



CMA(MD).No.854 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.01.2025

Pronounced on : 19.03.2025

CORAM

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

**C.M.A.(MD)No.854 of 2022
and
C.M.P.(MD)No.12752 of 2022**

Muthulakshmi

.... Appellant /
Respondent

Vs.

Murugan

... Respondent /
Petitioner

PRAYER : Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Court Act, 1984 to set aside the fair and decreetal order dated 06.06.2022 made in HMOP.No.40 of 2020 before the Family Court, Thirunelveli.

For Appellant : Ms.Vilma Raxy

For Respondent : Mr.A.Rajaram



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JUDGMENT

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(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2.The marriage between Murugan and Muthulakshmi was solemnized on 08.06.2016 at Arulmigu Salaikumara Swamy Kovil, Tirunelveli as per Hindu rites and customs. For Murugan this was his second marriage. His first marriage with one Padmavathy @ Alamelu was dissolved as per law. The parties appear to have lived together under one roof for over 3 years. No child was born through the wedlock. After the relationship between the parties came under strain in August 2019, Muthulakshmi has been residing alone in the upstairs portion. Alleging that the conduct of Muthulakshmi amounted to cruelty, Murugan filed HMOP.No.40 of 2020 on the file of Family Court, Tirunelveli for divorce. Muthulakshmi filed HMOP.No.2 of 2020 before the same Court for restitution of conjugal rights. Murugan examined himself as PW1. His brother Sivakumar was examined as PW2. Ex.P1 to EX.P17 were marked. Muthulakshmi examined herself as RW1.



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Ex.R1 to Ex.R7 were marked. After considering the evidence on either side, the Court below vide common order dated 06.06.2022 allowed Murugan's petition for divorce and dismissed Muthulakshmi's petition for restitution. Challenging the same, Muthulakshmi has filed CMA(MD)No.854 of 2022 questioning the order allowing HMOP.No.40 of 2020 filed by her husband Murugan. Murugan sought divorce on the following grounds:

a) He married Muthulakshmi so that not only he can lead a happy life but also take care of his aged mother; Muthulakshmi refused to serve his mother. She also insisted that he should drive away his mother.

b) His further allegation is that Muthulakshmi would not cook any food for the family. In support of this allegation, he examined himself as well as his brother. The Court below however chose to believe the husband's testimony and grant relief.

3.Though we were inclined to consider the contentions advanced by the learned counsel appearing for Muthulakshmi / appellant herein, our hands are tied. What is impugned before us is actually a common order dated 06.06.2022 passed by the learned Family Judge, Tirunelveli. By the said order, the Court below not only allowed Murugan's divorce



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petition but also dismissed Muthulakshmi's petition for restitution of conjugal rights. In the very nature of things, Muthulakshmi was obliged to have filed two appeals. She has not done so. Even if we wanted to overlook this technical lapse on her part, in the CMA prayer, Muthulakshmi wanted us to set aside only the order made in HMOP.No. 40 of 2020. The CMA prayer is silent as regards the restitution petition. If only Muthulakshmi had also prayed for setting aside the order made in HMOP.No.2 of 2020, may be we could have considered the issue on merits. It cannot be that the relief of divorce sought by the husband is denied even while rejecting the claim for restitutionary relief by the wife. The result will be that the parties would remain separate and the marital tie would remain intact. Such a situation is inconceivable. Since the appellant has not sought setting aside of the common order in *toto*, we have to reluctantly sustain the impugned order. We take note of the fact that Muthulakshmi is presently residing in the upstairs portion. It appears that she had also earlier made a maintenance claim. Muthulakshmi cannot be illegally dispossessed merely because this CMA has been dismissed. She has to be dealt with only in the manner known to law.



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4.It is well settled that the expression “wife” would also include the “divorced wife”. Therefore, the claim for maintenance also will have to be dealt with independently. We have declined to interfere with the divorce order only on a technical ground and not on merits.

5.With these observations, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
19.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Family Court,
Thirunelveli.



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AND
R.POORNIMA, J.

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