



C.M.S.A.Nos. 56 & 59 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2025

**CORAM:
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

C.M.S.A.Nos. 56 & 59 of 2024
and
C.M.P.Nos. 19788 & 19125 of 2024

Sivamanjunathan

... Appellant in
both C.M.S.A.s

Vs.

A.Mythili

.. Respondent in
both C.M.S.A.s

PRAYER : Civil Miscellaneous Second Appeals filed under Section 100 of Code of Civil Procedure read with Sec. 28 of Hindu Marriage Act, praying to set aside the common judgment and decree dated 26.03.2024 passed in C.M.A.Nos.9 of 2021 and 6 of 2020 on the file of the Principal District Court, Salem confirming the common judgment and decree passed in H.M.O.P.Nos. 30 of 2017 & 49 of 2012 dated 05.08.2019 on the file of Subordinate Judge, Sankari, Salem District.



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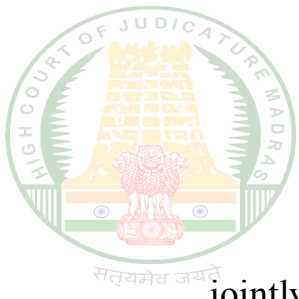
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For Appellant in
both C.M.S.A.s : Mr.M.Arun for
M/s. Karan and Uday
For Respondent in
both C.M.S.A.s : Mr. T.N.Rangeshkanna

COMMON JUDGMENT

Challenging the concurrent findings of the courts below rendered in the common judgment and decree dated 26.03.2024 passed in C.M.A.Nos.9 of 2021 and 6 of 2020 on the file of the Principal District Court, Salem confirming the common judgment and decree passed in H.M.O.P.Nos. 30 of 2017 & 49 of 2012 dated 05.08.2019 on the file of Subordinate Judge, Sankari, Salem District, the appellant husband preferred these Civil Miscellaneous Second Appeals.

2. Before the Sub-Court, Sankari, the respondent wife Mythili filed a petition in H.M.O.P.No. 49 of 2012 praying for restitution of conjugal rights. Subsequently, the appellant husband filed a petition in H.M.O.P.No.30 of 2017 praying for divorce. Both the petitions were tried

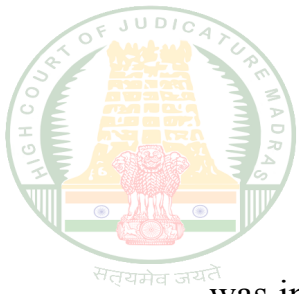


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jointly and both parties have adduced evidence and considering the oral and documentary evidence, the trial judge allowed the petition filed by respondent wife in H.M.O.P.No.49 of 202 for restitution of conjugal rights and dismissed the petition filed by appellant husband in H.M.O.P.No. 30 of 2017 for divorce. Challenging the said findings, the appellant husband preferred appeals in A.S.Nos. 9 of 2021 and 6 of 2024. On hearing both sides, the first appellate judge dismissed both appeals by confirming the findings of trial judge. Aggrieved over the concurrent findings, the appellant husband preferred these Civil Miscellaneous Second Appeals.

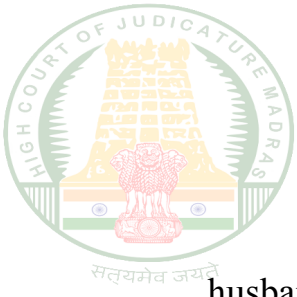
3. Both the appellant and respondent got married on 13.02.2011 by arranged marriage and at that time the appellant is a Post Graduate in M.C.A. and working as Assistant System Engineer in T.C.S. at Chennai. The respondent also completed her post graduate in M.Com., M.C.A., M.A.(Hindi), M.Phil and PGDCA and was working as a Guest Lecturer in Government Arts College for Women, Salem. After the marriage, they have started marital life at Karur. Due to job avocation, both were used to meet every weekend. While so, in the month of May 2011, the respondent wife



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was informed that she was pregnant. But the appellant husband insisted her to get abort at the instance of his mother and also promised that he would take her to Brazil, where he got off-site work. However, on their compulsion, on 07.05.2011, she was admitted in hospital and underwent abortion. Even then, both of them were lived with love and affection, but her mother-in-law does not like their close proximity and poisoned her husband's mind. In the meantime, the respondent wife planned to proceed to Brazil, for that, she applied passport and she undergone medical fitness, but due to hostile attitude of her mother-in-law, her husband refused to take her to Brazil and also to set up a house at Chennai. However, in the month of May 2011, her husband gone to Brazil to attend his off-site work. From there, he used to talk with the respondent wife through phone, at that time, he insisted her to stay at her mother's house, but to avoid further complications, she lived with her inlaws and performed her duties in the marital home. Even at those times, her husband used to call her and talk with her and also promised to come back and settle with her in a rental house at Chennai. Since her mother-in-law illtreated her, in the month of November 2011, she came to her parents and from that day onwards, her

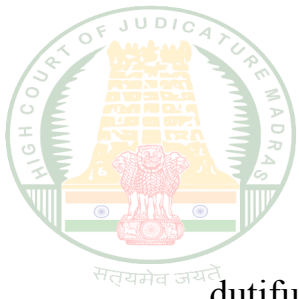


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husband not approached her through phone and also avoided her calls. Due to the ill-advice of her mother-in-law, in the month of March 2012, her husband came from Brazil, but it was not informed to her. When she attempted to meet him at Karur, she was not permitted and her inlaws declared that she would arrange second marriage for him. While so, she received a divorce notice in H.M.O.P.No. 49 of 2012 on the file of Sub-Court, Sankari, wherein there is no valid reason sought for divorce. Subsequently, the respondent wife made all attempts for re-union through their relatives. There was a panchayat also held, wherein her husband agreed to take her back, but later refused. On the compulsion of her mother-in-law, he filed the said divorce petition. Therefore, she always inclined to live with him. Hence, she filed a petition for restitution of conjugal rights in H.M.O.P.No. 49 of 2012.

4. The petition was filed by appellant husband under Sec.13(1)(ia) of Hindu Marriage Act stating that after the marriage, they started their life at Karur, but from the date of marriage, his wife/respondent always used to quarrel with him as well as his mother and not discharged her duties as a

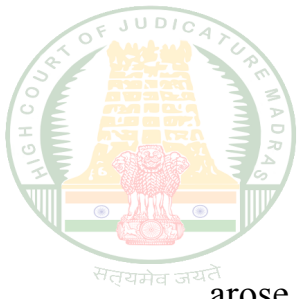


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dutiful wife. In the month of May 2011, he has to go to Brazil to attend his off-site work, but the respondent wife refused to go with him and she is not inclined to accompany him to go to Brazil and went to her parents house. After the return from Brazil, he called upon her to re-union, but she refused. Hence, he filed a petition seeking for a divorce.

5. Both parties have adduced evidence before the trial court. Considering the evidence of both parties, it reveals that not less than 45 days, they lived together as husband and wife. Thereafter, husband went to Brazil due to his job avocation. Thereafter, misunderstanding arose between the respondent wife and her mother-in-law, due to which a complaint was given in the month of September 2012. In the meanwhile, she filed a petition for restitution of conjugal rights. After that only, the appellant husband returned from Brazil and with the help of elder people, he called his wife for matrimonial home, for which, she refused. Thereafter only, he filed a petition seeking for a divorce. Further, he would submit that there was a misunderstanding arose between himself and his wife and she used to compel for sexual life often, due to which, there was a misunderstanding



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arose between them. Even before the return from Brazil, the dispute arose between his wife and her mother-in-law, due to which a complaint was given before the P-2 Police Station.

6. Heard and considered rival submissions made by learned counsel for appellant husband as well as respondent wife and perused the materials available on record.

7. On seeing the facts, it reveals that immediately after the marriage, within a short span of time, misunderstanding arose between the appellant husband and respondent wife. Admittedly, they have no children. The trial judge has concluded that the allegations are bald allegations and it has not been proved by appellant husband with material evidence. Therefore, he is not entitled for divorce under Sec.13(1)(ia) of Hindu Marriage Act. Accordingly, the petition was dismissed by the trial judge and the same was confirmed by the first appellate judge.



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8. Today, when the matter taken up for hearing, both the appellant and respondent appeared before this court along with their counsels. On the side of appellant husband, he submitted huge volume of messages and phone calls continuously sent by respondent wife during the pendency of proceedings. The respondent wife also appeared in person and admitted that she used to send messages and make phone calls continuously to her husband. Nearly about 26000 phone calls were continuously made by the respondent wife to the appellant husband from March 2023 to August 2024. Submitting the above call list, learned counsel for appellant argues that during the pendency of proceedings, she used to send messages day and night continuously and also made phone calls uninterruptedly, which would cause great mental agony to the appellant. Therefore, the subsequent conduct of respondent wife also to be considered by this court. Further, she used to bring some third parties to his house in order to convene panchayat even at the time of death ceremony conducted for father of appellant husband. Furthermore, one of mails sent on 26.10.2024 by the respondent to the appellant with a direction to switch on his phone and compelled him to call her. So, during the pendency of proceedings also, she used to sent

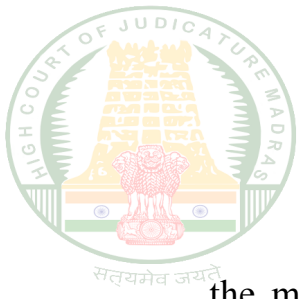


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awkward messages to the appellant husband continuously. Therefore, sending messages with the compulsion and threatening messages also made to compel the appellant to call her would clearly shows hat the respondent is not an ordinary woman and that apart by sending those messages, she harassed him continuously and certainly, it would cause mental agony to him. So, on that ground also, he is entitled for a divorce.

9. On considering the aforesaid averments, the fact reveals that within six months of the marriage, both the appellant and respondent got separated from 2012 onwards and nearly about 15 years, they got separated, however, as per the order of the court, the appellant husband is paying a sum of Rs.15,000/- as maintenance without fail and the same was admitted by respondent wife. But the respondent wife stated that she wanted to live with her husband. Therefore, she called upon him through her phone. Admittedly, from 2012 onwards, the petition for divorce as well as petition for restitution of conjugal rights pending before the court and the appellant husband is not inclined to live with the respondent wife due to harassment made by her. Even during the pendency of proceedings, she used to send



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the messages and made 26000 phone calls continuously to the appellant husband, which would certainly got mental agony to him. Therefore, subsequent conduct of respondent wife proves that he was harassed by her by continuously making phone calls and sending messages, which would cause mental agony to the appellant husband. The long separation between the parties as well as conduct of respondent wife would reveals that the matrimonial relationship between the parties are irretrievably broke down and appellant husband also not inclined to live with her due to the harassment made by her. Even during the evidence, the appellant husband has narrated the harassment made by her, but it was not appreciated by the courts below. Therefore, the harassment made by the respondent wife was proved by the appellant husband. Hence, the findings of the first appellate court in C.M.A.Nos.9 of 2021 and 6 of 2024 is set aside and the petition filed by appellant husband in H.M.O.P.No. 30 of 2017 is ordered. Accordingly, the marriage between the appellant husband and respondent wife is dissolved and consequently, the petition filed by respondent wife in H.M.O.P.No. 49 of 2012 for restitution of conjugal rights is dismissed. However, the appellant husband is directed to pay Rs.15,000/- as monthly



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maintenance without fail until modified by any court of law. Accordingly, these Civil Miscellaneous Second Appeals are allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

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

1. Principal District Judge, Salem.
2. Sub-Judge, Sankari.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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