



WEB COPY

CMA No. 1783 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-08-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1783 of 2025

Suresh Mary Stella

Appellant

Vs

Messella

Respondent

PRAYER

Civil Miscellaneous Appeal filed under Sec.55 of Indian Divorce Act, praying to set aside the fair order and decretal order dated 24-02-2025 passed in Divorce OP.No.195/2019 by the Principal District Judge, Villupuram and consequently allow Divorce OP.No.195/2019.

For Appellant: Mr.K. Elango

For Respondent: Mr.T.M.Madasamy



JUDGMENT

WEB COPY

Challenging the impugned order dated 24.02.2025 passed by the Principal District Judge, Villupuram in Divorce O.P.No.195 of 2019, the appellant preferred this Civil Miscellaneous Appeal.

2. The learned counsel for appellant would submit that before the trial court, the appellant has filed divorce Original Petition under Sec. 10(1)(ix) and (viii) of Indian Divorce Act seeking for divorce narrating the mental agony, cruelty caused by her, but the petition was filed with erroneous provision under Sec.10(1)ix and (viii) of Indian Divorce Act, which is meant for desertion and petition ought to have been filed the petition for restitution of conjugal rights, which has not been complied, but erroneously filed the petition on two grounds. The respondent also appeared through her counsel and filed her counter objections. After that, the trial was conducted. On the side of appellant/petitioner, he was examined as P.W.1 and individual witness was examined as P.W.2. The respondent wife had cross-examined P.W.1 during trial, but failed to cross-examine P.W.2 and also not filed a petition to examine herself



WEB COPY

as witness before the trial court. Though there was no evidence on her side, the trial court had analysed the entire allegations and also discussed about the cruelty committed by the respondent, but, while disposing the petition, the trial judge has held that erroneous provision of desertion was mentioned in the petition and the same was also not proved. Therefore, the said petition was dismissed. Challenging the said findings, the appellant preferred this Civil Miscellaneous Appeal.

3. Today, when the matter taken up for hearing, the appellant appeared in person along with his counsel. The respondent, who is residing at Bangalore living with her son, who is doing II year B.Com also appeared through video conference and her counsel also appeared.

4. When this court was enquired her, the respondent has averred that for the past 8 years, she was separated and she took steps for re-union, but on perusal of records, there is no such petition was filed on her side. When the court has also enquired whether she entered into witness box and none witnesses examined, but on perusal of records it reveals that she has not entered into witness box nor denied the allegation levelled against her by her husband.



WEB COPY

Therefore, the conduct of respondent wife shows that though the real intention of spouse is the main ingredient for re-union, the respondent has failed to prove the same. Therefore, the prayer for re-union sought by her is without any materials and it is also lacking confidence of the court. According to the findings of trial court, though the trial judge has analysed evidence and allegations of both parties and discussed about the cruelty committed by respondent wife, while disposing the petition, the trial judge has found that the petition was filed on the ground of desertion, but it was not met out. Accordingly, the petition was dismissed. It is a settled proposition that if a wrong provision of law is mentioned, the same can be rectified while considering the entire allegation in the petition. Though the wrong provision of law is mentioned, this court has to take note of findings of trial court while disposing entire divorce petition filed by the husband, who had categorically stated that the respondent wife had harassed him and abused him and also evaded for sexual relationship with him. The evading of sexual relationship also amounting to non-co-habitation of marriage, which would also amount to both physical and mental cruelty, which is a settled proposition of law. But, the said



WEB COPY

allegation was not denied by wife by entering into witness box. So, considering

her conduct, this court is empowered to draw adverse inference against her, but

the trial judge has failed to apply the said proposition of law properly.

According to husband, the respondent come to his office and insulted him in the

presence of his colleagues, which is also amounting to mental cruelty. As

discussed above, those allegations are also not denied by her by adducing contra

evidence. Therefore, the allegation found in the petition is sufficient to establish

the conduct of respondent both physical and mental cruelty committed to him.

Therefore, the findings of trial judge is liable to be set aside. The mentioning of

wrong provision law is not a ground to dismiss the petition. on the other hand,

the entire allegations of the petitioner is to be taken into consideration while

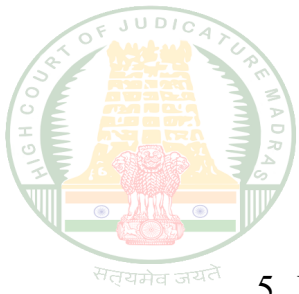
deciding the issues between parties. Accordingly, the appellant has proved the

cruelty committed by the respondent wife and on that ground, he is entitled to

get divorce under Sec.10(1)(x) of Indian Divorce Act. Accordingly, the findings

rendered by the trial judge in Divorce O.P.No. 195 of 2019 is set aside and

divorce is granted.



WEB COPY

5. When this court enquired about maintenance, the appellant submitted that he has paid a sum of Rs.20,000/- as maintenance to his wife and son and he has also agreed to look after education of his son. When this court enquired about the same with the respondent through video conference, she also admits that he is paying maintenance. Furthermore, while they were living together, two houses were purchased in joint mode and E.M.I. is paid by the husband as on date. This fact is also admitted by the respondent. Apart from that, there is an extent of 1 acre 25 cents of land nearby Villupuram also stands in the name of respondent, which was also admitted by her. Two more house plots also stand in the name of respondent at Kozhipannai village, Villupuram and the same was admitted by her. When the marriage was performed in the year 2004 as she has no separate income and thereafter, there was long separation till 2018, but there is no steps for re-union taken by the respondent and thus, the relationship between the parties are strained. Accordingly, on the ground of irrevocable broke down of marriage, the parties are entitled for separation of marriage. But, the ground mentioned in the divorce petition proves the conduct of respondent



for causing both physical and mental cruelty. So, divorce is granted on the ground of cruelty.

WEB COPY

6. With regard to maintenance, now the husband is inclined to settle the permanent alimony in favour of wife as well as his son, to that effect, an undertaking affidavit of the appellant submitted before this court is perused. Accordingly, he agreed to settle a flat measuring 857 sq.ft. in Pune in the name of respondent and also agreed to hand over the original documents relating to agricultural land measuring an extent of 1 acre 25 cents in Nangathur village to the respondent and also agreed to hand over the documents relating to two housing plots standing in the name of respondent at Kozhipannai village, Villupuram District. He had also undertaken to pay entire education expenses of his son until he concludes his studies and also agreed to pay the rent of Rs.13,000/- for the house, where the respondent wife and son are residing till 30.08.2026 i.e. completion of his studies. Instead of paying maintenance, now the appellant is inclined to transfer house plot and to give absolute right with regard to rented property and also inclined to hand over documents pertaining to two house plots. Therefore, the immovable properties are permanent alimony



for the respondent wife. So, the appellant need not pay monetary maintenance

hereinafter for wife and son and he has sufficiently given all the properties

though it stands in the name of respondent. Admittedly, she has no other source

of income and as on date, she has studied X Std. All those properties are

purchased out of his own income. Therefore, instead of permanent alimony and

other rights of immovable property, the respondent as well as son has no further

claim in future.

7. In the result, this Civil Miscellaneous Appeal is disposed of. As per the directions given in para 7 in the undertaking affidavit is also to be complied with by the respondent in order to settle the property. The undertaking affidavit given by the appellant is recorded and the same shall be forming part and parcel of this judgment. Considering the undertaking affidavit filed by the appellant, there is no further claim between the appellant and respondent in future. No costs.

29-08-2025

Index: Yes/No



Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

WEB COPY
rpp

To

1. Principal District Judge, Villupuram.
2. Section Officer, VR Section, Madras High Court.



WEB COPY

CMA No. 1783 of 2025



T.V.THAMILSELVI J.

rpp

CMA No. 1783 of 2025

29-08-2025