



C.M.A.No.3393 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.11.2025

Pronounced on : 28.11.2025

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.3393 of 2021

T.Manivannan ... Appellant / Petitioner / Husband

Vs

V.Padmashini ... Respondent / Respondent / Wife

This Appeal is filed under Section 19 of the Family Courts Act, praying to set aside the order and decretal order dated 18.01.2021 made in H.M.O.P.No.146 of 2017 on the file of the Family Court, Dharmapuri.

For Appellant : Mr.B.Srinivasan

For Respondent : Mr.V,Sakkarapani



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JUDGMENT

The appeal by the husband / petitioner being aggrieved by the judgment of the Family Court, Dharmapuri, passed in HMOP No.146 of 2017 dated 18.01.2021 dismissing the petition for divorce filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955.

2.The appellant went before the Family Court with an allegation that he and the respondent got marriage on 15.02.2002. Right from the date of marriage, he had been insulted by his wife comparing her complexion and financial status. She avoided conjugal relationship under some pretext or another. An independent house for nuclear family was arranged and they were lived in that house for some time. However, the respondent had shown no interest in the matrimonial life or domestic activities. She often picked quarrel and abused the petitioner comparing him with others. On the request of the respondent, she was admitted in Teacher Training Course at Uthamasolapuram, 10 Kms away from Salem. To facilitate her studies, he shifted his house near the institute. The mother of the respondent joined



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them and started degrading, humiliating the petitioner along with her daughter.

3.On 15.03.2003, a son was born to them. One day, he was brutally attacked by the family members of his wife. The respondent deserted him and nine months old child during the month of December 2003 and came back only during the month of March 2004 after much persuasion. She again left the matrimonial home taking away the child. When he went to her house to see the child and take her back to the home, he was attacked by the maternal uncles of the respondent. Another son was born to them on 03.02.2005. The respondent got an employment on 24.06.2006 in an elementary school and started attending her job. Once again, she left the matrimonial home. This time with the second child leaving the first child with the petitioner and started making allegation that she was driven out from the matrimonial home. A police complaint was given by her making false allegation and making variety of allegations. Alleging cruelty and ill treatment by the respondent, the petition for divorce filed by the appellant.



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4. Prior to filing of divorce petition, he filed petition for restitution of conjugal right along with the GOP No.2 of 2009. He withdrew the petition for restitution of conjugal right and contesting his petition for Guardian OP and filed petition for divorce on the ground of desertion and cruelty.

5. In the counter, the wife had stated that the allegations made against her are all false. In fact, she was sent out from the matrimonial home with no intention of taking her back but with ulterior design, the petition for conjugal right in FCOP No.98 of 2009 filed before the Family Court, Salem. Later, when the said petition was transferred to Dharmapuri by order of Court, he withdrew the petition for restitution of conjugal right. Similarly, with no intention to get custody or guardianship of children, just to harass, the husband, filed GOP No.2 of 2009. Since she was driven out from the house, she took out an application in the pending proceeding and through Court order, she took back her belongings. With his influence as a Government servant, the petitioner harassing her at work place. As, the marital relation has broken, due to the attitude of the petitioner, he cannot take advantage of his own wrong and seek for divorce.



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6.The petitioner / husband was examined as PW-1, eight documents were marked. The respondent / wife was examined as RW-1 and she has marked one document.

7.The Family Court on considering the evidence and the fact that the after filing petition for restitution of conjugal right and Guardian OP, in his cross examination had deposed that he is no more interested in rejoining with his wife and second son, held that the husband has failed to prove willful desertion by his wife and dismissed the divorce petition.

8.The appeal filed on the ground that, the material evidence placed before the Family Court, though sufficient to prove cruelty, the learned Judge has failed to take note of those evidence both oral and document. Though detailed evidence placed to prove cruelty of the wife and continuous desertion for more than two years, the Court below erred in disbelieving those evidence.

9.The learned counsel for the appellant relying upon the judgment of the Hon'ble Supreme Court rendered in *Smt.Roopa Soni Vs. Kamalnarayan*



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Soni reported in (2023) AIR SC 4186, would submit that continuous separation without expressing their intention of rejoining, besides making serious allegations against each other, it is a fit case for resolution rather prolonging the distress of maintaining a marital status which has no fruitful meaning.

10.For the said submission, the learned counsel for the appellant referred the conduct of the respondent who had not joined her husband even after he filing FCOP No.98 of 2009 for restitution of conjugal right. She did not state in her counter to the divorce petition that she is willing to join her husband. She after making wild allegations against her husband, only during the trial, had stated that she is ready to join her husband burying the defence.

11.The learned counsel appearing for the respondent submitted that still the respondent is ready to join with her husband and her separation was by force and not intentional. The learned counsel submitted that the allegations made against her prompted her to make counter allegations, otherwise, she is always willing to join her husband along with second son.



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12.Having taken away all her belongings with the help of the police and justifying her petition filed for return of articles, blaming her husband, is clear indication of her mind not to join her husband. Her separation being without any justification, the trial Court has dismissed the divorce petition ignoring the evidence and attending circumstances which proves the wilful desertion with animus to rejoin.

13.The present submission made by the respondent through counsel appears to be an after thought. Her intention to rejoin ought to have emanated much earlier atleast after the dismissal of the divorce petition. Right from instituting petition for restitution of conjugal right by the husband till the appeal taken up for final hearing, this Court unable to see even one incident, which indicate the intention of respondent, to reconcile the difference with her husband and reunite. The mutual allegations made against each other and long separation since February 2009 and her complaint to the All Woman Police Station, all indicates that the marriage relationship has broken irretrievably.



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14. Therefore, the order of the Family Court Dharmapuri, dismissing the divorce petition filed on the ground cruelty and desertion needs interference. Accordingly, the order passed in HMOP NO.146 of 2017 on the file of the Family Court, Dharmapuri, is set aside. The appeal stands allowed. The marriage solemnized between the appellant / T.Manivannan and the respondent / V.Padmashini on 15.02.2002 hereby dissolved. No order as to costs.

(G.J.J) (M.S.K.J)

28.11.2025

smv

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

To

The Family Court, Dharmapuri.



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

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Judgment in
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