

C.M.S.A.(MD)No.42 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.42 of 2019

S.Karunakaran

... Appellant

Vs.

Nirmaladevi

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act, 1955 r/w. Section 100 of Code of Civil Procedure , to set aside the fair and decreetal dated 23.03.2015 made in H.M.C.M.A.No. 14 of 2012 on the file of Principal District Court, Theni, confirming the Judgment and Decree dated 14.10.2011 made in H.M.O.P.No.27 of 2009 on the file of the Sub Court, Theni, and to allow the same with cost by allowing the appeal.

For Appellant : Mr.K.R.Laxman

For Respondent : Mr.P.Mahendran



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JUDGMENT

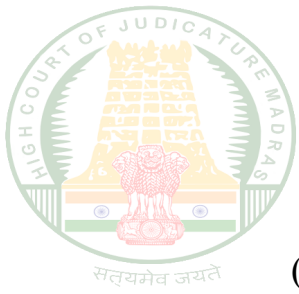
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This Civil Miscellaneous Second Appeal is filed as against the fair and decreetal dated 23.03.2015 made in H.M.C.M.A.No.14 of 2012 on the file of Principal District Court, Theni, confirming the judgment and decree dated 14.10.2011 made in H.M.O.P.No.27 of 2009 on the file of the Sub Court, Theni.

2. For the sake of convenience, the parties herein are referred to, as per their rank before the trial Court.

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

(i) The petitioner is the husband and the respondent is the wife. The petitioner husband has laid a petition for divorce on the grounds of cruelty and desertion. The marriage between the petitioner husband and the respondent wife was an arranged marriage solemnized on 10.06.2007 at Thuraiyappanadar Thirumanamandapam, Bodinayakanur, according to the Hindu Customs and Rites. After marriage, the couple began their matrimonial life at the petitioner husband's house and out of the said wedlock, the respondent gave birth to a male child on 05.12.2008.



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(ii) The allegation of the petitioner husband is that from the very beginning of the marriage, the respondent wife was not cordial towards him and led the matrimonial life with reluctance and hesitation. The marriage was consummated only after a period of one month and even then, it was done without emotional involvement and with much hesitation on the part of the respondent wife. Within a span of five months of the marriage, the respondent wife became pregnant. On 30.07.2008, the respondent's mother took her to the respondent's maternal home, assuring the petitioner that the respondent will be brought back to her matrimonial home within a week. However, after the period of one week, when the petitioner husband contacted the respondent she informed him that he should speak to her father regarding her return. After few months later, the respondent's baby shower (valaikaapu) was conducted at her maternal home.

(iii) However, the respondent's parents did not inform the petitioner or his relatives about the conduct of the said baby shower ceremony at the respondent's maternal home. On coming to know about this function conducted in the respondent's maternal home, the petitioner along with Rajaram Srinivasan, Sethu, Mookaiah from Periyakulam, approached the respondent's parents and requested them to send the respondent wife back



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to the petitioner's house. However, the respondent's father blatantly refused to respect the said request and instead demanded that all the Sridhana (dowry) articles be returned to the respondent.

(iv) Subsequently, a male child was born on 05.12.2008. However, the said information was also not informed by the respondent to the petitioner. When the petitioner and his parents expressed their intention to visit the child during the month of Tamil month 'Thai', the same was not received positively by the respondent's parents, and a positive reply was not further communicated from their end. However, the respondent's father went to the extent of threatening the petitioner that they would initiate legal proceedings under the Dowry Prohibition Act, 1960 and Protection of Women from Domestic violence Act, 2005, if any attempt was made to bring the respondent wife back to her matrimonial home. The respondent wife has miserably failed in fulfilling her duties as a wife to the petitioner. Consequently, the petitioner issued a legal notice on 03.02.2009 seeking restitution of conjugal rights. However, the same was not responded with an appropriate reply by the respondent wife. Hence, he filed a petition for divorce and pressed for allowing the civil miscellaneous second appeal.

(v) The respondent has filed a counter, refuting all the allegations made by the petitioner in his petition for divorce. The respondent wife has



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categorically refused the allegations that she had been reluctant to live a peaceful life from the first instance and also the other allegations about her family members, who have not cooperated for the reunions of the petitioner and the respondent. It has been further submitted that the respondent was subjected to heinous domestic violence, on 30.07.2008 in the presence of her mother during a visit while the respondent was pregnant. When the respondent's mother intervened and questioned about the reason for the physical assault, the petitioner went to the extent of abusing the respondent's mother as well. The petitioner's parents remained as mute spectators during the incident and hence, the respondent's mother with a broken heart had returned to her house. Thereafter, within a week of this incident, the petitioner himself allegedly humiliated the respondent and left her at her maternal home and went off.

(vi) The respondent has further submitted that the petitioner is a person of higher social status and better economic condition compared to the respondent. From the very beginning of his marriage with the respondent, he continuously subjected her to dowry abuse, demanding more dowry, ridiculing the dowry which was provided to her at the time of marriage. It is also stated that whenever the respondent's parents approached the petitioner and his family for baby shower (valaikaapu), the



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same was outrightly rejected by the petitioner and his parents. Hence, without the presence of the petitioner, the baby shower (valaikaapu) was formally conducted. Subsequently, the respondent gave birth to a male child on 05.12.2008. The respondent wife has denied all allegations of desertion in the said counter affidavit.

(vii) On the basis of the pleadings, the learned Trial Court proceeded to examine four witnesses on the side of the petitioner and marked Ex.P1 to Ex.P.7. Two witnesses were examined on the side of the respondent and no documents were marked on the side of the respondent.

(viii) On the basis of the arguments of the respective parties, evidence deposed and the materials available on record, the Trial Court proceeded to conclude that the petitioner had not made out any case for grant of divorce on the ground of cruelty.

(ix) In the absence of cogent and convincing evidence to prove the factum of cruelty which was subsisting in the matrimonial life between the petitioner and the respondent, the learned trial Court negated the petitioner's claim and dismissed the H.M.O.P.No.27 of 2009 on the file of the Sub Court, Theni. Challenging the same, H.M.C.M.A.No.14 of 2012 was preferred by the petitioner husband before the Principal District Court, Theni. The learned First Appellate Court do not find any valid reason to



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interfere with the judgment and decree passed by the learned Trial Court and accordingly, dismissed the H.M.C.M.A.No.14 of 2012. Challenging the same, the present civil miscellaneous second appeal is filed.

4. The learned Counsel appearing for the appellant categorically submitted that the marriage between the petitioner and the respondent was solemnized on 10.06.2007, and the respondent wife voluntarily left her matrimonial home on 30.07.2008. Despite all efforts by the petitioner husband to re-join with the respondent, those efforts have been failed. The parties have been living separated for the past 17 years and this prolonged separation has caused a mental condition that it is no longer feasible for the petitioner husband to continue living with the respondent wife. The marriage has reached a point of no return. He further relied upon the judgment passed by the Hon'ble Division Bench of this Court in the case of R.Thangamani @ Mainavathi Vs Satish Kumar dated 22.09.2017, wherein the Hon'ble Division Bench of this Court relying upon the judgment of the Honourable Apex Court in the case of **K.Srivas Rao Vs. D.A.Deepa** reported in **2013 (5) SCC 226** submitted that, the Honorable Apex Court considering the fact of a prolonged separation of more than 10 years which had created an unbridgeable distance between the couple, proceeded to



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dissolve the marriage and passed the judgment allowing the petition for divorce. Hence, the learned Counsel pressed for allowing this case following the mandates laid down by the Honourable Supreme Court in the aforesaid judgment.

5. Per contra the learned Counsel appearing for the respondent has categorically submitted that each and every case has to be dealt with in accordance with the facts and circumstances of the said cases and as far as matrimonial cases are concerned, the facts and circumstances of any other case cannot be fitted into the facts and circumstances of another case as such, the judgment relied upon by the learned Counsel for the appellant could not be made applicable to the facts and circumstances of this case. In the aforesaid case the petition for divorce was laid on the ground of desertion and as far as this case is concerned, the case is one where the divorce has been sought on the grounds of desertion as well as cruelty, wherein the factum of cruelty cannot be attracted because the couple had separated within a period of one year from the date of marriage. Further, the learned Counsel submitted that the appellant had miserably failed to prove the factum of cruelty before the learned trial Court with appropriate evidence and proper document and pressed for dismissal of the appeal



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6. Heard the learned Counsel for the appellant and the learned Counsel for the respondent and carefully perused the material available on record.

7. It is the case where the petitioner husband and the respondent wife had separated within one year from their marriage. The allegation of the appellant husband is that the respondent has treated him with cruelty, leading to the marriage reaching a point of no return. However, upon a careful perusal of the pleadings of the appellant husband in the petition for divorce would not reveal even a single incident which could attract the ground of cruelty. The only issue which has been pointed out in the petition for divorce is that the respondent had left her matrimonial home with her mother on 30.07.2008 by informing the petitioner that she will return shortly. However, she had never returned and her parents have conducted the Valaikaapu function in the absence of the petitioner and his parents and thereafter, the respondent had never turned up to her matrimonial home. It was also further pleaded that the efforts of reconciliation taken by few persons of common interest also failed due to the non-cooperation of the respondent's father. The learned Trial Court,



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after considering the evidence adduced by various witnesses, had come to a conclusion that a case filed by the appellant husband is not a fit case to be allowed for grant of divorce on the grounds of cruelty. The First Appellate Court concurred with the findings of the learned Trial Court. No major issue or incident of physical abuse or emotional abuse were pleaded or elaborated in the evidence of the respective parties. The only allegation raised by the petitioner husband is that the respondent wife was never cordial from the very beginning of the marriage. However, the said allegation has been duly denied by the respondent wife in both her pleadings and her evidence.

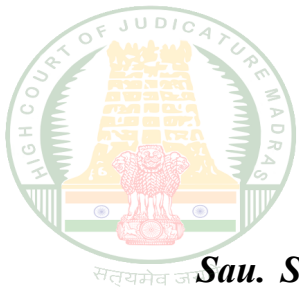
8. That apart, the other major allegation of the petitioner husband is that the respondent wife left the maternal home along with her mother. The date of marriage was 10.06.2007 and the alleged date of separation is 30.07.2008 i.e., the date on which the petitioner husband had alleged that the respondent wife had left the matrimonial her along with her mother. On 03.02.2009, the petitioner husband issued a legal notice seeking restitution of conjugal rights. However, the respondent wife did not reply to the notice. However, within three weeks from the date of issuance of a legal notice on 27.07.2009, the petition for divorce has been laid by the



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petitioner husband before the trial Court. The legal notice dated 03.02.2009 has been marked as Ex.P.2, acknowledgment has been marked as Ex.P.3, and the legal notice issued to the respondent's father was marked has been Ex.P.4 and the acknowledgment dated 27.02.2009 marked as Ex.P.7. For which the respondent wife by deposing her evidence has duly explained the reasons for not issuing a reply notice that on receipt of the notice for divorce, the elders of the family took effective steps through mediators for reconciliation, as the notice was only seeking restitution of conjugal rights and not divorce.

9. Hence, I am of the considered view that after issuing a notice for divorce, the appellant filed a petition for divorce within three weeks from the date of the notice. However, the respondent had filed a counter informing her intimation to reconstitute her conjugal rights. In the light of this, the appellant ought to have duly availed himself of the opportunity for mediation through the learned Trial Court and should have made efforts to reconcile with his wife. Having failed to do so and failing to prove the factum of cruelty before the learned trial Court, I do not find any demerits on the finding of the trial Court and the case is not fit for the grant of divorce. The Hon'ble Apex Court in the case of ***Vishwanah Agrawal Vs.***



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Sau. Sarla Vishwanat Agrawal reported in 2012 (7) SCC 288 has dealt with the case of concurrent finding by the Trial Court and the first Appellate Court, and has held that the High Court in the second appeal should not disturb the concurrent finding of facts unless it is shown that the findings recorded by the Courts below are perverse or are based on no evidence, or that on the evidence on record no reasonable person who have come to that conclusion. The relevant portion of the said judgment is extracted as follows:

36. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily “Lokmat” and the occurrence that took place on 11.10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujrathi. We have already referred to the second incident and expressed the view that the said incident does not establish that there was an extra marital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into



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consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in the case of [A. Jayachandra](#) (supra) :-

“The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

37. We may also usefully refer to the observations made in [Suman Kapur](#) (supra) wherein the wife had made a maladroit effort to take advantage of a typographical error in the written statement and issued a notice to the husband alleging that he had another wife in USA. Thus, this Court has expressed the opinion that the subsequent events can be considered.

10. Fully fortified by the judgment of the Honourable Apex Court and being satisfied with the concurrent findings of both the learned Trial Court and the Apex Court, I hold that the decision of the Trial Court is well supported by the evidence on record. In the facts and circumstances of the instant *lis* in hand, I am of the considered view that even in his pleading, the petitioner has not made any strong reasons which would contribute to the factum of cruelty. The fact that the wife left her maternal home for the purpose of delivery cannot, in the context of Indian society, be interpreted



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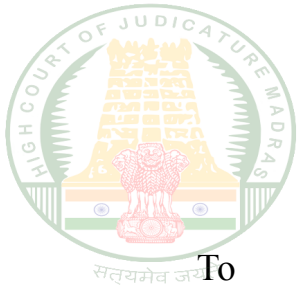
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as an act of cruelty attributable to the wife. It is the responsibility of the husband to ensure to that his wife is comfortable during her entire period of pregnancy, including facilitating her return to her maternal home, if necessary. In the instant case, the child was born on 05.12.2008. Within two months from the date of childbirth, the appellant husband filed a petition for divorce on the grounds of a non-existent cruelty factor. Therefore, I am not inclined to interfere with the judgment and decree passed by the learned Trial Court.

11. Accordingly, this Civil Miscellaneous Second Appeal stands dismissed. No costs.

12.03.2025

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

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



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L.VICTORIA GOWRI, J.,

jbr

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