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C.M.A.No.854 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2026

CORAM

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.854 of 2020

&

C.M.P.No.5547 of 2020

J.Komala Priya

... Appellant

VS

R.Sivakumar

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court, 1984 against the judgment and decree dated 11.12.2019 made in F.C.O.P.No.218 of 2018 on the file of learned Family Court, Vellore, Vellore District.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.P.Seshadri
for Mr.M.Venkatakrishnan



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JUDGMENT

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[Judgment of the Court was delivered by **C.V. KARTHIKEYAN, J**]

The respondent in F.C.O.P.No.218 of 2018 on the file of Family Court at Vellore, aggrieved by the judgment dated 11.12.2019 granting a decree of divorce of the marriage between her and petitioner therein has filed the present appeal.

2. The appellant/wife and the respondent/husband married on 13.06.2008. They were blessed with a girl child born on 10.08.2009. The child was diagnosed as being afflicted with autism. Naturally this led to aggravated conversations and discussions between the appellant and the respondent.

3. The respondent had filed the aforementioned F.C.O.P No.218 of 2018 contending that the efforts to beget a second child failed owing to non-cooperation by the appellant. He contended that he had taken every effort to convince the appellant that it would in their interest to beget another child,



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but since the appellant had refused to cooperate and had inserted a Copper T, the marital life stood frustrated. After waiting for several years, he had issued a notice on 28.04.2018 alleging that the appellant had not cooperated for the birth of a second child, which attitude according to him, amounted to cruelty.

4. The appellant herein had issued a reply notice dated 08.06.2018 wherein she stated that she had to look after the mental health of the first child since the child was afflicted with autism and special care had to be devoted to the child and only when that child had grown, it would be sensible to have a second child. She also expressed her intention to live with the respondent.

5. The respondent issued a rejoinder notice dated 09.07.2018 wherein he also expressed intention to live with the appellant herein.

6. Thereafter, the respondent had filed the aforementioned F.C.O.P.No.218 of 2018 before the Family Court at Vellore seeking dissolution of the marriage on the ground of cruelty. He had alleged that the



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non-cooperation by the appellant to beget a second child amounted to cruelty. It was only on that ground that he had filed the petition.

6. The appellant herein had filed a counter affidavit denying the allegation. According to her, since the first child had been diagnosed with autism, she had to look after the said child till the child reached the age of at least 4 to 5 years and thereafter, she had consented to beget a second child.

7. It is also on record that both of them had also visited Sri Ramachandra Medical College for counselling for the birth of the second child.

8. It was also stated by her that in view of the condition of the first child, she had inserted Copper T, but later on advice, on 27.12.2017 she had removed the same, but immediately within three days i.e., on 30.12.2017, the respondent had driven her out of her matrimonial house. She contended that she had to look after the child and that the respondent had not paid any maintenance towards the welfare and upbringing of the child. She, however, stated that she was ready and willing to live with the respondent herein.



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9. On the basis of such pleading, the matter went to trial. The respondent examined himself as PW1 and the appellant examined herself as RW1. During the cross-examination of the respondent, questions were put about the efforts taken to beget a second child. He admitted that he and the appellant had visited Sri Ramachandra Hospital seeking counselling for begetting a second child. During her cross-examination, the appellant stated that she had tried to convince the respondent that they could wait for some years for the first child to grow up and then have a second child. Questions were also put that the respondent was interested only in getting a male child and since no specific assurance could be given on that, there were misunderstandings between the two of them.

10. On the basis of the evidence and the pleadings, the learned trial Judge held that the appellant herein had deserted the matrimonial house on and from the year 2017 and therefore came to a conclusion that she was not interested in continuing with the marital life and on that basis held that there was no possibility of reunion. The learned Judge held that the conduct of the appellant indicated that she was not interested to continue to live with the



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respondent and therefore had proceeded to grant a decree of divorce on the ground of desertion. It must be kept in mind that the petition had been filed seeking dissolution of marriage on the ground of cruelty and not on the ground of desertion. Questioning this judgment, the present appeal had been filed.

11. Heard the learned counsel for the appellant and the learned counsel for the respondent. We must also state that the matter had been adjourned at least on two separate occasions to examine whether there could be any possibility of settlement, but however, both the learned counsels had not come forward to report such progress in settlement talks.

12. The learned counsel for the appellant took the Court through the facts of the case and stated that the appellant was always ready and willing to live a decent marital life with the respondent. He pointed out that the first child unfortunately was afflicted with autism and as a mother, the appellant had to devote a special attention for the well being of the first child and had therefore tried to convince the respondent to have the second child a little



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later. The learned counsel stated that the Copper T, which had been inserted, had been removed on 27.12.2017, but immediately thereafter within a period of three days, the appellant was driven out of the matrimonial house. He also stated that the appellant herein had never treated the respondent with cruelty and alleged that no ground for cruelty had been made out and established during the course of trial and found fault with the judgment since the learned Judge had granted the decree of divorce on the ground of desertion, which was never pleaded by the respondent. The learned counsel therefore argued that the judgment of the Family Court has to be set aside.

13. The learned counsel for the respondent, pointing out the facts, stated that the parties have been living separately from the year 2011 and there was no possibility of reunion and that the marriage had irreversibly broken down. The learned counsel contended that the appellant had not cooperated for the birth of the second child and this was the only reason for the marital discord between the parties. It was stated that learned Judge had correctly appreciated the evidence and granted the order dissolving the marriage.



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14. We have carefully considered the arguments advanced and perused the materials placed on record.

15. The marriage between the appellant and the respondent had taken place on 13.06.2008. It was an arranged marriage. They were blessed with a girl child, born on 10.08.2009. The child was diagnosed with autism after about two years. The normal expectation of any mother of an autism child would be that the father would cooperate and help the child to come out of her difficulties and bring up the child in a normal manner.

16. It is seen from the record that the appellant had never denied conjugal relationship, but also participated in the same hoping to get a second child. They had also taken specialized consultation with Sri Ramachandra Medical College on this issue.

17. We hold that the act of bringing up an autism child and paying special attention to the upbringing of such child can never be categorized as inflicting cruelty on the husband. Further, delaying the birth of the second child to enable the first child to grow and be able to look after herself during the formative years cannot also be considered as an act of cruelty against the



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husband. These steps are only for the welfare of the first child, who required special attention. The respondent should have understood this particular fact.

18. It is also on record that both of them went to Sri Ramachandra Medical College for consultation for the birth of the second child. This fact had been admitted by the respondent during cross-examination. This would also imply that both of them were willing to have a second child and it can never be stated that the appellant refused to have a second child. She only wanted some space to be given before the birth of the second child. It is only natural that as a mother, she wanted that space since she has to foster and look after the first child particularly taking into consideration the affliction of the first child with autism. She necessarily also had to affix Copper T and that can never be considered as an act of cruelty inflicted by her against the respondent herein. The respondent had a duty to adjust to the surrounding circumstances and devote attention towards the well being the first child.

19. Even otherwise, the respondent herein had issued a notice on 28.04.2018 to which a reply was issued by the appellant on 08.06.2018



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expressing intention to live with him. In the rejoinder notice dated 09.07.2018, the respondent also instructed his advocate to issue the rejoinder stating that he was also ready and willing to reside with the appellant. Once the respondent had agreed to live with the appellant, it has to be held that he had condoned any fault of the appellant.

20. It is also seen from the records that the Copper T was removed on 27.12.2017 and the appellant was driven away from the matrimonial house on 30.12.2017. This can never be termed as “desertion”. We hold that the learned trial Judge had misdirected herself by granting the dissolution of marriage on the ground of desertion when there was no evidence for the same. Further, there is no act of cruelty inflicted by the appellant. The appellant only wanted some space for the growth of the first child, which in our opinion cannot be termed as an act of cruelty particularly taking into consideration the status of the first child and the care which a mother has to show to a child afflicted with autism.



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21. In view of these reasons, we hold that the judgment of Family Court, Vellore has to be necessarily interfered with.

Accordingly, the judgment of the Family Court, Vellore dated 11.12.2019 in F.C.O.P.No.218 of 2018 is set aside. The appeal is allowed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

[C.V.K., J] [K.R.S., J]
26.03.2026

Index: Yes/No

Neutral citation: Yes/No

gpa

To

1. The Principal Family Judge
Vellore
2. The Section Officer
VR Section
Madras High Court



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