

C.M.S.A.(MD)No.1 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 05.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.1 of 2015

R.Samiyappan

... Appellant

Vs.

Tmt.Parameswari

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Order 28 of Hindu Marriage Act r/w. Section 100 of Code of Civil Procedure , to set aside the fair and decretal order passed in C.M.A.No.20 of 2011 dated 31.07.2014 on the file of the learned District Judge, Karur.

For Appellant : Mr.M.Punitha Deva Kumar

For Respondent : Mr.K.Govindarajan



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JUDGMENT

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This Civil Miscellaneous Second Appeal is filed as against the fair and decretal order dated 31.07.2014 made in C.M.A.No.20 of 2011 dated 31.07.2014 on the file of the learned District Judge, Karur.

2. For the sake of convenience, the parties are referred to, as per their rank before the Trial Court.

3. The brief facts in the nutshell are as follows:

(i) The husband is the petitioner in H.M.O.P and the wife is the respondent therein. The petitioner husband has filed a petition for divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, on the grounds of cruelty.

(ii) On 23.08.1991, the marriage between the petitioner and the respondent was conducted in the presence of elders and relatives in accordance with Hindu Rites and Customs. Out of wedlock, they were blessed with a daughter, namely Nevetha and a boy, namely Rahul. The petitioner was employed as a permanent labour in M/S. L.G.Steel Rolling



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Mills. Later, the same was locked out and hence he got engaged in Super Spinning Mills (P) Ltd., for a lesser salary. The respondent had never been kind and affectionate with the petitioner and on enquiry about the same by the petitioner, the respondent wife disclosed that she was given in marriage to him against her wishes and she was in love with another person before marriage.

(iii) Despite the said disclosure, the petitioner husband continued living with the respondent, holding onto the hope that, in due course of time, the respondent wife would recognize the nuances of her matrimonial life. However, the respondent wife without respecting the petitioner, led a life to her own whims and fancies. Pointing out her involvement in the Women Self Help Group, she went to the extent of neglecting her children. As a result of which indifference crept into the matrimonial life. All the requests made by the petitioner husband to lead a simple life and take care of the children were not heeded to by the respondent wife.

(iv) Further, she was habitual in abusing the petitioner with filthy and unparliamentary language in front of strangers. The petitioner, despite being patient with the respondent's atrocious behavior, endured her mistreatment. However, in May 2004, without informing him, the respondent left her matrimonial home and went to her maternal home. She



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deserted him for more than two years, and all the expectations of the petitioner husband that she would return to their matrimonial home in due course of time were unfulfilled. In March 2007, the petitioner husband made efforts for reconciliation through one Arumugam, but the respondent wife categorically refused to reconstitute her conjugal rights with the petitioner. Hence, the petitioner husband had filed this petition for divorce.

(v) The respondent wife filed a counter, refuting all the allegations made by the petitioner in his petition for divorce. She contended that the petitioner had been leading an extravagant lifestyle, spending excessively without taking care of the educational expenses and other day to day expenditures related to their Matrimonial life. It was only the respondent's parents who took care of their children's educational expenses. However, after the marriage of the respondent's brother in 2004, the respondent's maternal relatives, more particularly her brother and parents were no longer able to provide further financial support to the family. As a result of which, on the instigation of his family, the petitioner husband continuously inflicted heinous domestic violence on the respondent wife. Finally, in June 2004, he forcibly chased her out of their matrimonial home. With the sole intention of rescuing her life and that of her children, the respondent wife had to live in her parents house. The respondent wife took full



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custody of the children of her children and managed to support them by engaging in various forms of work. All of the expectation of the respondent wife that the petitioner husband would correct his behavior had gone in vain. The respondent wife never deserted the petitioner at any point of time; it was the petitioner husband who chased her away from the matrimonial home. Therefore, the petition for divorce has to be dismissed.

(vi) The Trial Court examined two witnesses on the side of the petitioner and no documents were marked. The respondent was examined as R.W.1 and one document was marked as Ex.R.1.

(vii) On the basis of the arguments made by the respective parties, the evidence deposed and the materials available on record, the Trial Court proceeded to conclude that the petitioner husband had miserably failed to prove the factum of cruelty that led to their separation and consequently, the filing of the petition for divorce. The Trial Court had categorically concluded that the petitioner husband failed to provide appropriate oral and documentary evidence to prove that his marriage had failed due to the cruelty inflicted by the respondent wife, and consequently, dismissed the petition for divorce on 18.09.2010. The First Appellate Court after considering the arguments made by both parties and the materials available on record, had considered the evidence of P.W.1 and concluded that the



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petitioner himself was not at all interested in taking back his wife and children.

(viii) Relying on the evidence of P.W.1, P.W.2 and R.W.1, the First Appellate Court concluded that it is the respondent wife who had been taking care of the children through her hard work all through the years following their separation. As per Ex.R.1, which was marked through RW.1 by which the learned Court concluded that the petitioner husband had sought to reconstitute her conjugal rights with the respondent wife before the All Women Police Station. However, it was the petitioner husband who had failed to take deliberate steps to reunite with his family. On this basis, the First Appellate Court found no reason to interfere with the decree of dismissal passed by the learned Trial Court. Challenging the same, the present civil miscellaneous appeal has been filed before this Court.

4. The learned Counsel appearing for the appellant categorically submitted that the petitioner husband has been separated from his wife for over 20 years and now he is 62 years old. Having been separated for such a long period, he is not inclined to reunite with this wife anymore at any point of time in the future. Further, the respondent wife does not seem to have any intention of reconciling with him. Both of their children are



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already married, settled, and independently taking care of themselves.

Therefore, the question of reuniting with the respondent wife does not arise and therefore, the learned Counsel pressed for allowing the appeal.

5. Per contra, the learned Counsel for the respondent categorically contended that it was only at the instance of the petitioner husband, the respondent wife was chased away from her matrimonial home and she had taken diligent steps to reunite with her husband, despite him negating his matrimonial duties towards maintaining herself and his children. However, in a society like the one she resides today, she is not prepared to accept a decree of divorce from this Court. She is ready to live with her husband and therefore, the learned Counsel pressed for dismissal of the appeal.

6. The learned Counsel appearing for the appellant categorically responded that compelling the petitioner, who is unwilling to live with the respondent, would itself amount to cruelty and therefore, sought for allowing this appeal.

7. However, I am of the considered view that a woman carries forward her matrimonial duties with great responsibility and patience in

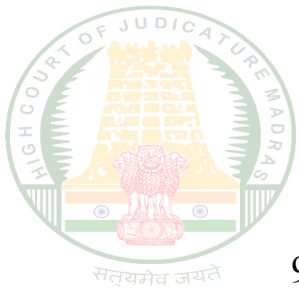


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every walk of life. In the instant case, the respondent wife has diligently cared for her two children, despite being atrociously chased away from her matrimonial home. She depended on her brother and engaged herself in small work in the village. Having successfully settled her two children by arranging their marriages and allowing them to live independently, the respondent wife, now in her old age, is willing to rest under her husband's shadow. Both the Trial Court and the First Appellate Court have found the bonafides of the respondent wife, recorded the same, and had held that there is no ground to allow the petition for divorce on the grounds of cruelty.

8. In the instant case, our main endeavour would be to define the broad parameters of the concept of “mental cruelty”. Thereafter, this Court would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.



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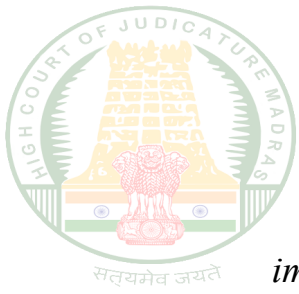
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9. The term “mental cruelty” has been defined in the Black's Law Dictionary (8th edition, 2004) as follows:-

“Mental cruelty - as a ground for divorce, one's spouse course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”

10. The concept of cruelty has been summarized in Halsbury's Laws of England (Volume 13, 4th edition Para 1269) as follows:-

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the



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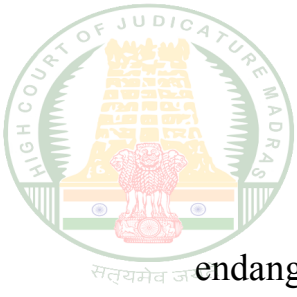
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impact of the personality and conduct of one spouse in the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainants capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty, but it is an important element where it exists.”

11. In **24 American jurisprudence**, 2nd edition, the term “mental cruelty” is defined as follows:-

“Mental cruelty as a course of unprovoked conduct towards one's spouse, which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse.”

12. Since the petition for divorce has been filed precisely on the grounds of cruelty, I am of the considered view that the Appellant had miserably failed to prove that the conduct of the respondent would



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endanger him in case of reunion with her. Hence, I do not find any merit in interfering with the concurrent judgments delivered by the Trial Court and the First Appellate Court. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

05.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
jbr

To

1. The District Judge, Karur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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