



C.M.A(MD)No.483 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 17.07.2025

Pronounced on : 28.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

CMA(MD)No.483 of 2024

Joan Christy

... Appellant/ Petitioner

Vs.

Roche Gilbert

...Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act, 1984, to set aside the fair and decreetal order dated 24.02.2023 made in O.P.No.305 of 2021 and counter claim in O.P. No.183 of 2022 on the file of the Family Court, Sivagangai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.A.Mohan

For Respondent : Mr.M.Gurudas



C.M.A(MD)No.483 of 2024

JUDGMENT

WEB COPY (Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant/petitioner/wife has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 24.02.2023 passed in O.P No.305 of 2021 and Counter claim in O.P.No. 183 of 2022 on the file of the Family Court, Sivagangai.

2.Brief facts of the petition before the lower Court is as follows:

(a)The petitioner submits that the marriage between the petitioner and the respondent was solemnized on 02.07.2020 at Saint Soosaiyappar Church at Kalathoorpatti Village in Trichy District, as per the customs prevailed in the Christian community.

(b) The petitioner further stated that at the time of marriage, her parents had given 75 sovereigns of gold ornaments, Rs.1,00,000/- cash and a Hyundai I20 sports car as Sridhana to the respondent.

(c) Before the marriage, the petitioner was working in the Office of the Rural Development Department, Thirumayam, whereas, the respondent was working as a teacher in a Government-aided Minority School, Muthupettai, Ramanathapuram District.

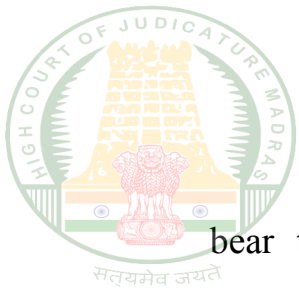


WEB COPY

(d) After the marriage, the respondent has not shown any love and affection towards her and he simply abandoned her without providing any small help to attend her duties during the COVID-19 pandemic period. Thereafter as decided by both families, they have shifted their matrimonial home to Thirumayam for a rental house after obtaining the consent of both families. Even after relocating the matrimonial home to Thriumayam, the respondent continued to quarrel with the petitioner and her parents for trivial issues.

(e) Later, she came to know that the respondent had involved in an extramarital affair with someone before their marriage and continued the illicit relationship thereafter. When, she confronted him regarding the same, the respondent openly admitted that he was maintaining such a relationship. Subsequently, she discovered the true nature of the respondent as he was habituated consuming alcohol regularly and often picked quarrels over trivial issues.

(f) The respondent and his family members have repeatedly ill-treated her in public places. Despite several attempts made by the elders of the family to resolve the issue, their efforts went in vain, as the respondent never attempted to change his conduct. Therefore, unable to



C.M.A(MD)No.483 of 2024

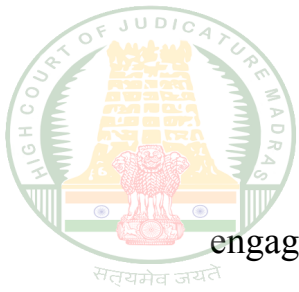
bear the cruelty inflicted by the respondent, the petitioner left the matrimonial home on 12.08.2021.

(g) The marriage between the petitioner and the respondent has broken down irretrievably and there is no possibility of reunion in future.

Hence, the petitioner has filed this petition, before the Family Court, Sivagangai, for divorce as against the respondent on the ground of adultery, cruelty and desertion, seeking to dissolve the marriage solemnized with the respondent on 02.07.2020.

3. Brief averment contained in the counter-claim filed by the respondent is as follows:

(a) The respondent denied all the allegations contained in the petition. He also denied the allegations regarding the demand for dowry and gifts. He has a 3.5 sovereigns of gold chain and an engagement ring. He did not receive any other jewellery or cash from the petitioner's parents. The Hyundai I20 car was not given as dowry, it was only parked at the marriage hall for photos, and the RC book and documents are still in the petitioner's father's name. The respondent had given Rs.6,70,000/- to the parents of the petitioner for making the mangalsutra and



C.M.A(MD)No.483 of 2024

engagement ring. The petitioner has his gold chain and gold ring.

WEB COPY

(b) The allegations of domestic violence, abuse, are false.

The respondent attempted to reconcile the dispute on 14.02.2021 at Ramanathapuram. However, the petitioner's claims regarding the decision to rent a house at Karaikudi are false. The petitioner visited the respondent's home only three times, after the marriage. In most of the occasions the petitioner accompanied her brother.

(c) The respondent denied the petitioner's claim about an accident involving a dog, but alleges that it was caused by a person named Karthik. The respondent admitted that he had rented a house during their marriage and that it was customary for the petitioner to visit his house.

(d) The respondent did not falsely state his age in his biodata, and the petitioner was fully aware of his actual age. The respondent neither misled the petitioner nor made her feel inferior.

(e) He specifically disputed the petitioner's allegations regarding the events said to have occurred on 12.08.2021, and asserts that it was the petitioner who acted aggressively and left the matrimonial home. The petitioner has fabricated the allegations to obtain a divorce. There is no valid ground available to grant a divorce.



C.M.A(MD)No.483 of 2024

(f) The marriage was solemnized on the assurance that the

petitioner would secure a transfer of her job to R.S.Mangalam. But she failed to transfer her job to R.S.Mangalam. Despite the petitioner, not obtaining such transfer, the respondent continued to visit her every weekend and made efforts to maintain a cordial family life. However, the petitioner failed to discharge her responsibilities as a dutiful wife. She refused to cook, and on several occasions threw away the food thereby, causing the respondent severe mental distress.

(g) The petitioner demanded the respondent to hand over his entire salary and refrain from showing any affection towards his family. She was primarily focused on, acquiring land and constructing a house in Karaikudi, and consistently pressured the respondent to fulfil her objectives. The petitioner along with her parents insisted that the respondent should reside with them, which caused him severe mental distress.

(h) The petitioner and her family members did not cooperate with any efforts towards reconciliation or reunion. The respondent further states that the petitioner ignored him, refused to cooperate in matrimonial relations, and frequently instigated quarrels. On 13.08.2021, the petitioner left the matrimonial home without any valid reason.



C.M.A(MD)No.483 of 2024

(i) The respondent seeks dismissal of the divorce petition

and prays for to order of restitution of conjugal rights.

4. The petitioner has filed a counter-affidavit in response to the respondent's counter-petition as follows:

The petitioner denies all the allegations contained in the counterclaim are false and calls upon the respondent to strictly prove them. The counter-claim petition was not filed with a genuine intention to live with the petitioner but to cause harassment and mental distress to the petitioner. The petitioner requests that the counter-claim petition be dismissed with costs and the divorce petition may be allowed.

5. During the trial on the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P2 were marked. On the side of the respondent, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R3 and M.O.1 were marked.

6. The trial Court after considering the evidence and records dismissed the petition. Aggrieved by the said order, this present Civil Miscellaneous Appeal has been filed by the appellant /petitioner/wife



C.M.A(MD)No.483 of 2024

against the dismissal order with the following among other grounds:

WEB COPY

1. That the Court below failed to notice the habit of the respondent/husband in using abusive words against the appellant/wife and her parents from the beginning of marriage.

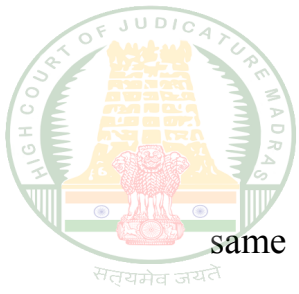
2. That the respondent suppressed his age and cheated the appellant and her family, which led to the appellant's depression and mental agony.

3. That the Court below failed to consider that the respondent /husband had brutally attacked the appellant/wife on several occasions for no reason, has put the appellant/wife in a lurch and she was forced to lead a life with the respondent /husband in fear.

4. That the respondent and his family had been very cruel to the appellant/wife and made her sit down in front of everyone to disrespect her and did not treat her as their family member.

5. That the Court below has committed an act of illegality in not considering the pleadings as well as the oral evidence of the appellant/ wife in proper perspective.

6. When the appellant/wife examined PW2 and PW3 to prove her contention as to the acts of cruelty after consuming liquor, the



C.M.A(MD)No.483 of 2024

same has been brushed aside by the Family Court, omitted to consider the same resulted in grave error.

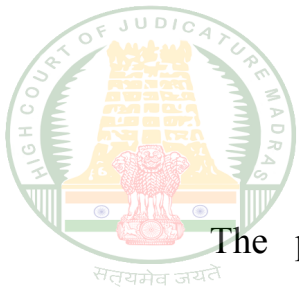
7. When the parties to the marriage are Indian Christians and a Divorce petition has been filed under the provisions of the Indian Divorce Act, the Court below did not properly apply its mind and rendered a finding that 'a Hindu Marriage is a sacred one' shows the non-application of mind on the part of the Presiding Officer.

8. That the Family Court, has not applied its mind properly on the oral evidence on both sides, it must have granted a decree for dissolution of marriage in favour of the appellant/wife.

9. The respondent is an alcoholic and has connections with the other women with no love and affection towards the appellant and neglected her, it was not taken into consideration by the trial court

10. That the judgment and decree of the Trial Court is liable to be set aside and hence, he prayed to allow the Civil Miscellaneous Appeal.

9. The learned counsel for the respondent seriously objected to the grounds raised in the Civil Miscellaneous Appeal by stating that none of the grounds were raised by the petitioner in the main petition.



C.M.A(MD)No.483 of 2024

WEB COPY

The petitioner levelled several defamatory allegations against the respondent by stating that he was a drunkard, committed adultery, etc., without any proof. The petitioner failed to prove that she was treated cruelly, in fact she alone left the matrimonial home and was living separately, and the respondent did not desert her.

10. The learned counsel for the respondent further argued that, till date, the respondent is ready to live with the petitioner. The appellant deserted the respondent without any reasonable cause. She insisted the respondent to leave his parents and give the entire salary to her and settle him in her matrimonial home. The ground raised in the appeal has not been established by the petitioner and therefore the trial Court properly dismissed the petition, no ground is available to allow this appeal and hence the respondent prays to dismiss the appeal with exemplary costs

11. In this case, the points for consideration are

(i) Whether the order passed by the trial Court is proper or liable to be set aside?



C.M.A(MD)No.483 of 2024

12. Heard the learned counsel on either side and carefully perused the entire material record.

13. The appellant/petitioner/wife filed the divorce petition under Section 10(1) (i), (ix), (x) of the Indian Divorce Act, 1955, seeking divorce on the ground of adultery, desertion and cruelty against which the respondent husband filed a counterclaim with a prayer for restitution of conjugal rights

14. The first ground raised in the petition is that the respondent committed adultery. The petitioner contended that, even before the marriage, the respondent maintained an illegal relationship with several women. He would leave the house under the pretext of going to work, but on returning the petitioner found evidence such as food items and toys for children in the respondent's car.

15. Though the petitioner alleges that the respondent led an adulterous life, she has not specifically mentioned the name of the person with whom the respondent allegedly engaged illegal relationship. When a person seeks divorce on the ground of adultery, the petitioner is required



C.M.A(MD)No.483 of 2024

to disclose the identity of the alleged adulterer, implead such person as a party to the proceedings, and substantiate the allegation with cogent evidence or documentary proof. The petitioner, P.W.1 and her father P.W.2 has neither disclosed the name of the adulterer nor produced any document to establish that the respondent had an illegal affair with such person. During cross-examination, the petitioner stated that she was willing to disclose the name of the alleged adulterer, which is not legally permissible at that stage.

16. The petitioner examined P.W.3 one independent witness, during her cross-examination she mentioned two names, stating that their contact numbers were found in the respondent's telephone. However, to substantiate this allegation, no call records or other contact details were produced before the Court.

17. The statutory scheme applicable in this regard under the Divorce Act 1869, Section 11 of the said Act is read as follows :

“11. Adulterer or adulteress to be co-respondent - On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-



WEB COPY



C.M.A(MD)No.483 of 2024

respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely :

(a) that the wife, being the respondent, is leading the life of a prostitute or the husband, being the respondent, is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead.

18. We rely upon the judgment in ***Ranganathan vs. Sindhuja, (C.R.P.(PD)(MD). No.546 of 2024 dated 04.03.2025*** in which paragraphs Nos.18 and 21, this Court has held as follows :

“18. A consolidated reading of the above said judgments would make it clear that the alleged adulterer is a necessary party to a divorce proceeding where there is an allegation of adultery. Merely because no relief is sought for as against the adulterer, he or she cannot be considered to be an unnecessary party. In case, if the alleged adulterer wishes, he or she may file a counter and dispute the allegation made against him or her.

19.



WEB COPY



C.M.A(MD)No.483 of 2024

20.

21. In the present case, the husband has taken a specific defence in the counter that the divorce petition is not maintainable without impleading the adulterer. But in the written submissions filed by the counsel in the High Court, it is stated that the husband would withdraw the objection and will not insist the plea of non-joinder. This Court has already arrived at a finding that the alleged adulterer is a necessary party to the proceedings. In such circumstances, the consequences of withdrawal of the objection raised by the husband pales into insignificance.”

19. The petitioner stated that she is aware of the details of the adulterer, however, she failed to implead the alleged adulterer as co-respondent and has not explained the reason for not disclosing the details of such person.

20. Therefore, it is concluded that the petitioner has failed to establish the involvement of adultery by the respondent.

21. The second ground taken for seeking divorce is desertion under Section 10 (1) (ix) of the Indian Divorce Act.



WEB COPY

22. Desertion in marriage refers to one spouse intentionally abandoning the other without a justifiable cause, and without the other's consent, to permanently end the marital relationship. It is not merely physical separation, there must be both deliberate intention to desert and an actual separation. It is the petitioner's burden to prove that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.

23. The petitioner, stated that she was employed in Thirumayam Panchayat while the respondent was working as a Teacher in an aided School at Muthupettai, Ramnathapuram District. During the COVID period, the petitioner was commuting to her workplace from her parents' house and the respondent was attending his job from his parents' residence. During this time, the petitioner met with an accident. As there was no bus service available both were residing separately in a house at Thirumayam.

24. Subsequently, due to a matrimonial dispute between the spouses, a compromise meeting was held on 14.02.2021, in which it was



C.M.A(MD)No.483 of 2024

WEB COPY

decided that they would reside in a house at Karaikudi and commute to their respective workplaces from there. However, the respondent refused to comply with this decision and verbally abused her. Earlier on 12.08.2021, both argued that the respondent chased the petitioner to her parents' home. On the same day, he came to her house, in an inebriated condition, quarrelled with and assaulted her. Thereafter the parties have been living separately from 12.08.2021.

25. The marriage took place on 20.07.2020 during the COVID period. From the petitioner's admission, it is established that from the beginning, both parties continued to reside in their respective parental home. Subsequently, the parties resided at Thirumayam in a separate house for a short period. The petitioner has admitted that they were living together only for three months after which they have been living separately. Subsequently, a panchayat was convened on 14.02.2021 between the parties wherein it was decided that both should live together. However within six months, again they developed misunderstandings. Thereafter, on 13.08.2021 she left for her parental home where she continues to reside alone. She has not produced any evidence to establish that she was compelled to leave by the respondent



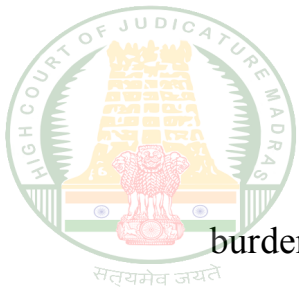
C.M.A(MD)No.483 of 2024

or that he deserted her with intention to permanently end the marriage.

WEB COPY

On the contrary, it stands established that she alone left the matrimonial home and the respondent had not deserted her. Furthermore, the petitioner has not made any efforts to reunite with the respondent. It is pertinent to note that the petition was filed on 10.11.2021 within three months of the date of separation. However, as per Section 10(1) (ix) of the Divorce Act, the respondent has deserted the petitioner for atleast two years immediately proceeding the presentation of the petition. However, as per the petitioner's own statement, she alone left the matrimonial home on 13.08.2021 but filed the divorce petition within three months from the date of their separation. Since the petitioner voluntarily left the respondent and filed the petition within three months from the date of leaving the matrimonial home, the statutory requirement of living separately for a minimum period of two years under the Divorce Act has not been fulfilled. Therefore, the above desertion ground for dissolution of marriage is not sustainable and liable to be rejected.

26. The petitioner further alleged that she was cruelly treated by the respondent. Cruelty is one of the valid grounds for divorce. However, Act not provide a precise definition of cruelty. However, the



C.M.A(MD)No.483 of 2024

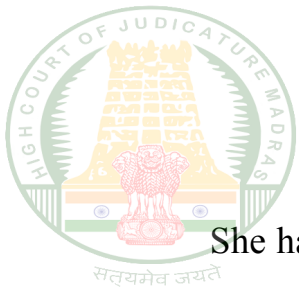
burden lies on the petitioner who alleges the act of cruelty to prove the

same in the following manner:

a. For mental cruelty by evidence by petitioner, family members, neighbours or anyone who witnessed the occurrence by proving that there were continuous insults, humiliation, abusive language, false allegations, or refusal of marital obligations, threats of suicide, denying companionship, etc.

b. For physical cruelty, assault, physical violence or behaviour, endangering, life and health by submitting medical reports.

27. The petitioner stated that she was abused and assaulted by the respondent. In support of her claim of cruelty, the petitioner has alleged that the respondent frequently came home in an inebriated condition, abused her and assaulted her. She further alleged that, he was involved in an illicit relationship with several women. The Petitioner further alleged that whenever she reasonably questioned the respondent, he assaulted her and abused her. Despite her repeated requests, the respondent refused to take her to the School where he was employed.



C.M.A(MD)No.483 of 2024

She has also stated that the respondent used to commute to school by car and on return she noticed sweets and toys meant for children. When she questioned him about the same, he allegedly assaulted her and abused her in filthy language.

28. The petitioner has not specified any particular date on which the alleged act of cruelty was committed. She has also failed to disclose the name of the woman with whom the respondent is alleged to have had an affair. Further, she admitted that no police complaint was lodged for the alleged act of cruelty. She has not produced any phone messages or written communications addressed to her parents regarding the cruelty and harassment committed against her.

29. The petitioner's father was examined as P.W.2. In his chief examination, he stated that his daughter was not able to live peacefully in her marital life. However, he did not state that the respondent was an addict of alcoholic or involved in extramarital affairs. During cross-examination, he further admitted that the petitioner and respondent had been living together only for three months. He stated that he and his wife visited the petitioner's house 4 to 5 times, however,



C.M.A(MD)No.483 of 2024

he did not specify that those visits were made solely to enquire about the act of cruelty committed against her. He also did not clearly state on which day the respondent treated his daughter cruelly nor did he specify when the daughter called and informed him about the same.

30. P.W.3 an individual witness is examined to support her claim. She stated in her chief examination that the respondent had a habit of assaulting the petitioner and that the family members had ill-treated her. However, during cross-examination, she also admitted that the petitioner and respondent were living together only for three months at Thirumayam in a separate house. She further acknowledged that she has not personally witnessed any assault committed by the respondent. Further, she has not deposed that the respondent was an addict of alcoholic or involved in any illegal affairs with multiple women.

31. On cumulative consideration of the evidence, it revealed that the marriage between the petitioner and the respondent was solemnized during the COVID period and therefore they were living separately in their respective houses and attending to their employment. Thereafter a matrimonial home was set up at Thirumayam, where the



C.M.A(MD)No.483 of 2024

petitioner and respondent lived together only for a short period of about three months. In these circumstances, the petitioner cannot be said to have been residing in the matrimonial home for any substantial period and therefore the allegation of harassment made against the respondent is without basis and liable to be rejected.

32. The further allegation to that the respondent consumed alcohol, and involved extra extramarital affairs with several women has not been substantiated. Except the petitioner, the other witnesses examined on her viz., her father P.W.2 and another witness P.W.3, have not stated in their evidence that the respondent was a drunkard and involved in extramarital affairs. If indeed, the respondent had been consuming alcohol or maintaining extramarital affairs, it would have been natural for the petitioner's father to depose about the same in his testimony. However, he has not stated anything in this regard. The petitioner's evidence is not corroborated by the testimony of other witnesses. Consequently, the allegation of harassment and cruelty as stated in the petition has not been properly established on the side of the petitioner.



C.M.A(MD)No.483 of 2024

33. Further, the petitioner, has not specifically mentioned

any date of harassment either in her petition or in evidence, before 12.08.2021, however, she stated that a panchayat was held on 14.02.2021 at Ramnathapuram, wherein it was decided that the petitioner and respondent should reside at Karaikudi and attend their respective employment, the respondent refused to reside with her at Karaikudi. On 12.08.2021, the petitioner called the respondent over the phone, enquired whether he had set up house at Karaikudi, but the respondent refused to reside with her at Karaikudi. He further stated that he did not wish to live with the petitioner, and that she could go her own way. On the same day, he went to her house, an argument ensued during which the respondent abused her in filthy language and assaulted her at about 10.30 hours and chased her.

34. It is seen that the petitioner has not been consistent in her versions, in her chief examination, she stated that the respondent came and created a problem on 12.08.2021, whereas in cross-examination, she admitted that on 12th August at about 4.00 p.m, the respondent informed her that he would not continue to live with her. Thereafter, the next day, namely the 13th August, she went to her parental

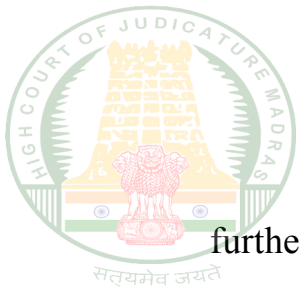


C.M.A(MD)No.483 of 2024

home. She further deposed that on the very same day at about 10.45 p.m., the respondent came to her house and created a problem. Thus her evidence contains contradictions and does not inspire confidence.

35. Further, the respondent seriously denied the alleged incident took place on 12.08.2021. He stated that on 12.08.2021, he was attending a Baptism function at Theni (Royappan patti) and returned to his parents' house at Muthupettai at about 10.30 p.m. To substantiate his contention, he examined R.W.2 in whose family the baptism function was held. R.W.2 one Arokia Saviour in the chief examination stated that on 12.08.2021, the respondent was attended the function and further contended that the respondent remained there with other teachers upto 4.30 p.m., before leaving for his parents' residence. He has produced the invitation of baptism as Ex.R1, and photographs to show that the respondent attended the function as Ex.R2.

36. One Ratchagaraj was examined as R.W.3, in his chief examination, categorically stated that a mediation was effected between the petitioner and the respondent on 14.02.2021, in which it was decided that both the parties would live at Thirumayam and not at Karaikudi. He



C.M.A(MD)No.483 of 2024

further stated that the respondent is a person who lives with discipline and allegations made against him are false.

37. On Careful perusal of the record, the petitioner fails to prove that the respondent was involved in an adulterous relationship and an addict of alcohol. She further failed to establish that the respondent deserted her or treated her with cruelty.

38. On the contrary, it is established that the petitioner is employed at Thirumayam while the respondent is employed at Muthuppettai. The respondent was living with her in Thirumayam in a separate house. Thereafter, the petitioner compelled the respondent to stay at Karaikudi, which is a different place, since the same was refused by the respondent, she left the matrimonial home, filed the present petition with false grounds, which is liable to be dismissed.

39. The allegation raised against the respondent was not proved and therefore, the trial Court correctly dismissed the petition. We do not find any merit in the Civil Miscellaneous Appeal and hence, the same is liable to be dismissed.



C.M.A(MD)No.483 of 2024

WEB COPY

40. In the result, the Civil Miscellaneous Appeal is dismissed. The fair and decretal order dated 24.02.2023, passed in OP No.305 of 2021 and counter claim in O.P.No.183 of 2022, by the Family Court, Sivagangai, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
28.08.2025

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

RM

To

1.The Judge,
Family Court,
Sivagangai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.483 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.483 of 2024

28.08.2025