



C.M.A(MD)No.1628 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 28.04.2025

Pronounced on : 04.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.1628 of 2024

and

C.M.P.(MD)No.17354 of 2024

S.Ruby Celsia

... Appellant / Respondent

Vs.

P.Selvakumar

... Respondent / Petitioner

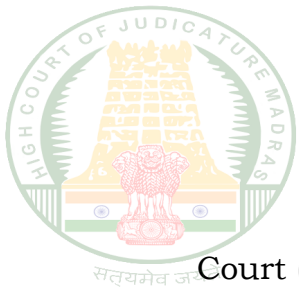
PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Divorce Act, 1869, read with Section 104 of Civil Procedure Code, 1908, to set aside the Judgment and Decree dated 07.11.2024 made in I.D.O.P.No.181 of 2023 on the file of the learned Additional District Court (FTC), Tenkasi.

For Appellant : Mr.M.Shemadaniel

For Respondent : Mr.D.Srinivasaragavan

JUDGMENT

This civil miscellaneous appeal is filed by the appellant, challenging the order passed by the learned Additional District Judge's



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Court (FTC), Tenkasi in I.D.O.P.No.181 of 2023.

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2. For the sake of convenience, the parties here to are mentioned as per their ranking before the Learned Trial Court.

3. The husband was the petitioner before the learned Trial Court and the respondent is his wife. The respondent wife has preferred this Civil Miscellaneous Appeal challenging the order passed in I.D.O.P.No. 181 of 2023 dated 07.11.2024. The petitioner husband filed a petition for divorce under Section 10(1)(vii) and 10(1)(x) of Indian Divorce Act, 1869, seeking to dissolve the marriage solemnized between him and the respondent wife on 09.11.2018.

4. The gist of the case as averred in the petition for divorce is as follows:

(i) The marriage between the petitioner husband and the respondent wife was conducted on 09.11.2018 at Punitha Arulappar Church, Avudaiyanoor village in the presence of elders and relatives according to the Christian rites and practices. The marriage was an arranged marriage. Thereafter, the petitioner and the respondent together registered their marriage on 31.12.2018 at Pavoorchatram Sub Registry.



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(ii) The petitioner is an Engineer, and he is working as a Software Engineer. The respondent is an Engineer who holds a Bachelor of Technology (Mechanical), a Master of Technology and a doctoral degree in Engineering. She is presently employed as an Assistant Professor at K.S. Rengaswamy Engineering College, K.S.R.Education Nagar, Thiruchengode Taluk, Namakkal District. From the very instance of marriage, the respondent was not interested in leading a happy family life. She had declared that she had no belief in the family system and also refused to live in harmony with the petitioner. Though the petitioner was patiently handling her with the fond hope that the respondent would learn the nuances of marriage in due course of time, he suffered untold mental agony because of the respondent's attitude. Very often, the respondent left from her matrimonial home to her maternal home.

(iii) The respondent's father citing the prevailing family problems in the petitioner's family, fraudulently instigated the petitioner to execute a settlement deed with respect to his properties in favor of the respondent. In this regard, the petitioner has filed a suit for recovery of property in O.S. No. 344 of 2023 on the file of the Principal Subordinate Judge's Court at Tenkasi and the same is pending. While being so, on

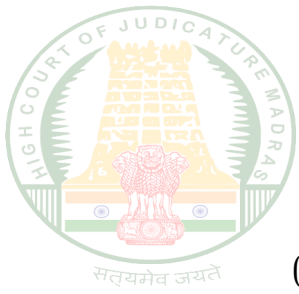


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10.11.2021, the respondent permanently left her matrimonial home and settled in her maternal home. All the advices and efforts taken by the petitioner for a reconciliation, proved futile. In fact, the petitioner's effort to give psychological counselling through a Psychologist to the respondent also proved futile.

(iv) The respondent categorically declared that she is not ready to live with him even for namesake. Shocked by the revelations of the respondent, the petitioner is suffering from a mental and physical trauma that he is not even able to carry forward his day-to-day affairs of life normally. The respondent's deeds and activities are legally and socially unacceptable and she has been living away from him, separated, for a period of more than two years in her parents' home. As a result of which, the petitioner has lost hope and a mindset has been imbibed in him to such an extent that he could no longer live with her anymore. Hence, this petition for divorce has become necessary and the petitioner has filed this petition for divorce seeking to dissolve the marriage on two grounds namely, cruelty and non-consummation of marriage.

**5. Gist of the counter-affidavit filed by the respondent's wife
in I.D.O.P No. 181 of 2023:**



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(i) Refuting all the allegations set forth by the petitioner in his petition for divorce, the counter affidavit has been filed. All the allegations of frequenting to her maternal home, leaving the petitioner in their matrimonial home is strongly denied by the respondent wife. It was contended by the respondent that the petitioner and the respondent lived together for a period of one week with the respondent in her village after marriage. Thereafter, for a period of two weeks, the respondent accompanied the petitioner to Bangalore wherein he was employed. While being so, the respondent was selected to pursue Ph.D., at Mepco Schlenk Engineering College, Sivakasi.

(ii) It was only with the permission of the petitioner, the respondent joined in her Ph.D., research course and stayed in the Sivakasi Mepco College and completed her Ph.D., course. Even during the said six-months period of time, the petitioner used to visit the respondent in her quarters and stay with her every weekend. After completion of her research, the respondent and the petitioner lived together for a period of one and a half years at Bangalore where the petitioner was employed. During the COVID-19 pandemic, the petitioner was compelled to work from home, as a result of which, both the petitioner and the respondent returned to their native and arranged a rented accommodation at Pavoorchatram village and from May 2021



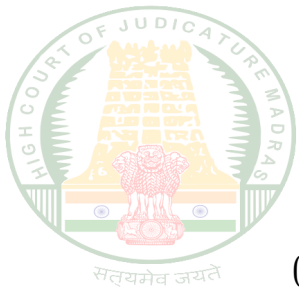
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until November 2021, they lived in the said village house.

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(iii) While being so, it was only at the instance of the petitioner, the respondent went to her maternal home for taking proper treatment for begetting a child during December 2021 and left with no other option, on his compulsion, the respondent had gone to her parent's house. However, after this, the petitioner did not contact the respondent. After the hectic efforts taken by the elders of the respondent's family, the petitioner voluntarily took the respondent along with him during December 2022 to his Pavoorchatram house, wherein they lived together for a period of two months.

(iv) In the meanwhile, the petitioner was selected as a Lecturer in an Engineering College at Thiruchengode. It was only because of the fact that the petitioner severed all contacts with the respondent during this period of time, the respondent was left with no other option rather joining in the said job at Thiruchengode. The allegation that the respondent's father had instigated the petitioner to execute a settlement deed in favor of the respondent with respect to his properties are sternly refuted. It was further submitted that the petitioner himself had executed the same out of his own will and volition.



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(v) In a similar manner, the respondent has also executed a settlement deed in favor of the petitioner out of her own volition. Having accepted the fact that the petitioner has filed a civil suit with respect to the properties settled by him in favor of the respondent, the respondent had clarified in her counter in Para 3 that she has appeared in the aforesaid civil suit and is conducting the same legally.

(vi) The claim of the petitioner of having given psychological counselling to the respondent is unnecessary and the allegations that the respondent had permanently deserted the petitioner for no reason is also strongly denied. It is only for the purpose of living together with the petitioner, the marriage had been conducted. However, it is only the petitioner who failed to conduct the matrimonial life with due respect, love, and affection. During the period when the respondent lived with the petitioner, he had imposed several conditions of restricting her from contacting her parents and using social media as well as computer. This had caused grave impact in her mind, as a result of which, she continuously suffered from depression and encountered unnecessary worries.

(vii) When the respondent was taken back by the petitioner at the instance of the elders of the respondent's family during December 2022,

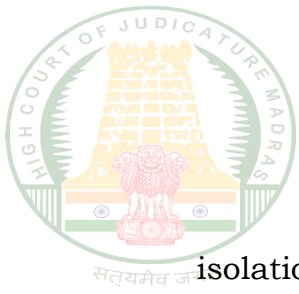


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it was the petitioner who demanded money to a tune of Rs.4,00,000/- (Rupees Four Lakhs only) and a car worth Rs.2,00,000/- (Rupees Two Lakhs only). Not willing to heed to the petitioner's petition for divorce, the respondent had required the Learned Trial Court to dismiss the petition for divorce filed by the petitioner.

6. Two witnesses were examined on the side of the petitioner as PW-1 and PW-2 by the Learned Trial Court and Exhibits P1 to P7 were marked. The respondent wife was examined as RW-1 and exhibits R1 series, Exhibit R1 to R3 were marked on the side of the respondent.

7. On the basis of the evidence deposed, documents marked, and the arguments put forth by the respective parties, the Learned Trial Court giving way to the evidence deposed by PW-2, one Dr. Ayyappan, who claimed to have been running a mental hospital by name and style of Thanvanthri Hospital at Tirunelveli, came to a conclusion that the respondent had suffered a mental illness, namely, Paranoid Schizophrenia, and concluded that it was the respondent who was not inclined to live together with the petitioner and she had conducted her matrimony without any love and affection and the Learned Trial Court came to a conclusion that the petitioner and the respondent did not live a happy married life and most of their marital life was led only in

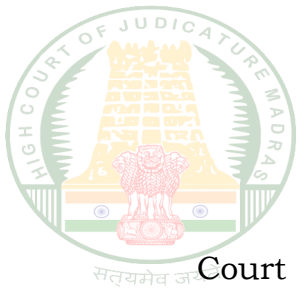


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isolation.
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8. Further, the Learned Trial Court also concluded that the respondent had intentionally avoided to consummate the marriage and the allegations leveled against the petitioner by the respondent itself would show that the petitioner has been subjected to cruelty. Further, the Learned Trial Court observed that the respondent had behaved violently and hysterically in an aggressive manner exposing anger and hatred towards the petitioner and the behavioral changes of the respondent would have obviously caused mental agony to the petitioner which could very well be perceived from the evidence let in the trial by the respective parties and concluded that the case is a fit case for grant of divorce by dissolving the marriage which was held between the petitioner and the respondent on the ground of non-consummation and mental cruelty.

9. It is a settled proposition of law that while considering the facts in issue, the primordial duty of the Trial Court is to substantiate the evidence as to the facts in issue which were properly pleaded by the respective parties. Without pleadings, the evidence deposited beyond the scope of those facts which are already pleaded cannot be taken as substantial facts to decide the facts in issue. The Honourable Supreme



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Court in the case of **Ms.Trojan & Co Ltd vs R. M. N. N. Nagappa**

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Chettiyar¹ has held as under:

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief, not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

10. It is the considered view of this Court that though the Court has very wide discretion in granting relief, however, the Court cannot ignore and keep aside the principles governing grant of relief and resort to grant relief beyond the scope of the facts in issue which were pleaded by the respective parties, more particularly in matrimonial cases. In the instant case, the petitioner husband had laid a petition for divorce under the grounds of having willfully refused to consummate the marriage and cruelty.

11. For the sake of convenience, section 10(1)(vii) and section 10(1)(x) of Indian Divorce Act, 1869, is extracted as follows:

“10.Grounds for dissolution of Marriage- (1) Any marriage solemnized, whether before or after the commencement of the Indian

¹ AIR 1953 SC 235



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Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent-

(vii) has willfully refused to consummate the marriage and the marriage has not therefore been consummated;

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.”

12. The marriage between the petitioner and the respondent was held on 09.11.2018. Though it is pleaded in para 4 of the petition for divorce that, from the very instance of the marriage, the respondent had been reluctant to nurture a cordial matrimonial life, she went to the extent of informing the petitioner that she was not interested or inclined towards leading a matrimonial life and she went to the extent of telling that she did not have any faith in living a cordial matrimonial life with him. In para 5 of the petition, the petitioner had claimed that the respondent frequented to her maternal home very often, and in para 6, he had made it clear that finally on 10.11.2021, the respondent had separated the petitioner permanently and left for her maternal home. However, except for pleading that the respondent had informed him that she is neither interested nor inclined nor has faith in a normal

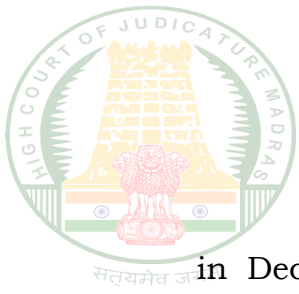


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matrimonial relationship, nowhere in any part of the petition for divorce, the petitioner had stated that the marriage was not consummated.

13. Per contra, the counter affidavit filed by the respondent wife itself commences in para 1 of the counter affidavit categorically refusing and denying the contention set forth in para 4 of the petition for divorce where the petitioner husband had claimed that the respondent had informed him that she was neither inclined nor interested nor had any faith in the matrimonial relationship. It is specifically denied in para 1 of the counter affidavit filed by the respondent that such an averment made by the petitioner husband is fully incorrect and false. In para 2 of the counter affidavit, she had categorically contended that the respondent had lived with the petitioner and had elaborated in the rest of the portions of the counter affidavit, the instances during which the petitioner and the respondent lived together and the efforts taken by the petitioner in encouraging her in pursuing a research studies and completing Ph.D., after her matrimony.

14. However, in para 6 of her counter affidavit, she had also pleaded that lastly when she was taken back to her matrimonial home



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in December 2022 at the instance of the elders, the petitioner had treated her with unkindness by demanding more money and a car worth Rs.2,00,000/- (Rupees Two Lakhs only). However, she had required the learned Trial Court to dismiss the petition for divorce. When a petition for divorce has been laid under section 10(1)(vii) of the Indian Divorce Act, 1869, it is pertinent to provide sufficient proof of non-consummation of marriage to obtain divorce under the said ground.

15. No instances of willfully refusing to cooperate in consummating the marriage has been put forth either in the pleadings or in the evidence by the petitioner. The petitioner has failed entirely to prove non-consummation of the marriage. Pleadings are wholly silent on that point and no specific instance of any wilful refusal by the respondent to consummate was pleaded or proved. A veil pleading of the petitioner that the respondent had informed him at the very instance of the marriage that she is neither inclined nor interested nor had any faith as to the matrimonial relationship would not strengthen his ground of non-consummation. However, a careful perusal of the pleadings, documents, and the materials available on record, more particularly, the R1 series document marked by the respondent wife as RW-1 while deposing her evidence demonstrates a very cordial and

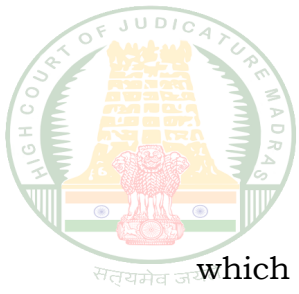


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warm relationship between the petitioner husband and the respondent wife, for atleast two years after theri wedding on 09.11.2018. Those photographs directly controvert the petitioner's assertion that the marriage was never consummated.

16. The moments of intimacy which are mirrored in the exhibit R1 series photograph will resonate the fact that after marrying the respondent on 09.11.2018 at least for a period of two years the petitioner and the respondent had led a happy matrimonial life without too many complications. Exhibit R1 series would defy the claim of the petitioner husband that the marriage was not consummated. Having lived together for at least two to three years before laying the petition for divorce, the claim of the petitioner husband that the marriage was not at all consummated without any substantial piece of evidence could not be accepted and the said claim should be negated.

17. The other ground on which the divorce has been sought for is the ground of cruelty. For the purpose of establishing the factum of cruelty, the learned Trial Court had given weightage to the evidence deposited by one Dr.Thiru.Ayyappan who deposited his evidence as PW-2. It is ridiculous as to how the learned Trial Court relied upon the evidence deposited by PW-2 without marking even a single document



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which would substantiate the fact that the respondent had suffered from Paranoid Schizophrenia.

18. That apart, this Court is shocked by the way the Trial has been conducted by the learned Trial Court in admitting the evidence of PW-2 that the respondent suffered from Paranoid Schizophrenia when the said aspect was not at all pleaded by the petitioner in any portion of his petition for divorce. What the petitioner had pleaded, more particularly, in paragraph 3 of his petition for divorce, is that the respondent had left her matrimonial home permanently on 10.11.2021 to her parents house, despite the advice rendered by the elders of both sides. It is only in this point, the petitioner had pleaded in paragraph 6 of his petition for divorce that, even he had taken efforts by taking the respondent to a psychologist for the purpose of giving her a psychological counselling and the same proved futile. Nowhere in the pleadings in the petition for divorce, the petitioner had claimed that the respondent had suffered from a psychiatric condition, namely, Paranoid Schizophrenia, and that she was treated by a Psychiatrist for the said mental health condition.

19. This Court is very particular in distinguishing between the aspect of Psychology and Psychiatry. Though Psychologists and



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Psychiatrists work in the mental health area, their approaches and qualifications obviously differ. Many Psychologists are qualified either in M.A.,/M.Sc., Psychology or MSW (Master of Social Work). On the other hand, Psychiatrists are qualified medical practitioners who prescribe medicines and also treat the mental patients. Psychologists normally conduct counsellings in matters of depression and incompatibility with any aspect of life. On the other hand, the Psychiatrists are medical practitioners who treat mental patients with proper diagnosis and medications. In the instant case, having pleaded that the respondent was subjected to a counselling process with a Psychologist later at the time of deposing evidence, the petitioner had went to the extent of deposing his evidence narrating that the respondent was subjected to treatment in the mental hospital and he also managed to examine one Dr. Ayyappan as PW-2 in which the PW-2 went to the extent of deposing evidence that he had treated the respondent for at least seven days for Paranoid Schizophrenia.

20. This Court is of the considered view that the learned Trial Court ought erred in admitting and acting upon the evidence that lies outside the scope of the parties pleadings. The petitioner never pleaded that the respondent suffered from Paranoid Schizophrenia. Yet PW-2 was allowed to testify to that effect and the Trial Court relied on that

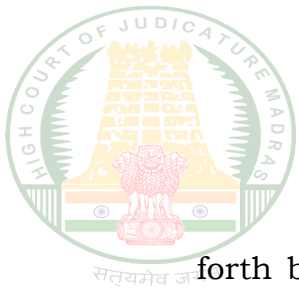


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testimony to brand on otherwise healthy woman as mentally ill, without a shred of documentary corroboration. The Hon'ble Apex Court has well settled in **Ms.Trojan & Co Ltd vs R. M. N. N. Nagappa Chettiyyar's** case that, a Court cannot adjudicate on matters not pleaded not grant relief on a case not set out in the pleadings. Those principles apply even greater rigour in matrimonial litigation. While the Court enjoys wide discretion in moulding reliefs, it cannot transgress the boundaries of the pleadings or the substantive law. Section 10(1)(vii) and Section 10(1)(x) of the Indian Divorce Act, 1869, invoked by the petitioner require strict proof respectively of (a) wilful refusal to consummate and (b) cruelty. No such proof has been adduced. In the absence of any proper medical records in this regard, the Trial Court ought not to have admitted the evidence of PW-2 at all. Psychologists are those who focus on therapy and counselling to help individuals with behavioral and emotional issues, Psychiatrists are the medical practitioners who can diagnose mental disorders, prescribe medication and provide medical treatments. Though the respondent had admitted in her counter affidavit that she suffered mental depression due to her incompatibility with the petitioner in her matrimonial life, she had categorically denied in her evidence that she suffered any mental health problems.

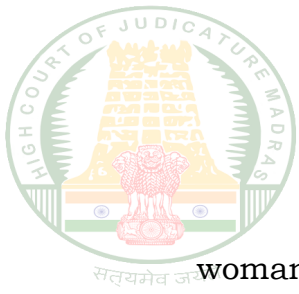
21. Considering the nature of allegations which has been put



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forth by way of evidence as against the respondent both by PW-1 and PW-2 that the respondent suffered from Paranoid Schizophrenia, this Court, by order dated 20.03.2025, required the said PW-2, namely, Dr. B. Ayyappan, Thanvanthri Hospital, North Bypass Road, Vannarpettai, Tirunelveli-627 003, to appear before this Court on 27.03.2025 at 3.30 P.M in the chamber, requiring him to produce the complete original medical records pertaining to the respondent wife, namely, Mrs. Ruby Celsia, who was claimed to have been admitted on 27.05.2021 and was taking treatment there at and discharged on 03.06.2021, in a sealed cover. Interestingly the said doctor, namely, Dr. B. Ayyappan, appeared on 27.03.2025 without any medical records and submitted before this Court that he is handicapped with medical records and he do not have any medical records pertaining to the respondent in his hospital.

22. In the absence of any medical records which would substantiate that the respondent was treated in Thanwantri Hospital, the manner in which the Trial Court had conducted the Trial by admitting the evidence of PW-2 and allowing him to depose evidence elaborating the mental health condition of the respondent to that extent that she suffered from Paranoid Schizophrenia and that too without any proper documentary evidence, I am of the considered view that, the learned Trial Court failed in dispensation of justice by painting a normal



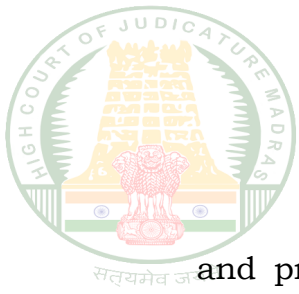
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woman as a Paranoid Schizophrenic patient giving way to the society to annihilate the respondent questioning her credibility and personality posing serious threat even to her future livelihood and employment.

23. It is an admitted fact that the respondent is an Engineer and she had completed her B.Tech., M.Tech., as well as she is a doctorate in Engineering. That apart, she is also serving as an Assistant Professor in an Engineering College at Thiruchengode. The only allegation which has been set forth by the respondent as against the petitioner is that, he had subjected her to certain restrictions that she should not frequently converse with her parents and that she should not use her computer, as a result of which, she suffered mental agony and depression. She has also pleaded in her counter affidavit that after rejoining her husband at the instance of the elders in December 2022, the petitioner had demanded a car as well as cash of Rs.4,00,000/- (Rupees Four Lakhs only) from her parents.

24. However, the learned Trial Court went on to observe that the allegations leveled by the respondent against the petitioner itself would show that the petitioner was subjected to cruelty and that the respondent suffering from Paranoid Schizophrenia might also have had a grave implication on the mental and living condition of the petitioner



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and proceeded to conclude that the marriage was not consummated between the petitioner and the respondent, and the petitioner had suffered cruelty in the hands of the respondent and allowed the petition for divorce.

25. However, I am of the considered view that the learned Trial Court gravely erred by relying upon the evidence deposited by PW-2 which was not based on any material evidence, in the absence of any document marked before the learned Trial Court. That apart, this Court has confirmed the same by requiring the said PW-2 who claimed himself to be a doctor who treated the respondent for Paranoid Schizophrenia to produce the entire original medical records concerning the respondents alleged hospitalisation. In response to the same, the said PW-2 duly appeared before this Court only to clarify before this Court that his evidence before the learned Trial Court was without any material evidence and that he was handicapped by the absence of any relevant documents. His failure to produce the relevant medical records for my perusal itself would render his testimony as PW-2 inadmissible and the Trial Court's reliance on it is a grave error.

26. Given (a) the total lack of admissible evidence of non-consummation (b) the absence of proof of cruelty, and (c) the procedural



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illegality of relying on unpleaded and unproved allegations of Paranoid Scheozphrnia, the impugned decree cannot stand. Accordingly, I do not find any merit in the order passed by the learned Trial Court and hence, the same has to be interfered necessarily and accordingly, the order passed by the learned Trial Court is hereby set aside. To conclude, the available record underscores that, in adjudicating disputed facts, the Trial Court's "primordial duty" is to confine itself to the issues framed on the pleadings and to base its findings on admissible evidence alone. Evidence adduced beyond the scope of the pleadings is not "material" within the meaning of the law of evidence and must be discarded. The Trial Court's departure from that duty in a sensitive matrimonial case mandates appellate correction.

27. With the above observations, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
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Internet : Yes
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To
The Additional District Court (FTC),
Tenkasi.

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L.VICTORIA GOWRI, J.,

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