



WEB COPY

CMA Nos. 916 & 917 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K.RAJASEKAR

CMA No. 916 of 2018

AND

CMA No. 917 OF 2018

K.Jayakumar
S/o Krishnasamy Gounder
Previously Residing At Nanjappa Goundar
Thottam Government Staff Quarters
Kuniamuthur
Coimbatore.

..Appellant(s) in both
CMAs

Vs

Selvi @ Sellamuthu
W/o K.Jayakumar
Door No.215, Chillan Thottam
Rayarpalayam
Ponnagounden Pudur
Palladam,
Coimbatore.

..Respondent(s) in both
CMAs

CMA No. 916 of 2018

This Appeal filed under Section 19 of the Family Courts Act seeking to set aside the decree and judgment passed in HMOP.No.856 of 2011 dated 01.10.2015 on the file of the Additional Family Court Coimbatore by allowing the above appeal.



CMA No. 917 of 2018

This Appeal filed under Section 19 of the Family Court Act seeking to set aside the decree and judgment passed in HMOP.No.1173 of 2011 dated 01.10.2015 on the file of the Additional Family Court Coimbatore by allowing the above appeal.

For Appellant(s): Mr.I.Abrar Mohamed Abdullah

For Respondent(s): Mr.N.Manoharan

COMMON JUDGMENT

(Judgment of the Court was delivered by K.Rajasekar J.)

The petitioner / husband in HMOP No.856 of 2011 on the file of the Additional Family Court, Coimbatore, is the appellant in CMA No.916 of 2018. The respondent / husband in HMOP No.1173 of 2011 on the file of the Additional Family Court, Coimbatore, is the appellant in CMA No.917 of 2018.

2.HMOP No.856 of 2011 had been filed by the appellant herein / husband seeking divorce and dissolution of the marriage solemnized between himself and the respondent herein / wife on 25.03.2010 as per Hindu rites and customs on the ground of cruelty.

3.HMOP No.1173 of 2011 had been filed by the respondent herein / Selvi @ Sellammuthu against the appellant herein / K.Jayakumar seeking restitution of Conjugal Rights.



4.By common order dated 01.10.2015, the trial Court has dismissed HMOP No.856 of 2011 filed by the husband for divorce and allowed HMOP No.1173 of 2011 filed by the wife for restitution of conjugal rights.

5.Challenging the common order dated 01.10.2015, the present two appeals have been filed by the appellant / husband.

6.For the sake of convenience, the parties would be herein referred to as husband and wife.

7.The allegation made by the husband in his petition for divorce is that the marriage was solemnized on 25.03.2010 as per the Hindu rites and customs. After the marriage, the marital home was set up in the parental home of the husband. After the marriage, the wife has not behaved properly and she was not cooperating with the husband to lead happy marital life and she started to quarrel with husband and his family members for no reasons and also humiliated his aged parents. Since the husband's family is a joint family, due to behaviour of the wife, the entire family has suffered mental agony. Further, the wife has not come forward to perform her marital obligations who acted against the husband's family. In spite of the best efforts made by the husband, wife has not changed her attitude towards the family members and also threatened that



she would commit suicide, if anyone from the family has advised. She had also gone to an extent of lodging police complaint against the family members and in this regard, the enquiry was also contemplated and therefore, it is clear that the wife herself deserted the family on 10.02.2011, which resulted in causing cruelty to the husband and his family members. Hence, he has come forward with the petition for divorce.

8. The wife has filed separate application for restitution of conjugal rights by denying the allegations levelled against her. According to her, though she entered into marital home with the hope of happy married life, her marital life was disturbed by intervention of the other family members of the husband. She also stated that though the husband and wife are having separate room, it was frequently visited by the family members at odd hours and it had affected the privacy of the couple. Further, the relationship between them has deteriorated, since she was not able to conceive and they have also undergone certain medical examination and even thereafter, she has not conceived, which resulted in harassing the wife by the husband and his family members. On 24.08.2011, the husband has lodged a Police complaint against her before the R.S. Puram Police Station and enquiry was also conducted and while returning home, the family members had not accompanied her and refused her from entering into matrimonial home, which forced her to return back to her parental house. From that day onwards, she is living separately and though she has made certain



attempts by lodging the complaint to the Police for re-union with the husband, the same has not fructified and hence, unable to bear the same, she has also come forward to file a petition seeking restitution of conjugal rights.

9. The trial Court considered both the issue of allegation of cruelty alleged by the husband as well as the desertion alleged by the wife. The husband was examined as PW-1 and the wife was examined as RW-1. Exs.P1 to P3 were marked on the side of the husband and Ex.R1 was marked as evidence on the side of the wife. The trial Court, after considering the evidence place on record, had recorded that though the wife has made several allegations regarding the various incidents that had taken place inside the house and regarding intervention of the family members into the matrimonial life, the same has not been denied by the husband in his petition or in his counter affidavit. This was taken as one of the major ground to interpret the pleadings that there is an implied admission and the case of the wife was accepted. Further, the trial Court has also accepted Ex.R1, which is the Police complaint to show that the wife has made separate complaint alleging the harassment made to her and thereby, the contention of the husband that there is a cruelty was rejected and consequently, the petition filed by the wife for restitution of conjugal rights was allowed and dismissed the petition filed by the husband for divorce.



10. Aggrieved by the common order, two separate appeals have been preferred by the appellant / husband.

WEB COPY

11. Heard arguments advanced by Mr. I. Abrar Mohamed Abdullah, learned counsel appearing for the appellant / husband and Mr. N. Manoharan, learned counsel appearing for the respondent / wife.

12. The learned counsel for the appellant / husband submitted that two incidents have been cited in the complaint and the same had also been established. One incident is regarding the continuous harassment made by the wife against the husband and she had also threatened the family member that she will commit suicide and other is threat and abuse. Further, there is also desertion on 10.02.2011 by the wife and thereby, she had withdrawn from the matrimonial life and to substantiate the same, the husband has adduced oral evidence and his evidence has not been properly appreciated by the trial Court and hence, he prays to set aside the common order to grant decree on the ground of cruelty. He also relied on the judgment of the Hon'ble Supreme Court in **(2007) 4 SCC 511, Samar Ghosh Vs. Jaya Ghosh**, to buttress his arguments that continuous and long period of separation will also lead to mental cruelty.

13. The learned counsel for the respondent / wife submitted that there are ample evidence produced before the Court, more particularly, there are evidence



to the effect that in the matrimonial home several family members are residing in small house and in which, one of the unmarried brother of the husband was also living. Her privacy had been disrupted by the family members, and they used to visit the room even at the odd hours. This has been taken note of by the trial Court and further, these allegations have not been denied by the husband in his pleadings. Since there is a valid ground forcing the wife to leave the matrimonial home and as there is no ground or evidence made out by the husband to prove the mental cruelty, he prays to dismiss both the appeals.

14. We have carefully considered the arguments advanced on either side and perused the material records.

15. The following points are now framed for consideration:

“i) Whether the husband/appellant had made out the case for cruelty as alleged in his petition?

ii) Whether the trial Court was right in accepting the case of the wife that there is a continuous interpretation in the matrimonial life of the couples by the family members and whether she was subjected to harassment by them?

iii). Whether the finding of the trial Court that in the absence of rebutted pleadings, the allegations levelled in the pleadings by the wife is presumed to be admitted by the husband?”



16. Since the discussion with respect to each one of the three points framed for consideration overlap, all the three points are taken up together for consideration.

17. The trial Court, while discussing the pleadings and evidence, specifically observed that on 24.08.2011 itself, the husband had lodged a complaint before the R.S.Puram Police Station and further, on that day itself, the family members of the husband have left her in the Police Station and returned back to their house. When she returned back to house, they have not allowed her to enter into the house. In this regard, she has also lodged separate complaint and the copy of the complaint is also marked as Ex.R1. All these averments have not been denied by the husband in his pleadings, more particularly, it has been recorded that the facts stated in paragraph Nos.4 to 10 of the petition filed by the wife in HMOP No.1173 of 2011, had not been specifically denied by the husband in his petition or in his counter.

18. Apart from that, the husband has filed his divorce petition on the ground of cruelty and hence the burden is on him to prove the cruelty for the purpose of granting divorce in his favour. Though he has adduced oral evidence as PW-1 and when he made several allegations, more particularly, the wife has not cooperated with him for leading happy and peaceful matrimonial life, and also there is an allegation that she has picked up quarrel with the family members for no reasons, and when the same has been denied by the wife, the husband has to establish his case by preponderance of probabilities.

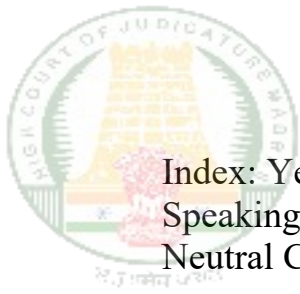


19. Once there is a denial of allegations, some more evidence is required to corroborate the allegations, apart from his oral evidence. There are no corroborative materials to substantiate the same. Per contra, the wife has made certain allegations and they have not been specifically denied by the husband. That has been taken note of by the trial Court and it was held that the same is implied admission of the allegations made by the wife.

20. In such circumstances, this Court is of the view that the husband has failed to prove the allegation of cruelty as pleaded by him and hence, this Court is of the view that the impugned order passed by the trial Court holding that the husband failed to prove the case and also the fact that he has impliedly admitted the allegations made against him by the wife, is acceptable. We are of the view that there is no reason to interfere with the common order dated 01.10.2015 passed by the trial Court in HMOP Nos. 856 & 1173 of 2011 and the same is confirmed. Accordingly, the points framed for consideration are answered. Both the Civil Miscellaneous Appeals are dismissed. There shall be no order as to costs.

(C.V.K.,J.) (K.R.S.,J.)
12-03-2026

smv



Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

WEB COPY

To

1.The Additional Family Court, Coimbatore.

2.The Section Officer, VR Section, High Court of Madras.



WEB COPY

CMA Nos. 916 & 917 of 2



**C.V.KARTHIKEYAN J.
AND
K.RAJASEKAR J.**

smv

**CMA No. 916 of 2018
AND
CMA NO. 917 of 2018**

12-03-2026