



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 21.03.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA**

**C.M.A(MD)No.534 of 2019
and
C.M.P(MD)No.6253 of 2019**

Shally Roselin

... Appellant/Petitioner

.Vs.

Aaron Durairaj

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act praying this Court to set aside the fair and decretal order made in I.D.O.P.No.149 of 2017, dated 26.11.2018 on the file of Family Court, Tirunelveli.

For Appellant : Ms.K.Shwathini
for M/s.G.Prabhu Rajadurai

For Respondent : Mr.K.Samidurai



WEB COPY

JUDGMENT

DR.G.JAYACHANDRAN., J
AND
R.POORNIMA.,J

The Civil Miscellaneous Appeal by the wife being aggrieved by the dismissal of her petition for divorce filed on the ground of cruelty.

2.The brief facts of the case is that:

Shally Roselin, the appellant and Aaron Durairaj, the respondent were married as per Christian rites and customs on 29.12.2003. The appellant is a Teacher by profession serving in the management school under CSI, Tirunelveli Diocese. Two children were born to them and thereafter their marriage relationship has broken down leading to filing of a petition for divorce by the wife alleging that she had been subjected to cruelty, since the date of marriage. The husband is suffering from serious ailment and used to force his wife and her parents to part away with jewels and money to meet his medical expenses. Due to his chronic illness, the husband used to be in the hospital at least six to seven days in a month and as a dutiful wife, she used to take care of him. But due to



WEB COPY

his guilty conscious and suspicious mentality, her husband had tortured her both physically and mentally. She was admitted in the hospital for the injury sustained in the attack for a period of three days between 13.8.2026 to 16.8.2016. Again on 14.11.2026, she was physically assaulted by her husband on 5.4.2017. He attempted to push her from her moving car. The said allegation was vehemently opposed by the husband-respondent in his counter, particularly, the allegation regarding cruelty and ill health was vehemently denied. The respondent husband contended that he is serving as a Reverend in CSI Saint Immanuel Church, cheranmahadevi and earning a monthly income of Rs.39,000/- and also serving as correspondent of seven schools. He had never forced his wife to give money for his medical expenses. Further he is hale and healthy and carrying on his life as Reverend and Correspondent of seven schools. The real dispute between them was the attitude of the Petitioner/wife who always used to frequently visit her parents house without information and consent. The parents of the appellant/wife are making hindrance to their reunion.

3. The Court below on considering the evidence of the Petitioner/wife and the evidence of the husband/Respondent and the documents relied on either side,



WEB COPY

found that the allegation about the health condition of the respondent not proved.

The allegation regarding cruelty and physical assault not substantiated by documentary evidence. Hence the Petition for divorce was dismissed vide order, dated 26.11.2028. Being aggrieved, the present appeal is filed and pending for consideration for nearly six years. In the meanwhile, the respondent had thought it fit to file an application for restitution of conjugal rights and had preferred I.D.O.P.No.132/2019, on the file of Family Court, Tirunelveli. The wife in turn had filed Domestic Violence Act Petition No.14 of 2019 before the learned Judicial Magistrate No.I, Tirunelveli. While the Petition filed by the respondent husband for restitution of conjugal rights dismissed for default on 5.1.2021, it appears that DVA Case is still pending. The case details would show that DVA case has been adjourned time to time and thereafter referred to mediation through Lok Adalat, but the same failed.

4.The learned counsel appearing for the appellant submitted that the respondent husband submitted that the trial Court ought to have taken note of the fact that the respondent husband has not placed any justification for his withdrawal from the conjugal relationship even after the Petitioner has failed to



WEB COPY

place medical records and other documents to prove the cruelty. It is contended by the learned counsel that the respondent had no intention to join with his wife and lead a happy married life. The petition filed for restitution of conjugal rights is after the filing of application under the Domestic Violence Act and the averments made in the Petition would go to show that he by making false allegations of adultery want to tarnish the reputation of the appellant/wife and his intention is not to meant the broken relationship reunited, as obviously seen from his averments. Therefore taking note of the subsequent events, this Court shall interfere with the order of the trial Court and allow the appeal.

5. The learned counsel appearing for the respondent submitted that the allegations in the divorce petition found to be false and baseless. Having withdrawn from the marital society voluntarily for the reasons best known and deprived the right of the father having the custody of the children is adverse to the plea raised by the appellant. The Petition filed for restitution of conjugal rights and after institution of Domestic Violence Complaint with false and imaginary allegations, the Petition for restitution of conjugal rights is filed with a bonafide intention to join with the appellant and lead a peaceful marital life. Whiles so, after



WEB COPY

realising that the appellant is not inclined to restore the broken relationship, he did not pursue the Petition further and got it dismissed on 5.1.2021. It is further submitted that the averments in the Petition filed for restitution of conjugal rights should not be read in isolation, but to read along with the Petition filed by the appellant under the Domestic Violence Act and the counter filed by the respondent husband in that case.

6. This Court after giving anxious consideration to the rival submissions and scrutiny of the records finds that the marriage between the parties which was solemnized on 29.12.2003 sustain till 2016. In the meanwhile, two children were born to them and they are now almost about to reach the age of majority. The appellant herein want to dissolve the marriage in the process known to law. Further she was not able to convincingly place materials to prove the allegation of cruelty before the trial Court. The filing of application for restitution of conjugal rights in I.D.O.P.No.132 of 2019 and the subsequent dismissal of it for default about four years ago, would also show that the respondent is no more inclined to restore the marital relationship. In the said circumstances, it is necessary to look at the averments made by the respondent in his application for



WEB COPY

restitution of conjugal rights. It is surprise to note that the respondent has made allegation against the appellant referring to her fidelity. He had specifically alleged that the appellant is living in adultery with one named person and only at his instigation, she filed I.D.O.P.No.149 of 2017. However the said allegation or averment was not found in the counter filed by the respondent in I.D.O.P.No.149 of 2017. The allegation of adultery and the allegation of instigation by the adulteror found to be a newly invented story ventured to prove through trial and got his O.P dismissed for default on 5.1.2021.

7. This Court considering the subsequent events finds that the allegation of the respondent against the appellant referring to her fidelity amounts to cruelty and suffice to dissolve the marriage taking note of the further circumstances that they are living separately since 2016 and no steps have been taken for their reunion.

8. As a result, the Civil Miscellaneous Petition is allowed setting aside the order made in I.D.O.P.No.149 of 2017, dated 26.11.2018, on the file of Family Court, Tirunelveli. The marriage solemnized between the appellant and respondent



WEB COPY

on 29.12.2003 at Military Line Christ Church, Palayamkottai according to Christian rites and customs is dissolved by a decree of divorce. No costs. Consequently connected Miscellaneous Petition is closed.

[G.J.,J.] [R.P.,J.]
21.03.2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Judge,
Family Court,
Tirunelveli.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN

C.M.A(MD)No.534 of 2019
and
C.M.P(MD)No.6253 of 2019

21.03.2025