

C.M.S.A.(MD)No.23 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 27.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.23 of 2017

and

C.M.P.(MD)Nos.6226 & 12621 of 2024

Amutha

... Appellant

Vs.

R.Balu

... 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 judgment and decree dated 20.12.2016 passed in C.M.A.(HMOP) No.26 of 2014 on the file of the Principle District Judge, Thiruchirappallil, reversing the judgment and decree dated 28.02.2012 passed in H.M.O.P.No.368 of 2008 on the file of the Principal Subordinate Judge, Thiruchirappalli and allow this civil miscellaneous appeal.

For Appellant : Mr.H.Lakshmi Shankar

For Respondent : Mr.R.Govindaraj



C.M.S.A.(MD)No.23 of 2017

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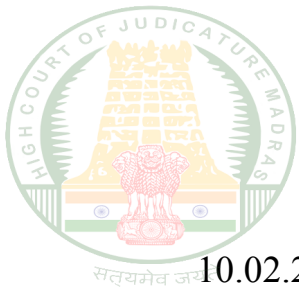
JUDGMENT

This Civil Miscellaneous Second Appeal is filed challenging the judgment and decree dated 20.12.2016 passed in C.M.A.(HMOP) No.26 of 2014 on the file of the Principle District Judge, Thiruchirappallil, reversing the judgment and decree dated 28.02.2012 passed in H.M.O.P.No.368 of 2008 on the file of the Principal Subordinate Judge, Thiruchirappalli.

2. For the sake of convenience, the parties herein are referred to as per the rank before the Original HMOP.

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

(i) The petitioner in H.M.O.P 368 of 2008 on the file of the Principal Subordinate Judge, Thiruchirappalli, is the husband, which was one for divorce on the grounds of desertion. The respondent is his wife. The petition was filed by the husband under section 13 (1)(ib) of the Hindu Marriage Act, 1955. The marriage between the petitioner husband and respondent wife took place at Meenakshi Thirumanamandapam, Musiri on



C.M.S.A.(MD)No.23 of 2017

10.02.2000, in the presence of the elders, relatives and friends of both the husband and the wife, in accordance with Hindu Customs and Conventions. The marriage expenses were met by the petitioner husband and his parents.

(ii) After the marriage, the petitioner husband and the respondent wife commenced their matrimonial life in the matrimonial home of the respondent wife, which was the husband's house. The matrimony survived only for a short period of eight months. At the very instance of their marriage, the respondent wife developed a habit of leaving her matrimonial home and frequently visiting her maternal home. The petitioner husband is the only son of his parents, and both of his sisters were already married at the time of his marriage. Apart from maintaining his parents, he is also running a dairy farm. Frequently, the respondent wife had been urging him to arrange a separate house, thereby breaking the joint family in which he was living with his parents.

(iii) The respondent wife has two elder brothers and one elder sister and a mother. Her elder sister was married before the marriage of the petitioner husband and the respondent wife. It was only on the ill advice



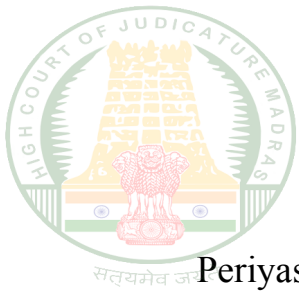
C.M.S.A.(MD)No.23 of 2017

WEB COPY

given by the respondent wife's brothers and mother, the respondent wife became hesitant about continuing her matrimonial life with the petitioner husband. On 17.07.2006, she left her matrimonial home. All the attempts made by the petitioner husband to bring her back to her matrimonial home for the purpose of restitution of conjugal rights were unsuccessful. The respondent wife deliberately left her matrimonial home with the intention of deserting the petitioner husband permanently. They have no children. Therefore, the petitioner husband pursued the respondent wife to take medical treatment at a fertility centre in Chennai.

(iv) However, she did not cooperate with the petitioner husband for taking medical treatment for the past three years from the date of their marriage, until she deserted him on 17.07.2006. She has been continuously staying at her parents home instead of living in her matrimonial home, on the ill adviceS of her family members. She was always arrogant in nature and showed no regard for her mother-in-law and father-in-law. She continuously insisted the petitioner husband to arrange a separate residence for her to live in.

(v) As a result, the petitioner husband sought the help of one



C.M.S.A.(MD)No.23 of 2017

WEB COPY

Periyasamy of Pudupatti village, who is none other than the paternal uncle of the respondent wife, for a reconciliation. However, throughout the reconciliation efforts made by the petitioner husband with the aid of Periyasamy, the respondent wife's brothers were adamant about not moving the negotiation forward in a way that would result in an acceptable outcome, enabling their sister, the respondent wife, to live with the petitioner husband. Since the continuous efforts of the petitioner husband to live with the respondent wife failed and also considering the conversation of the respondent wife in a threatening mode that she would lodge a complaint against him and his family members before the jurisdictional All Women Police Station, he was left with no option but to approach the Subordinate Judges Court at Thiruchirappalli, by filing HMOP.NO.362 of 2007 for restitution of conjugal rights.

(vi) However, the respondent wife filed her counter reiterating and pressing for a separate residence, insisting that she was not willing to live with the petitioner and his parents in his matrimonial home. During the pendency of the said case, on 21.03.2008 at Mettumaruthur, Kulithalai Taluk, in the presence of one Alagesan, a retired teacher, another effort of compromise and conciliation was initiated between both parties. In this

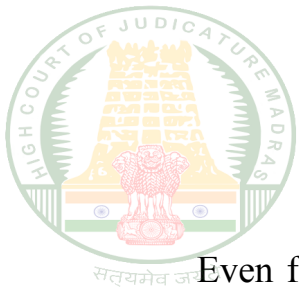


C.M.S.A.(MD)No.23 of 2017

WEB COPY

conciliation, one Mathivanan, Shanmugam, Marimuthu, Kalaiselvi, Ponnann and his wife Nagammal, Pudupatti Periyasamy, Murugesan Advocate Clerk, Vijayalakshmi and Saravanan, along with the petitioner husband's parents, participated. During the conciliation talks, the respondent wife went to the extent of disclosing unfound allegations against her mother-in-law accusing her of having abused the respondent wife and claiming that she was involved in an illicit relationship with her father-in-law, thereby degrading the status and dignity of the parents of the petitioner husband.

(vii) That apart, both brothers of the respondent wife were also not indulgent in compromising the matter and throughout the conciliation effort, they continuously used filthy language, aggravating the situation. As a result, the conciliation efforts failed on that occasion as well. Following which the respondent wife filed an original suit in O.S.No.136 of 2008 on the file of the District Munisif Court, Musiri, seeking to restrain the petitioner husband from marrying again during the subsistence of his marriage with the respondent wife. In the meanwhile, on 30.06.2008, the petitioner husband's mother died due to a heart attack because of the attitude of the respondent wife harassing both physically and mentally.



C.M.S.A.(MD)No.23 of 2017

Even for the final rites of his mother, neither the respondent wife nor her family members turned up, causing immense anxiety to the petitioner husband. Hence, the petitioner husband withdrew H.M.O.P.No.362 of 2007.

(viii) Under such circumstances, the petitioner husband came to a conclusion that the respondent wife was not willing to live with him, and the situation had further aggravated after the filing of the petition for restitution of conjugal rights. As a result, he not pressed H.M.O.P.No.362 of 2007, with the liberty to file a petition for divorce, following which this petition was filed seeking divorce on the grounds of desertion.

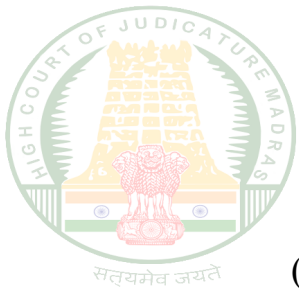
(ix) The respondent wife had filed a counter, refuting all the allegations raised by the petitioner husband in his petition for divorce categorically contending that the said petition is a frivolous application. The factum of having deserted the matrimonial home within a short period of eight months, has been categorically denied by the respondent wife. She put forth a case claiming that the petitioner husband suffered from infertility but insisted the respondent wife to undergo medical treatment in the year 2002 at CMC Vellore. The respondent wife cooperated with the treatment, and both the petitioner husband and the respondent wife were



C.M.S.A.(MD)No.23 of 2017

advised to follow the prescribed treatment, which she attended at CMC, Vellore, after a period of three months. However, it was the petitioner husband, who failed to cooperate in undergoing proper medical treatment. This repeated again and again when circumstances emanated in such a way that the petitioner husband never ever cooperated in effectively continuing the fertility treatment and he even refused to provide his semen for medical analysis to examine the semen counts. Hence, they were left in a position where they could not continue the fertility treatment at CMC Vellore.

(x) After a span of four years, in the year 2006, the petitioner husband and the respondent wife went to G.G. Hospital, Chennai, for treatment. Even at this second instance, the petitioner husband failed to cooperate in enhancing his fertility by undergoing appropriate treatment. The allegation that the respondent wife did not cooperate with the medical treatment at the fertility centre in Chennai is a concocted tale. Only to evade the medical treatment for fertility the petitioner husband had filed the petition for restitution of conjugal rights in H.M.O.P.No.362 of 2007. Even in his own instance, he took Siddha treatment at Trichy some time during 2003, which he discontinued without any valid reason.



C.M.S.A.(MD)No.23 of 2017

WEB COPY

(xi) In fact, the Doctors at Trichy advised the petitioner husband to facilitate the respondent wife to beget a child through the IVF facility. However, the unwilling petitioner husband filed a frivolous petition for restitution of conjugal rights in H.M.O.P No.362 of 2007. The petitioner husband and the respondent wife lived with their parents as well as the sisters of the petitioner in a joint family from the time of their marriage. The respondent wife had tried her level best to adjust in the joint family and never had any grudge against the petitioner husband or his family members. The allegation that during the conciliation efforts taken by Periyasamy of Pudupatti, the respondent wife went to the extent of telling something which would even provoke a women to commit murder, is completely false.

(xii) In fact, the line of conciliation itself involved requesting the petitioner husband to cooperate for proper medical treatment which he failed to take in the proper sense, and as a result, the negotiations, failed. The respondent wife had never ever spoken to her husband at any point of time that she would prefer a criminal complaint before All Women Police Station and those allegations are blatant lies. The respondent wife had never deserted the petitioner husband, in fact, she continuously tried her



C.M.S.A.(MD)No.23 of 2017

WEB COPY

best to convince him to help her with medical intervention to enhance his medical condition so as to beget a child. However, he went to the extent of demanding dowry from the respondent wife on the ill advice of his sisters, despite the respondent wife bringing a color TV, 37 sovereigns of gold, cot, a bureau and other items as Sridhana at the time of marriage.

(xiii) The brothers of the respondent wife have always been willing to spend whatever amount of money is necessary for the respondent wife to become a mother through IVF fertility facility. However, the petitioner husband and his family have never supported this at any point and have been fully deaf eared towards the respondent wife's plight and her request. The allegation that the respondent wife had continuously and consistently refused to provide conjugal happiness to the petitioner husband is a blatant lie. It is only the petitioner husband who has harassed the respondent wife demanding additional dowry, and forcing her to go to her parents home and return whenever he required. He never made any attempt to restore their matrimonial life, and it is not possible for the respondent wife to have a good family life unless he undergoes treatment. The respondent wife is ready to live with the petitioner husband provided if he sets up a separate abode and cooperates with the medical treatment.



C.M.S.A.(MD)No.23 of 2017

WEB COPY

4. Heard the learned Counsel appearing for the appellant wife, the learned Counsel for the respondent wife husband and carefully perused the materials available on the record.

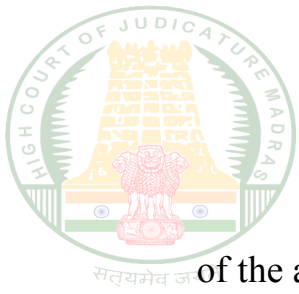
5. The learned counsel for the appellant wife relying upon her pleadings before the trial Court categorically contended that the trial Court had diligently considered the plight of the respondent wife and only on the basis of the evidence deposed by the respective parties, had fairly come to a conclusion that the wife's demand for her husband to cooperate with a fertility treatment in order to beget a child and her insistence on a separate abode for that purpose, could not be a case of desertion and dismissed the HMOP. However, in the appeal preferred by the petitioner husband in C.M.A.(HMOP)No.26 of 2014, the learned Principal District Judge, Thiruchirappalli, without considering the fact that the petition for divorce has been laid on the grounds of desertion, has rushed to allow the civil miscellaneous appeal on the grounds of cruelty, thereby dissolving the marriage between the petitioner husband and the respondent wife. This decision is not sustainable, and pressed for allowing the civil



C.M.S.A.(MD)No.23 of 2017

miscellaneous appeal by reiterating all the points raised in the counter filed before the learned trial Court.

6. Per Contra, the learned Counsel for the respondent categorically submitted that there is no need to interfere with the order passed by the learned Principal District Judge, Thiruchirappalli. The date of desertion was as early as on 17.07.2006, and already 19 years have passed without any chance for reconciliation. Fairly considering that the couple do not have a child and the line of the averments made by the petitioner husband before the learned trial Court, the learned counsel submitted that, although the petitioner husband had fertility problems, the indifference in the matrimonial life between the petitioner husband and the respondent wife was only because of the inimical attitude of the respondent wife from the very first instance of the marriage, including her frequent visit to her maternal home without any valid reason. She always involved herself in serving her maternal home rather facilitating a harmonious matrimonial life. Her inimical attitude and separation from the petitioner husband caused untold anxiety both physically and mentally to the petitioner husband's mother, which resulted in her death. Therefore, the marriage has reached a point of no return, and the learned Counsel pressed for dismissal



C.M.S.A.(MD)No.23 of 2017

of the appeal.

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7. The learned trial Court had examined the petitioner husband and his father on P.Rajalingam as P.W.1 and P.W.2 and had marked Ex.P.1 to Ex.P.5 on the side of the petitioner husband. The respondent wife was examined as R.W.1.

8. A careful perusal of the evidence deposed by the respective parties would reveal that the petitioner husband never denied having fertility problems and that he underwent medical treatment multiple times, although unsuccessfully. Though he had deposed to that effect that the respondent wife also underwent treatment, he had precisely deposed before the learned trial Court that her health condition improved and the treatment was successful. However, he insisted that she had voluntarily deserted her matrimonial home with no intention of returning. While the petitioner husband's father, who was examined as P.W.2 during the chief examination, raised several allegations against the respondent wife, more particularly regarding her disrespectful attitude toward elders and her



C.M.S.A.(MD)No.23 of 2017

WEB COPY

involvement in unnecessary conversation during the conciliation efforts, and further throwing allegations that his wife passed away only because of the attitude and conversation made by the respondent wife in the conciliation process. However, during cross-examination, he was not able to cogently depose anything with respect to those allegations which he had raised in his examination in chief. However, he fairly admitted that his son had fertility problems, and during cross-examination, he had accepted that they had taken several steps for reconciliation.

9. However, in due course of time, they did not take any further steps to bring the daughter-in-law back to the matrimonial home of his son. He also deposed that he is not able to remember the last time he took steps to reconcile the differences between his son and daughter-in-law. He fairly deposed during cross-examination that it was only after confirming that the medical treatment had failed and it was not possible for them to beget a child that she left her matrimonial home. However, he went to the extent of deposing that it was only because of the infertility of the respondent wife that they were not able to beget a child and on the basis of the diagnosis of Dr.Kamala Selvaraj of G.G.Hospital at Chennai. However, he did not mark

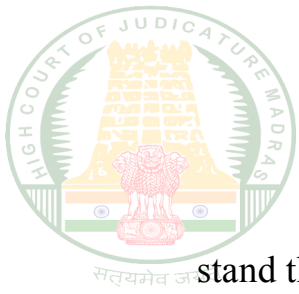


C.M.S.A.(MD)No.23 of 2017

any documents pertaining to the said allegation.

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10. A careful perusal of the evidence deposed by the petitioner husband, P.W.1 and P.W.2 in conjunction with the petition for divorce would reveal that the allegations made by the petitioner husband in his evidence has nothing to do with the facts which had been pleaded in the petition for divorce. They went beyond the scope of the petition for divorce while deposing evidence. Based on this, I am of the considered view that the trial Court came to a conclusion that a woman, in those circumstances, compelled to continue her matrimony when her husband is not cooperating for fertility treatment, is left with no other option, but to leave her matrimonial home. The trial Court concluded that the case was not fit for divorce on the grounds of desertion. However, when the petition for divorce itself was filed on the grounds of desertion, the judgment passed by the District Judges Court at Thiruchirappalli, in C.M.A.(HMOP) No.26 of 2014, by setting aside the order passed by the learned trial Court and granting divorce on the grounds of cruelty, with the observation that the wife's demand to live separately, broke the joint family and compelling the husband to undergo treatment itself would amount to desertion, will not



C.M.S.A.(MD)No.23 of 2017

stand the scrutiny of law.

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11. It is the fundamental right of any woman who desire to become a mother and it is the conjugal duty of every husband to adhere to matrimonial values, facilitating the matrimony by undergoing proper medical treatment in case of fertility issues, and facilitating the wife to beget a child. Under such circumstances the wife herein came forward to demand a separate abode, only to facilitate in begetting a child and undergoing proper medical treatment. When the circumstance within the joint family did not aid to her plight of undergoing proper medical treatment, compelling her husband to continue with the umpteen number of efforts taken for her to undergo proper treatment, would not amount to cruelty or desertion. When the petition itself was filed on the grounds of desertion, there is no reason for the appellate Court to have granted the same on the grounds of cruelty, as the wife's demand can never be termed as an act of cruelty. Hence, the order passed in CMA (HMOP) No.26 of 2024 on the file of the Principal District Judge, Thiruchirappalli, is set aside and the order passed by the trial Court is upheld. It is also brought to the attention of this Court that the respondent wife is always ready to live



C.M.S.A.(MD)No.23 of 2017

with her husband, and it is open for the petitioner husband to take her back, in the circumstances, where both his parents have passed away.

12. Accordingly, this Civil Miscellaneous Second Appeal is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

27.02.2025

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

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C.M.S.A.(MD)No.23 of 2017

L.VICTORIA GOWRI, J.,

jbr

To

1. The Principal District Judge,
Thiruchirappalli.
2. The Principal Subordinate Judge,
Thiruchirappalli.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

C.M.S.A.(MD)No.23 of 2017

27.02.2025