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C.M.A(MD)No.762 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.762 of 2021

Jeyanthi

...Appellant/Petitioner

Vs.

Mahendran

...Respondent/Respondent

Prayer:- This Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, to set aside the order dated 30.03.2021 passed in O.P.No.13 of 2020, on the file of the Family Court, Theni by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.G.Aravinthan

For Respondent : Mr.S.Siva Thilagar



J U D G M E N T

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

This Civil Miscellaneous Appeal is filed against the Judgment and decree, dated 30.03.2021 passed in O.P.No.13 of 2020 by the Family Court, Theni.

2. Wife is the appellant and the husband is the respondent herein. Wife filed O.P.No.13 of 2020 before the Family Court, Theni for divorce on the ground of cruelty and desertion.

3. The main contention of the appellant / wife before the Family Court is that the marriage between them was solemnized on 05.06.2011 as per the Hindu Customs and Rights. After the marriage, they are living at Madurai Andalpuram and they blessed with female child on 31.05.2012. Thereafter, the spouses shifted their residence to Nagalapuram. The respondent indulged in card playing and used to assault and abuse the petitioner. The appellant suffered with mental agony due to the act of cruelty committed by the respondent/husband and she became ill-health. On 06.04.2016, the petitioner issued a lawyer notice demanding divorce.



The respondent did not reply. No possibility for the petitioner to live with the respondent. 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 / husband filed counter denying the averments made in the petition. He further stated that he met with an accident on July 2014 and he has taken three months bed rest. During the time, the petitioner / wife left away from the matrimonial home. The petitioner is living separately from July 2014 and she refused to live with the respondent.

5. During trial, petitioner / wife was examined as P.W.1 and one Tmt.Jeyalakshmi was examined as P.W.2 and marked Ex.P1 to Ex.P3. The respondent / husband was examined as R.W.1 and one Soundararajan and Elangumaran @ Balasubramani were examined as R.W.2 and R.W.3 and no document was marked.

6. On consideration of both oral and documentary evidence, the learned Family Court Judge, Theni has dismissed the petition stating that the petitioner has not proved the allegation of desertion. As far as the



desertion on the ground of cruelty is concerned, the main contention raised by the learned counsel for the appellant is that the respondent demanded dowry and caused mental agony as well as the physical cruelty, therefore, the appellant has filed a petition seeking divorce on the ground of cruelty. But the appellant has not examined any independent witness, except the appellant and her mother, to prove the allegation of cruelty. Therefore, the petition filed for divorce on the ground of cruelty was dismissed on the ground that the petitioner has not proved the allegation of cruelty. Aggrieved against the said judgment and decree, the appellant / wife has preferred the present appeal.

7. The learned counsel for the appellant would submit that the mother of the appellant has clearly spoken about the demand of dowry and no independent witness can be expected to prove the allegation of this nature. Since the allegation made against the spouse within the four wall, no independent witness can be expected to establish the alleged cruelty. Though the appellant sent a legal notice, for which, the respondent did not send any reply, therefore, the allegations levelled against the respondent in the notice was not denied by the respondent / husband, the learned Judge, Family Court has failed to consider the pleadings, oral and documentary evidence, dismissed the petition on the ground that the allegation of cruelty was not proved.



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8. The learned counsel for the respondent would submit that the appellant is not entitled for getting decree of divorce on the ground of desertion since two years was not completed from the date of desertion. However, the cruelty is concerned, though the appellant has not examined any independent witness, the respondent examined R.W.2 for cruelty aspect, who is the independent witness and he is the well-wisher and also participated in all the ceremonies in their family. He has clearly stated that at the time of marriage, the respondent never demanded any money and all the marriage expenses are beared by the respondent and there was no demand of dowry. The respondent through the independent witness proved that only the mother of the appellant is cause for misunderstanding between the spouses and there was no cruelty and the trial Court has rightly appreciated both oral and documentary evidence dismissed the petition and there is no merit in the appeal and prays for dismissal of the appeal.

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

10. Admittedly, the marriage between the appellant and the respondent was solemnized on 05.06.2011 as per the Hindu Customs and



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Rights and they blessed with female child on 31.05.2012. Even as per the allegations in the petition, desertion took place in the month of July, 2013, whereas, the petition for divorce on the ground of desertion was filed only on 14.06.2016. A perusal of the averments made in the petition that two years not completed from the date of desertion on the date of filing petition for divorce. Therefore, the trial Court has rightly dismissed the petition for divorce on the ground of desertion. As far as cruelty is concerned, though the appellant mainly stated that the respondent caused physical and mental cruelty by way of demanding dowry, whereas, the appellant has not examined any independent witness, but, the respondent has examined R.W. 3, who is the independent witness and he has clearly spoken that at the time of marriage and after the marriage, the respondent did not demand any dowry and the appellant has not proved that the respondent demanded dowry. In the case of matrimonial matter, no independent witness can be expected. However, when the appellant has made a specific allegations about the demand of dowry, the well-wisher of the family members of the respondent has clearly deposed that the respondent has not demanded any dowry and he has not committed physical and mental agony. Therefore, the appellant has to prove that she was subjected to cruelty by demanding dowry or otherwise.



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11. A reading of the material records shows that the appellant has not proved the allegations made in the petition by examining any independent witness and therefore, there is no perversity in the order passed by the learned Family Court Judge, Theni and there is no merit in the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree passed in O.P.No.13 of 2020 by the learned Family Judge, Theni. No costs.

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

12/11/2025

Index : Yes/No.

Internet : Yes/No.

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To:

The Family Court,
Theni.



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and
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