



C.M.A.(MD)No.1092 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.01.2025

CORAM

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

C.M.A.(MD)No.1092 of 2018

and

C.M.P.(MD)No.11159 of 2018

and

C.M.P.(MD)No.579 of 2019

Maharasi @ Santhi

... Appellant

Vs.

Muthu Ganesh

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under section 19 of Family Court Act, to allow the civil miscellaneous appeal by setting aside the judgment and decree passed in H.M.O.P.No.227 of 2015 on the file of the Family Court, Tirunelveli, dated 19.02.2018.

For Appellant : Mr.R.T.Arivukumar,
For Mr.N.GA.Nataraj.

For Respondent : Mr.S.Navamani



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JUDGMENT

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

Heard both sides.

2.The marriage between the appellant and the respondent was solemnized on 05.09.2005 in the house of the appellant at NGO Colony, Tirunelveli as per Hindu rites and customs. It is not in dispute that the marriage was not consummated. Due to some difference of opinion, the parties separated on the very second day. Thereafter, the wife / appellant herein filed H.M.O.P.No.136 of 2008 before the Sub Court, Tirunelveli seeking restitution of conjugal rights. The husband / respondent filed H.M.O.P.No.199 of 2009 seeking dissolution of marriage. While the petition filed by the wife was allowed and the petition filed by the husband was dismissed. Aggrieved by the same, the husband / respondent herein filed C.M.A.(MD)Nos.11 and 12 of 2014 before this Court. For reasons that are not quite clear, both the civil miscellaneous appeals were dismissed as withdrawn. Subsequently, the husband / respondent herein filed H.M.O.P.No.227 of 2015 before the Family Court, Tirunelveli for dissolving the marriage. The respondent / husband



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examined himself as P.W.1 and marked Exs.P1 to P16. The appellant / wife examined herself as R.W.1 and marked Exs.R1 to R6.

3.After considering the evidence on record, the Court below vide order dated 19.02.2018 allowed the HMOP and dissolved the marriage that took place between the parties. Challenging the same, this civil miscellaneous appeal has been filed.

4.When the matter was taken up for hearing, the learned counsel for the respondent / husband submitted that he is ready to pay a sum of Rs.3,00,000/- to the appellant / wife herein. He also produced demand draft bearing No.536500 drawn at Indian Bank, Alangulam. We direct the learned counsel for the appellant to accept the same so that it can be passed on the appellant. The appellant can accept the same without prejudice to her contentions.

5.The question that calls for consideration is whether the impugned order granting divorce in favour of the respondent snapping the marital tie can be sustained.



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6.It is beyond dispute that the parties are remaining separate from each other for almost twenty years from the date of marriage. The marriage was not consummated. 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 of the view that the aforesaid decision of the Hon'ble Supreme Court deserves to be invoked in this case. On this ground, we sustain the order impugned in the civil miscellaneous appeal and the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (R.P. J.)
23.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

The Family Court,
Tirunelveli.



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

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