



C.M.S.A.No.11 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.S.A.No.11 of 2002

R.Natarajan ... Appellant / Petitioner
vs.
B.Shakunthala ... Respondent / Respondent

Prayer: This Civil Miscellaneous Second Appeal is filed under Section 100 of CPC against the Judgment and Decree dated 01.10.2001 passed in C.M.A.No.3 of 2001 on the file of District Court, Uthagamandalam, confirming the Judgment and Decree dated 31.03.2000 passed in O.P.No.25 of 1996 before Sub-Court, Uthagamandalam.

For Appellant : Mrs.R.Meenal
For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Second Appeal has been preferred by the husband against the Judgment and Decree passed in C.M.A.No.3 of 2001 by the District Judge of the Nilgiris at Uthagamandalam.

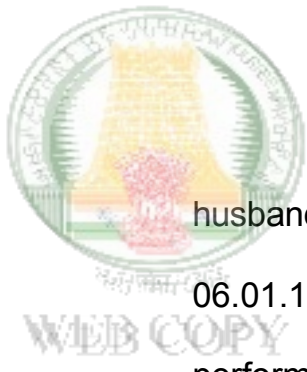
2. Parties are indicated herein as per their litigative status and ranking before the trial Court.



3. According to the petitioner, petitioner and the respondent are Hindus. Their marriage was performed as per Hindu rites and customs at Muthalammanpettai on 17.11.1972. Out of their wedlock a girl baby was born to the respondent herein. Respondent left the matrimonial home in the year 1973 without any reason. The petitioner on several occasions directly and through Panchatars called the respondent to the matrimonial home. But the respondent refused to come to the matrimonial home. The respondent filed a maintenance case in M.C.No.2 of 1979 under Section 125 Cr.P.C., before Judicial Magistrate Court, Coonoor and after due enquiry, an amount of Rs.70/- for the respondent/wife and Rs.30/- for the daughter was ordered. Thereafter, she filed a collection petition in M.C.No.24 of 1982 under Section 127 of Cr.P.C., Based on the endorsement made by the petitioner/husband, the monthly maintenance was increased to Rs.100/- for the wife and Rs.45/- for the daughter.

3.1. Despite the order of restitution passed in O.P.No.33 of 1979 filed by the petitioner/ husband before the Sub-Court, Uthagamandalam, the respondent/ wife refused to come to the matrimonial home and refused to live with the petitioner/ husband.

3.2. The respondent/ wife got employment by stating that her



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husband is no more and she is a widow and got employment on 06.01.1988. The marriage of her daughter with one Ramachandran was performed on 04.02.1992 at Mettupalayam Badhrakaliamman Temple. The same was registered at Sub-Registrar Office at Coonoor on 07.08.1992 and in the said application, father's name is mentioned as late Natarajan. Thereafter, in the marriage invitation dated 07.08.1992, his name is not shown as father of the bride. In the Marriage Register column 4(a) reads "Full names of parents or guardian in marriage if any, it has been shown as "late Natarajan", when he is still alive. For his daughter Sathya, 2nd marriage was performed on 15.09.1994 with one Naganathan @ E.Kamaraj.

3.3. In the marriage invitation of his daughter, petitioner's name was not shown as the father of Sathya. The conduct of the respondent in declaring her living husband as dead is highly objectable and torturous. Because of the said declaration, petitioner was put to mental agony and shame. For the past three years, respondent has been openly proclaiming with the petitioner's relationship and says that she lost her husband and he is dead. The friends and relatives have been inquiring him with regard to the said details and as a result of which, he was put to unbearable mental agony and such an insulation amounts to cruelty of worst order. Therefore,



the respondent is liable to be divorced on the ground of cruelty.

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4. Per contra, the respondent/ wife would *inter-alia* contend that the allegations made in the petition against her are false and denied. In fact, the panchayatdars had time and again directed the petitioner/ husband to pay the maintenance to the respondent/ wife. The petitioner has been living in adultery with one Veni from 1971 onwards. Therefore, the respondent had no option but to live separately. She filed M.C.No.2 of 1979 before the learned Judicial Magistrate, Coonoor for maintenance and she filed petition for enhancement of maintenance. It was ordered on joint endorsement.

4.1. The petitioner never complied with the Order of the Court to pay the maintenance amount to the respondent/ wife or for his daughter. The allegation that the respondent left the society of the petitioner and refused to come back is false and self-serving. The petitioner had filed O.P.No.33 of 1979 before the Sub-Court, Uthagamandalam, for restitution of conjugal rights. On endorsement made by the respondent/wife stating that if her husband is found living with other woman, she is free to come out from the matrimonial home. As per the said Order, the respondent / wife went to the residence of the petitioner / husband and found petitioner living with the



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said Veni and she rightly came out from his residence.

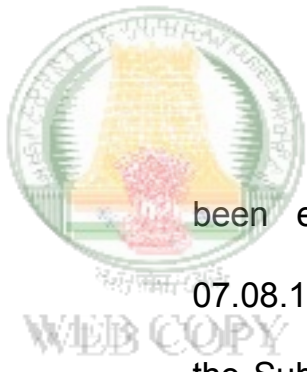
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4.2. She never described the petitioner as late Natarajan. In the marriage application of her daughter she stated that she is a destitute, abandoned by her husband, therefore, she secured Government employment on that ground. The marriage invitation of their daughter, petitioner's name is not printed due to his misconduct.

4.3. The petitioner concealed the fact that he is not only living in adultery with one Veni, but he has also married her and begotten four children through her. His two daughters are studying 10th and 8th standard and two sons are studying 7th and 6th standard respectively at Coonoor. The petitioner/ husband is therefore guilty of adultery and not as contended by him. In view of the repulsive conduct of the petitioner, he is not entitled to make any allegations of cruelty against her. On the other hand, the petitioner left the respondent and their daughter in abject poverty and the respondent/ wife was forced to seek employment in order to bring-up her daughter. The petition is unsustainable and the prayer for divorce is not maintainable in law.

5. At trial, to substantiate the petition details, five witnesses have

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been examined and eight documents were marked. Exs.P5 dated 07.08.1992 is the true copy of marriage extract of their daughter issued by the Sub-Registrar Office, Coonoor. On the respondent's side, respondent has examined herself as RW1 and four documents have been marked.

6. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times.

7. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.



8. It is relevant to refer the observations made by the Hon'ble Supreme Court in *V. Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

9. In *Samar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:



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“101. (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

10. The petition was filed by the petitioner on two grounds:

1) Cruelty, 2) Desertion

11. PW1/ Petitioner has spoken in line with the details of the petition stating that in the marriage extract of his daughter, his wife has mentioned him as late Natarajan when he is alive and in the marriage invitation of his daughter, his name is not printed as the father of the bride Sathya. These are the acts of cruelties put-forth by the petitioner and therefore, on that grounds he is entitled for divorce. Petitioner/ Husband would contend that Respondent/ wife secured employment in the State Government by stating that her husband died, and she is a widow.



12. The second ground for divorce namely desertion, PW1/ petitioner would state that the respondent/ wife deserted him in the year 1979 without reasonable cause and left the matrimonial home. Therefore, on the ground of desertion also he is entitled for Order of divorce.

13. As regards Ex.P5 marriage invitation of their daughter Sathya, wherein it is alleged by the petitioner that in Ex.A5 marriage extract, it is mentioned as late Natarajan. In this regard, PW2, one Benny who is said to have filled up application has been examined as PW2. He would depose that the details were given by the respondent. Marriage of the daughter had taken place in the year 1992.

14. From a careful perusal of evidence of PW2, it appears that he is neighbour of the petitioner Natarajan. Definitely the respondent has given incorrect statement that her husband was not alive. In this regard, had she stated that her husband is alive to the parents of the groom then naturally they would start to enquire about the details of separation and even they may enquire her husband. Respondent/ wife would state that because of the illicit intimacy of the petitioner with one Krishnaveni, she was forced to come out of the matrimonial home. Even PW1 would admit that he has been living with one Krishnaveni and he has begotton four children through

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the said Krishnaveni. Probably having led an unpleasant marital life, she would have stated so. In these circumstances, the said details cannot be taken as an act of cruelty on the part of the Respondent/ wife.

15. As regards the second ground put-forth by the petitioner that the name of the petitioner is not printed in the marriage invitation of their daughter, RW1/ respondent would state in her counter as well as in her evidence that because of the conduct of the petitioner, his name was not printed. The next ground urged by the petitioner is that the respondent by claiming that she is a widow got the Government job. In this regard, the Head Master of the concerned School has been examined as PW4. RW1 would depose that she got the job under destitute quota. These details have been affirmed by PW4 in support of the respondent. In fact, the petitioner got married the respondent in the year 1972, and as per evidence of RW1, they are in separation from June 1974 and in the year 1979, she had filed M.C.No.2 of 1979 before the Judicial Magistrate, Coonoor. Maintenance was ordered for the respondent and her daughter Sathya.

16. As regards the second ground – desertion, it is the evidence of PW1 that in 1973 itself, respondent deserted him and left the matrimonial

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home without reasonable cause. But, PW1 also would depose during his cross-examination that he is living with one Krishnaveni and four children were born to them. RW1 also would state that as the petitioner had illicit intimacy with one Krishnaveni, she was forced to come out of the matrimonial home and she would further add that in fact, her husband has deserted her and he has committed acts of cruelty upon her by having illicit intimacy with one Krishnaveni and utterly failed to maintain her and her daughter and left her in abject poverty.

17. In the given circumstances, taking into account the evidence of both sides, the acts of cruelty alleged by the petitioner / husband would not constitute act of cruelty. This Court is conscious of the fact that Hindu Marriage as per Vedic Philosophy is sanskar and is made in heaven as per Hindu Customs.

18. As regards the ground of desertion also, it is because of the acts of petitioner, the respondent/ wife was forced to come out of the matrimonial home. Therefore, based on both grounds as alleged, petitioner is not entitled for divorce and the matrimonial Court as well as First Appellate Court have dismissed the Original Petition filed by the petitioner/ husband in a right perspective.



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19. This Court does not find any infirmity or perversity in the findings of the First Appellate Court. This Court also does not find any good reason to upset the finding of the said Court.

20. Above being the position, this Civil Miscellaneous Second Appeal stands dismissed. Sequel to this, the judgment and decree granted by the District Court at Nilgiris in C.M.A.No.3 of 2001, dated 01.10.2001 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions, if any stands closed.

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Internet:Yes

Index :Yes/No

Speaking/Non speaking order

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To

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1. The District Court,
Uthagamandalam.

2. The Sub-Court,
Uthagamandalam.



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