty and mental agony to him. Therefore, the petitioner come forward with a petition seeking for a divorce.

5. The appellant wife submitted objections stating that from the date of marriage, they have demanded dowry and harassed her and her parents alone brought up the children by taking the house for rent nearby her place and helped her. In fact, her husband, the respondent herein used to spend more time along with other women and on one occasion, when she had questioned the same, he



beaten her and also forced to send out her from matrimonial home. Even while going to the work place, her husband not even taken care to drop her through bike and she used to go to office by bus after maintaining children. The ATM card was in the hands of her husband, he only used all her salary, but he filed a petition for divorce with false allegation. Hence, she prayed to dismiss the petition.

6. Before the trial court, on the side of respondent husband, P.W.1 to P.W.5 were examined and the documents Ex.A1 to Ex.A4 were marked. On the side of appellant wife, D.W.1 to D.W.5 were examined and the documents Ex.B1 to Ex.B18 were marked.

7. On considering the evidence adduced on both sides, the trial judge held that as per the evidence of P.W.1, he was ill-treated even at the time of ear-piercing ceremony of the children in the presence of relatives and she also refused for cohabitation and without his knowledge, she took a car key and also attacked her husband. Thus, all her attitude shows that she always caused ill-treatment, due to which, her husband sustained harassment both physically and



mentally. From the year of 2014 onwards, they were living separately and to prove the harassment made by the wife, her husband examined two more witnesses viz., Headmasters, who were examined as P.W.2 and P.W.3 , thereby, the husband proved the cruelty caused by wife. Accordingly, the trial court has held that husband is entitled for divorce as prayed for and divorce was granted.

8. Challenging the said findings, she preferred an appeal, wherein the appellate judge analysed entire facts and evidence, confirmed the findings of trial judge by dismissing the appeal. Challenging the concurrent findings of the courts below, she preferred this Civil Miscellaneous Second Appeal.

9. The learned counsel for appellant argues that there was no evidence on the side of respondent/husband to establish that the cruelty caused by the appellant wife, without which the courts below erroneously granted the divorce, more particularly, the first appellate court while confirming the findings of trial court erroneously held that the relationship between parties are irretrievably broke down and there is no possibility of reunion as such is illegal and liable to be set aside. The learned counsel would also argues that in the absence of



specific pleadings to prove mental cruelty or desertion, the petition filed by the respondent as such is not maintainable and ought not to have granted divorce.

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Therefore, the order passed by the trial judge is liable to be set aside. He would also pointed out that the courts below failed to appreciate that both persons were living together in the same house with their children even on the date of summons issued in H.M.O.P.No.66 of 2015, which itself shows that there was no desertion did by the wife and she has not deserted her husband. Inspite of that, the divorce was granted as such is erroneous one and liable to be set aside.

The courts below failed to take note of the fact that the respondent herein alone committed character assassination by giving false allegation against wife, inspite of that divorce granted in his favour as such is perverse and liable to be set aside. The learned counsel for appellant would also submit that during the pendency of proceedings, the respondent married another woman and the said marriage is also void, which would not bind appellant wife. Hence, he prayed to set aside the findings of courts below.



10. Considering the submissions of learned counsel for appellant, this

Civil Miscellaneous Second Appeal is admitted on the following question of

law:-

(a) Whether in the absence of any proof of mental cruelty is the grant of divorce under Sec.13(i)(i-a) of Hindu Marriage Act sustainable in law?

11. On the findings of any mental cruelty under Sec.13(i)(i-a), the learned counsel for respondent replied that on many occasions, he was ill-treated by appellant wife and the same was also proved before the trial court by adducing oral and documentary evidence, even she has not permitted the respondent to look after her minor daughter and at the instigation of her parents, she used to ill-treat him in the presence of other persons and the same was proved before the trial court. Therefore, the findings rendered by the courts below needs no interference. Hence he prayed to dismiss the appeal as no merit.

12. Considering both side submissions, the fact reveals that both have got married and settled their matrimonial home at Udumalaipettai taluk and after the said marriage, they have begotten two female children, more particularly,



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after the second birth of child, according to the respondent, there was misunderstanding arose between them due to ill-treatment made by the appellant wife and at the instigation of her parents, she has not discharged her duties as a dutiful wife. Further, to support his contentions, he examined P.W.2 and P.W.3 both are Headmasters In order to prove compromise made by third person in the family matter, he examined P.W.2 and P.W.3. Admittedly, both of them were School headmasters having known to the petitioner rather the respondent. Even their evidence as well as the admission made by P.W.1 during the cross-examination that appellant wife inclined to live with him but the respondent husband alone needs three months time to give his consent for reunion. When the intention of wife, she also wanted to live with him, since she had two female daughters, but the conduct of respondent reveals that he wantonly evaded matrimonial life with appellant wife. Further, he also thrown false allegation against her as if she developed illegal intimacy with another man and used to travel with him in a two wheeler. When he raised such an allegation against his wife, appellant herein, he must be very specific with whom he developed with such illegal intimacy, without which he thrown bad



allegation against the appellant wife itself shows that he had made character assassination with his own wife even though she is inclined to live with him.

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Further, pending appeal proceedings, the respondent husband got second marriage, which itself shows that in order to get divorce, he made false allegation against his wife and after getting a divorce decree, he got marriage with another woman during the appeal proceedings, which has not been strongly denied by the respondent. When there is no material evidence to prove the allegation levelled against appellant wife, the trial court ought not to have granted divorce, but erroneously granted the relief on the ground of cruelty and irretrievably broke down the marriage. In fact, the conduct of respondent husband alone caused harassment to the appellant wife and the witness on the side of respondent is also very closely known to the respondent and their evidence also not inspired the minds of the court about the alleged cruelty caused by her. P.W.2 and 3 are closely associated with the respondent husband. Furthermore, they attempted to compromise them with regard to the family issue, which used to happen in the family course of life in every family. Therefore, there is no sufficient evidence on the side of respondent husband to



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establish that she committed cruelty as well as deserted him without which, the courts below granted the divorce in favour of appellant wife as such is illegal and liable to be set aside. Accordingly, the question of law (a) is answered. Therefore the findings of courts below held in C.M.A.No.11 of 2021 on the file of IV Addl. District Judge, Udumalaipettai is set aside and consequently, H.M.O.P. is dismissed. Accordingly, this Civil Miscellaneous Second Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. IV Addl. District Judge, Udumalaipettai.

2. Sub-Court, Udumalaipettai.



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T.V.THAMILSELVI J.

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