



C.M.A.No.1387 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.1387 of 2017

Muthaiya Desikar

..Appellant

Vs.

Senthamizh Selvi

..Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts, Act, 1984, against the fair and decreetal order in H.M.O.P.No.11 of 2014 dated 09.06.2015 on the file of the Family Court, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : No appearance



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JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

The present Civil Miscellaneous Appeal has been filed by the appellant/husband against the fair and decreetal order dated 09.06.2015 passed in H.M.O.P.No.11 of 2014, whereby his petition for divorce, has been dismissed by the Family Court, Villupuram.

2. The case of the appellant/petitioner before the Family Court, is that the marriage between the appellant and the respondent was solemnized on 17.06.2001. Out of the wedlock, a male child was born to them. The respondent/wife is a close relative of the appellant, who hails from a poor family. Therefore, the appellant did not demand any dowry and spent a sum of Rs.1,00,000/- towards marriage expenses. After their marriage, both the appellant as well as the respondent lived happily at the appellant's home but only for a short period of two months.

3. According to the learned counsel for the appellant, the main grievance of the appellant/ husband is that the respondent/wife often left the matrimonial home to her parent's home, without informing the same



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to the appellant and his family members. Moreover, it is the contention of the appellant that the respondent did not discharge her bounden duty as Hindu wife. She failed to take care of the appellant's parents, thereby neglecting them and often insisted the appellant to come out of the home and set up a separate home to the place of her choice.

4. Further, the learned counsel for the appellant contested that the respondent left the matrimonial home in the month of December 2001, to her parents house without informing the same to the appellant and his family members. The appellant convened a panchayat and demanded the respondent to come back, but she refused to come and live with the appellant. Further, the respondent and her father used filthy language against the appellant and also threatened that if the appellant insisted on living together, he will be put to jail. The attitude, conduct and character of the respondent/wife put the appellant/husband into extreme mental agony, distress which tantamount to cruelty.

5. The learned counsel appearing for the respondent/wife resisted the above contention by filing a counter before the Family Court denying



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all the allegations made against her. It is averred from the counter that within two months from the date of marriage, the appellant and his family members harassed the respondent by demanding her to bring money and get property from her parents. The respondent further stated that the appellant always suspected her character and was a narrow minded person. Even though panchayats were convened on three occasions for their re-union, the appellant did not come forward to take back the respondent. It was further stated that the respondent is ready to live with the appellant, if the appellant throws his suspecting character.

6. The learned Judge, Family Court, dismissed the petition for divorce on the ground that the petitioner has not proved willful desertion or subjected to cruelty by the respondent.

7. When the matter came up for hearing on 21.11.2024, the learned counsel appearing on either side stated that if the matter is referred to Mediation Centre attached to the District Court, Villupuram, there is a possibility of amicable settlement. Hence, by consent of both parties, the matter was referred to the Mediation Centre of the District Court, Villupuram.

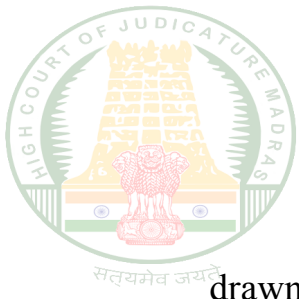


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8. The learned Principal District Judge, Villupuram, has also sent a report after the mediation sessions conducted on 05.12.2024, wherein it was stated that the appellant only appeared for mediation. Again on 02.01.2025, when the matter was listed, the learned counsel for both parties would state that the mediation before the Family Court, Villupuram, has failed and would seek for accommodation to argue the case on merits. Hence, the matter was adjourned to 21.01.2025.

9. Today when the matter is taken up for hearing, there is no representation on behalf of the respondent. On perusal of the records, it is seen that the appellant/husband and the respondent/wife are living separately for more than 20 years and hence, there is no possibility for re-union. The Family Court held that though the appellant/husband has made allegations of cruelty and desertion against the respondent/wife, the same has not been established by him. However, the respondent has not filed any petition seeking restitution of conjugal rights to prove her intention to join her husband for the past 20 years. The above act of the respondent amounts to desertion. Thus, an adverse inference could be



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drawn as against the respondent/wife that she had deserted the appellant.

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10. It is to be noted that though the respondent/wife, in her deposition, has denied all the allegations made by the appellant against her and stated that she is always ready and willing to live with the appellant, the respondent/wife has not filed any petition seeking restitution of conjugal rights to prove her intention to live with her husband, which clearly reveals the fact that there is hardly any chance of their living together even if they are reunited by a court's order.

11. Considering the circumstances of the case and that the respondent/wife has also not filed any petition for restitution of conjugal rights, neither she has appeared before the mediation nor before this Court, this Court is of the considered opinion that there is no chance of reunion. The long separation itself amounts to cruelty and there is no purpose in keeping the marriage alive. Therefore, we are inclined to dissolve the marriage by passing the decree of divorce.



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12. Further, considering the nature of the case and the avocation of the appellant viz., Flower Decorator, we are of the opinion that ends of justice would be met if the appellant is directed to pay of Rs.5,00,000/- to the respondent-wife by way of permanent alimony.

13. In the result, the fair and decreetal order dated 09.06.2015 passed by the learned Judge, Family Court, Villupuram, are set aside. The marriage solemnized between the appellant/husband, Muthaiya Desikar and the respondent/wife, Senthamizh Selvi, on 17.06.2001 is hereby dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. The appellant/ husband is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent/wife by way of permanent alimony within a period of three (3) months from the date of receipt of a copy of this order.

14. According, the Civil Miscellaneous Appeal stands allowed.
There shall be no order as to costs.

(J.N.B, J.) (R.S.V, J.)
21.01.2025

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J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

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To

The Judge,
Family Court, Villupuram.

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