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C.M.A(MD)No.669 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.669 of 2021

L.Muralidharan

...Appellant/Petitioner

Vs.

Krishnaveni

...Respondent/Respondent

Prayer:-This Civil Miscellaneous Appeal is filed under Section 19(3) of Family Courts Act, to set aside the judgment and decree made by the Family Court, Tirunelveli in H.M.O.P.No.88 of 2019, dated 22.01.2021 and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.K.Samidurai

For Respondent : M.P.Senthil



J U D G M E N T

(Judgment of the Court was made by the Hon'ble P.VELMURUGAN J.)

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This Civil Miscellaneous Appeal is filed against the Judgment and decree order, dated 22.01.2021 passed in H.M.O.P.No.88 of 2019 by the Family Court, Tirunelveli.

2. Husband is the appellant and the wife is the respondent herein. Husband filed H.M.O.P.No.88 of 2019 before the Family Court, Tirunelveli for divorce on the ground of cruelty and desertion.

3. The main contention of the appellant / husband before the Family Court is that the marriage between them was solemnized on 28.11.1999 as per the Hindu Customs and Rights. After the marriage, they were living in Elees Nagar at Madurai and they blessed with male child on 04.06.2001. The respondent / wife has left the matrimonial home on 23.06.2003 and they are living separately since then. In spite of repeated request, the respondent / wife refused to return back the matrimonial home. Therefore, the appellant has filed a petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act seeking divorce on the ground of cruelty and desertion.



4. The respondent / wife filed counter denying the averments made in the petition. She also denying the contention that she was driven away from the matrimonial home along with children.

5. During trial, petitioner / husband was examined as P.W.1 and marked Ex.P1 to Ex.P7. The respondent / wife was examined as R.W.1 and marked Ex.R1 to Ex.R6.

6. On consideration of both oral and documentary evidence, the learned Family Court Judge, Tirunelveli has dismissed the petition stating that the petitioner has not proved the grounds raised for divorce. Aggrieved against the said judgment and decree, the appellant / husband has preferred the present appeal.

7. The learned counsel for the appellant would submit that the marriage between the appellant and the respondent was solemnized on 28.11.1999 as per the Hindu Customs and Rights. Whereas, the respondent / wife left the matrimonial home on 23.06.2003 and taking much efforts, the respondent did not come to the matrimonial home and therefore, he filed a petition for divorce on 25.02.2019. The appellant has made several attempts for reunion, she did not come. The respondent in her evidence



before the trial Court she admits that she afraid to go and live with the appellant since the appellant/husband is working as driver. The said admission is the best piece of evidence and even after 22 years, the respondent / wife is not willing to live with the appellant. She herself voluntarily deserted the appellant. The learned Family Court Judge has failed to consider the admission made by the respondent/wife, dismissed the petition. Therefore, the order passed by the learned Family Court Judge is liable to be set aside by allowing the Civil Miscellaneous Appeal.

8. The learned counsel for the respondent would submit that earlier the appellant has filed two more applications for the same ground and those applications were dismissed. Further, the appellant has not proved the ground of desertion that the respondent left the matrimonial home voluntarily without any valid reason. The respondent filed an application for restitution of conjugal rights and she was ready and willing to join with the appellant, only the appellant alone has not taken any effective steps to take back the respondent. Hence, the trial Court has rightly appreciated the oral and documentary evidence and dismissed the petition.



9. We have heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

10. It is seen from the records that the relationship of the parties is not in dispute. The respondent / wife left the matrimonial home on 23.06.2003 and she is living separately is not in dispute. Initially, the application for divorce was filed on 22.05.2009 and the divorce is seeking on the ground of desertion. If any spouse left the matrimonial home without any valid reason and there was no reunion for the period of two years, they are entitled to seek for divorce on the ground of desertion. Though, in this case, the husband filed a divorce on the ground that the wife left the matrimonial home without any valid reason and she is living separately for more than two years and therefore, he is entitled for divorce.

11. R.W.1 / respondent in her evidence has clearly stated that while pending the divorce application, the Family Court Judge has directed the parties to appear before the Court and asked her that whether she is ready and willing to live with the petitioner / husband and for that, she has stated that she was afraid because her husband is working as a driver and causing accident. The fact remains that even at the time of marriage, the appellant was by profession driver and hence, the reasons assigned by the



respondent is not valid and tenable. Since the respondent is not willing to join with the petitioner/husband and they are living separately for more than two years, this Court finds that respondent/wife left the matrimonial home voluntarily on her own volition without any valid reason, the appellant is entitled to get the divorce on the ground of desertion.

12. Accordingly, this Civil Miscellaneous Appeal is allowed and the judgment and decree of the Family Court, Tirunelveli in H.M.O.P.No.88 of 2019 is set aside. The marriage solemnized between the appellant and the respondent on 28.11.1999 is dissolved. No costs.

(P.V.,J.) (L.V.G.J.,)

12/11/2025

Index : Yes/No.

Internet : Yes/No.

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To:

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- 1.The Judge, Family Court,
Tirunelveli.
- 2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.
and
L.VICTORIA GOWRI,J.
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