



C.M.A.(MD)No.927 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.927 of 2022
and
C.M.P.(MD)No.9161 of 2022**

M.Umajothi

... Appellant

Vs.

T.Saravanan

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under section 19 of Family Court Act, to set aside the judgment and decreetal order passed Original Petition No.202 of 2021 dated 11.07.2022 on the file of the Family Court, Sivaganai.

For Appellant : Mr.M.Venkadehsh Kumar

For Respondent : No appearance



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JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard the learned counsel for the appellant. The respondent has been served. But he has not chosen to enter appearance either in person or through counsel. It is seen that the respondent remained *ex parte* before the Court below. The respondent has not come forward to contest the case before this Court also.

2.The marriage between the appellant and the respondent was solemnized on 08.04.2009 at Vaiapuri Patti as per Hindu rites and customs. They lived together for about six years. In March 2015, differences between the parties reached a breaking point and the appellant left the matrimonial home. The appellant claims that she was subjected to cruelty. But then, on account of the mediation by the elders of the village, she desisted from giving any police complaint. It appears that there was an agreement between the parties and the respondent had agreed for divorce by mutual consent. Agreement dated 06.01.2021 was entered into in this regard.



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3.The appellant thereafter filed H.M.O.P.No.202 of 2021 on the file of Family Court, Sivagangai seeking divorce on the grounds of cruelty and desertion. The appellant examined herself as P.W.1. She marked the marriage invitation card as Ex.P1 and the divorce agreement as Ex.P2. The Court below after considering the evidence on record held that the appellant failed to prove cruelty and hence, she is not entitled to divorce. Challenging the order dated 11.07.2022 dismissing her divorce petition, this civil miscellaneous appeal has been filed.

4.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to set aside the impugned order and allow the civil miscellaneous appeal as prayed for.

5.We went through the testimony of P.W.1. She has narrated the instances of cruelty meted out to her. This testimony of the appellant has not been challenged in cross examination. The Court below in our view ought to have gone by the unrebutted testimony of the appellant.



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6.It is also seen that no child was born through the marriage. The parties are remaining separate for more than ten years. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 497 (Shri Rakesh Raman Vs Kavita)** had held as follows:

“20. ...

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

21. ... We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”



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7.We are satisfied that a case of cruelty has indeed been made out.

The impugned order is set aside. The marriage that took place between the appellant and the respondent on 08.04.2009 at Vaiapuri Patti stands dissolved. This civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
30.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-
The Family Court,
Sivagangai.



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**G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.**

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