



C.M.A(MD) Nos.200 of 2023 & 508 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.01.2025

Pronounced On : 19.03.2025

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MS.JUSTICE R.POORNIMA**

C.M.A(MD) Nos.200 of 2023 & 508 of 2024

In CMA(MD)No.200 of 2023 : -

Sathish ... Appellant

VS.

Renuka ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to set aside the judgment and decree dated 30.12.2021 in HMOP No.328 of 2018 on the file of the Family Court, Karur.

For Appellant : Mr.N.Balakrishnan

For Respondent : Mr.R.Mathiyalagan

In CMA(MD)No.508 of 2024 : -

Sathish ... Appellant

VS.

Renuka ... Respondent



C.M.A(MD) Nos.200 of 2023 & 508 of 2024

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to set aside the judgment and decree dated 30.12.2021 in HMOP No.26 of 2019 on the file of the Family Court, Karur.

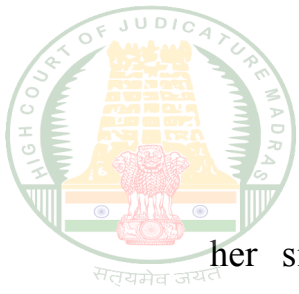
For Appellant : Mr.N.Balakrishnan

For Respondent : Mr.R.Mathiyalagan

COMMON ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The marriage between Sathish and Renuka was solemnized on 10.09.2017 at Venkatramanasamy Temple, Thanthondrimalai, Karur. Sathish is employed as a temporary computer operator in the office of the District Collector, Karur. Renuka is employed as a government school teacher. Their marital relationship came under strain and they have been living separately. Sathish filed HMOP No.328 of 2018 on the file of the Family Court, Karur seeking dissolution of the marriage on the ground of cruelty on the part of the wife. Renuka filed HMOP No.26 of 2019 seeking restitution of conjugal rights before the Family Court, Karur. Sathish examined himself as PW.1 and marked Exs.P1 to P9. Renuka examined herself as RW.1 and one Mohammed Sultan was examined on



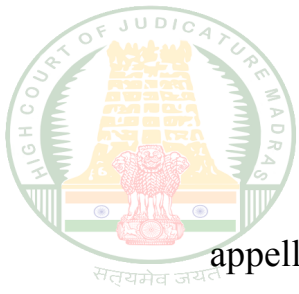
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her side as RW.2. No evidence was marked on her side. After considering the evidence on record, the learned Trial Judge allowed HMOP No.26 of 2019 filed by the wife and dismissed HMOP No.328 of 2028 filed by the husband. Aggrieved by the same, Sathish filed these civil miscellaneous appeals.

2.The learned counsel appearing for the appellant submitted that the parties were together for hardly five days. No children was born through the wedlock. For the last seven years, they have been living separately. Their marital relationship has irretrievably broken down and this by itself would constitute cruelty. The learned counsel for the appellant called upon this Court to snap the marital tie by reversing the order of the court below and by allowing these appeals.

3.Per contra, the learned counsel for the respondent submitted that the impugned order does not call for interference.

4.We carefully considered the rival contentions and went through the evidence on record. The point for determination is whether the



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appellant had proved that the respondent was guilty of cruelty. It is well settled that divorce cannot be granted for the asking unless it is by mutual consent. Onus is on the appellant who has sought to dissolve the marriage to prove that cruelty has been committed by the respondent. HMOP No.3288 of 2018 was filed under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. We carefully went through the petition averments and also the evidence of PW.1. As rightly observed by the court below, the petitioner has not made any major allegation against the respondent. The appellant examined himself as PW.1. He has not examined any other witness on his side. Non-examination of independent witnesses has seriously undermined the petitioner's case. For instance, he stated that when elders of the family and relatives were sent to resolve the issue, they were insulted by the respondent. If that be so, at least one of the persons could have been examined on his side. The appellant had not done so. Even Exs.P5 and P6 are only receipts issued by the jurisdictional police. The receipts merely contain an endorsement. In the receipt, it has been mentioned that the parties are remaining separate on account of differences of opinion. Admittedly, the respondent is working as a government school teacher. She was transferred from



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Karur to Neerpathurai. Therefore, the respondent cannot be blamed for not staying in Karur. It is well settled that an employee cannot be charged with cruelty or separation or denying conjugal company only on the ground that she had been living in a place different from the place of the husband.

5.The case of the respondent is that soon after the marriage, the mother of the appellant compelled her to hand over the jewelry weighing around 30 sovereigns so as to keep the same in a bank locker. That the demand was made has been admitted by the appellant. The respondent refused to part with her jewels. It is well settled that the jewels given at the time of marriage by the bride's family are the exclusive property of the wife and that she cannot be called upon to part with the same. Applying the principle of preponderance of probability, we conclude that it is this incident that led to the break down of the relationship between the parties. We are of the view that the wife cannot be blamed for the ensuing outcome.



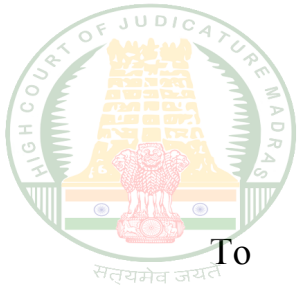
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6.It is true that the parties are remaining separate for the last several years. We are equally conscious that the Hon'ble Supreme Court in such cases held that such a long separation by itself would constitute cruelty and that divorce can be granted. But then, such an approach can be adopted where both the parties have not at all been united. If in this case, divorce is granted on the ground of separation and the marital tie is snapped, the appellant will be taking advantage of his own wrong. The respondent cannot be attributed with any blameful conduct. When it is not our finding that her conduct amounted to cruelty, it would not be fair to grant divorce at the instance of the appellant. After a careful appreciation of the evidence on record, we are of the view that the approach adopted by the court below is justified and sound. Interference with the same is not warranted.

7.These civil miscellaneous appeals are dismissed. No costs.

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

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The Family Court, Ramanathapuram.



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AND
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