



C.M.A.No.2454 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.11.2025

Pronounced on : 27.11.2025

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.No.2454 of 2017

D.Dhanaraja

... Petitioner / Appellant

Vs

P.Rekha

... Respondent / Respondent

This Appeal is filed under Section 19 of the Family Courts Act, praying to set aside the judgment and decree dated 27.02.2017 passed by the Family Court, Dharmapuri, in F.C.H.M.O.P. No.59 of 2016.

For Appellant : Mr.K.Bhaskar

For Respondent : Mr.R,Nalliyappan



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JUDGMENT

HMOP No.559 of 2016 for divorce filed by the husband on the ground of wilful desertion. The Family Court, Dharmपुरi, on considering the evidence filed in support of the pleadings of respective parties, dismissed the petition, stating it lacks bonafide. Being aggrieved by the dismissal, the appeal under consideration is filed by the dissatisfied husband.

2.The appellant, as petitioner, went before Family Court, carrying his case that his marriage with the respondent on 29.06.2012 at Salem had shattered due to rude and quarrel some behaviour of his wife, who refuse to carry on the normal domestic life expected from the spouse. She not even use to attend the basic needs of the petitioner and his parents. She has left the matrimonial home and started sending disparaging and derogatory messages to the e-mail address from different names. When a complaint given to the police in this regard, she was enquired and she after admitting her guilt of sending such disparaging and derogatory messages, gave an undertaking that she will not indulge in such indecent act. With the said promise, she took the custody of the child with her and even thereafter, she had not changed her attitude and had not come forward to reunite.



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3.Contrarily, the respondent had made counter allegations against her husband stating that she was forced to do menial work for her in-laws, despite her ill health. She was treated as a servant maid in the family and was constantly abused with filthy language. She was forced to leave the matrimonial home during the month of June 2016. She admit to the police that she has sent the disparaging and derogatory e-mails to her husband in different names with expectation that she will be taken back into the matrimonial fold. She always willing to reunite the petitioner.

4.The petitioner / husband examined as PW-1 and fourteen documents were marked. The respondent / wife examined as RW-1 and three documents were marked.

5.The evidence of the petitioner, disbelieved by the trial Court regarding the disparaging e-mails received by the husband and the admission of the wife about her guilt of generating those e-mails, the Court below has held that the husband has not placed material evidence to substantiate the allegation. He has not summoned the police, who had investigated his



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complaint and therefore, held that there is no sufficient proof to hold the respondent / wife responsible for the offensive e-mails. It has also found fault on the petitioner / husband for not taking his wife to Saudi Arabia, where he was employed and keeping his wife in his parents home. While concluding the finding, the trial Court has observed that cruelty implies and means harass conduct of such intensity and persistence, which would make it impossible for the spouse to sustain the marriage and it is impossible to reach such satisfactory conclusion that the petitioner / husband was put to cruelty sufficient to grant divorce.

6.The grounds of appeal narrates how the trial Court has failed to properly appreciate the evidence placed before it, particularly the admission of the respondent in the cross examination that she has not taken any steps to reunite with her husband after she got separated from him during the month of June 2016 and she has not even replied to the notice sent to her to reunite. The admission of the respondent, sending disparaging e-mails, to the police, as well as in the counter, been totally overlooked by the Family Court.



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7.The learned counsel appearing for the appellant, reading through the disparaging e-mails marked as Exs.P3, P5, P7 and P9 and the statement of the respondent given to the police marked as Ex.P13, submitted that these documents sufficient enough to arrive at irresistible conclusion that the husband was subjected to cruelty after wilful desertion.

8.Per contra, the learned counsel appearing for the respondent submitted that the petition filed only on the ground of wilful desertion. However, the additional ground pleaded alleging cruelty when the relief sought only on the ground of desertion, the appellant cannot improve his plea by adding additional ground of cruelty. That apart, he also submitted that for wilful desertion, the petitioner ought to have proved that the respondent left the matrimonial home on her own, without any reason. Whereas, in this case, the hardship and cruelty met by the respondent, at the hands of her in-laws, in the absence of her husband / appellant was the cause for the desertion. Since it is not a wilful desertion, the Family Court has rightly dismissed the petition for divorce.



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9.The point for consideration whether the separation of the appellant and the respondent, since June 2016, is a wilful withdrawal or withdrawal by force.

10.It is admitted that, after marriage, the appellant was serving in Saudi Arabia and the wife was in the matrimonial home along with the parents and sister of the appellant. It is also an admitted case, that from June, soon after the child birth, the respondent has left the matrimonial home and living separately along with her son. It is also an admitted fact that when the appellant caused notice, Ex.P10 dated 27.06.2016, calling upon the respondent to come and join him and resume the marital life, the respondent neither replied nor joined the appellant.

11.In this context, if we read the content of Exs.P3, P5, P7 and P9, the alleged derogatory e-mails received by the appellant from different name, but admitted by the respondent that it was originated from her side, though later retracted, it is very clear that the respondent is not inclined to join with her husband to save the marital life. Even after the dismissal of the



divorce petition, eight years ago, till now there is no sign of expressing willingness to reunite.

12.Regarding the separation, the Family Court had not considered the conduct of the respondent who has left the matrimonial home on her own and had not joined her husband inspite of causing notice. Even after dismissal of the divorce petition, she has not taken any interest for reunion.

13.When the matter came up for consideration, the main emphasis before the Court was non-payment of maintenance and not about resuming the marital life. The Court cannot be a felicitous of the fact that insofar as matrimonial disputes are concerned, the attitude of the parties before filing petition, during pendency of the petition and after the disposal of the petition varies and the Courts are suppose to take a pragmatic decision, so that, the sour among the spouse does not carry for a long affecting the prospects of the children.

14.In this case, Ex.P13 indicate that the respondent has admitted generating derogatory e-mails to the address of appellant / husband. If one



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go through the content of those e-mails, it will be certain that no person can continue the marital relationship, if such letters been emanated from his spouse.

15.For good reasons, the respondent now disown the e-mails. However, her allegations in the counter, put in different words, is similar to the content of the e-mails, except the vulgarity found in it. The continuous disinclination to join the appellant is yet another reason to infer that the respondent withdrawn the matrimonial home on her own. Exiting from the matrimonial home, does not prevent the respondent from retaining relationship with her husband and setting up family elsewhere.

16.From the evidence, we find no material to infer that, after coming out of the matrimonial home, the respondent / wife made an attempt to establish nuclear family. Her silence to the notice, Ex.P10 dated 27.06.2016, speaks volume. Unfortunately, the Family Court has not taken out of the said fact. Hence, we are of the view that withdrawal from the matrimonial life by the respondent is wilful, continuous and unreasonable.



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17.For the said reasons, the appeal allowed. The judgment and decree dated 27.02.2017 passed by the learned Judge, Family Court Dharmapuri in F.C.HMOP No.59 of 2016 is set aside. The marriage held between the appellant and the respondent at Salem dated 29.06.2012 stands dissolved. No costs. If any maintenance ordered by the Court below shall continue to be paid, unless modified or altered through a separate proceedings in future.

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

27.11.2025

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.

smv

Judgment in
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