



WEB COPY

CMA No.1900 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 1900 of 2020

Udayachandran

..Appellant(s)

Vs

Devikarani

..Respondent(s)

Appeal against the Judgement and decree passed in FCOP No.125 of 2018, dated 04.08.2020 on the file of Family Court, Namakkal.

For Appellant(s): Mr.V.Selva Perumal

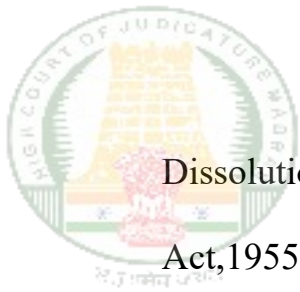
For Respondent(s): Mr.V.Viswanathan

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The petitioner in F.C.O.P.No.125 of 2018 on the file of Family Court at Namakkal, aggrieved by the dismissal of the said petition by judgment dated 04.08.2020, is the appellant herein.

2. The above said petition had been filed seeking divorce of the marriage solemnised between the appellant and the respondent on 02.09.2011.



Dissolution was sought under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty.

WEB COPY

3. In the petition filed, the appellant had stated that the marriage between him and the respondent was solemnised on 02.09.2011 and, during the marriage, there was the usual exchange of jewellery and other items. It had been further stated that when the Valaikapu festival for the respondent had been done, she went to her mother's house and, at that time, the appellant had gone at irregular intervals to reside in the mother-in-law's house. It was contended that the respondent had however acted disparagingly against the appellant.

4. A male child was born on 22.05.2014. When the appellant went over to his mother-in-law's house to see the child, it was contended that they spoke ill of him and abused him. It was stated that there were many attempts for settlement by calling upon the respondent to come back to the marital house and live with the appellant, but, she refused to do so. It was contended that the respondent had left the marital house and had not returned back, which was an act of desertion and that desertion amounted to cruelty. On those grounds, the appellant had filed the petition, seeking divorce.

5. In the counter, the allegations had been denied. It was stated that the respondent was always ready to live with the appellant. It had also been stated that the appellant was living a way-ward life by spending money and he was also spending money on alcohol and on playing cards. It was also stated that



she wanted to preserve the marital relationship in her interest and particularly in the interest of her son.

WEB COPY

6. An additional counter affidavit had also been filed by the respondent, stating that the allegation of the appellant that she was seeking a share in the property was not correct. She reiterated that she was ready and willing to continue the marital life with the appellant.

7. On the basis of the said pleadings, the parties went to trial. During trial, the appellant examined himself as P.W.1 and also examined his maternal uncle as P.W.2. He marked four documents as Exs.P-1 to P-4 on his side. Ex.P-2 was the information received under the Right To Information Act about the complaint given by the respondent and the enquiry conducted under it. The respondent examined herself as R.W.1 and marked one document as Ex.R-1 on her side.

8. The learned trial Judge, on the basis of the evidence, held that the allegation primarily was that the respondent had demanded a share in the land. It was also found with respect to allegations of cruelty that no substantial evidence had been adduced and that the primary grievance was that the respondent had left the marital house at the time of Valaikapu festival and did not come back.

9. Learned counsel for the appellant stated that this amounted to cruelty. This contention of the learned counsel for the appellant that this act amounted to cruelty had also been raised during trial and rejected by the trial Court and the



petition had been dismissed. Challenging the said judgment and decree, the present appeal has been filed.

WEB COPY

10. Heard the learned counsels for the appellant and the respondent.

11. It is the contention of the learned counsel for the appellant that on and from the function of Valaikapu, the respondent had left the marital house and that the respondent had taken a conscious decision not to come back to the marital house even after the child was born. He also contended that the respondent had been living separately for nearly twelve years and that the only interest of the respondent was to get a share in the property. It was further contended that by deserting the matrimonial house, the respondent had committed an act of cruelty and, therefore, the appellant sought for allowing the petition for divorce.

12. In this connection, learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in *Roopa Soni v. Kamalnarayan Soni*, (2023) 16 SCC 615, wherein the Hon'ble Supreme Court had held that if there is irretrievable break down of marriage, divorce shall be granted. We should however point out that the said judgment was delivered by the Hon'ble Supreme Court, by exercising their power under Article 142 of the Constitution of India, which power is not available to this Court.

13. Learned counsel for the appellant placed further reliance on the judgment of the Hon'ble Supreme Court in *Vijayakumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, (2003) 6 Supreme Court Cases 334, wherein the issue



of mental cruelty had been discussed and it had been stated that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship would constitute mental cruelty. But, however, in this case, no such allegation had been adduced by the respondent herein.

14. Learned counsel for the appellant stated that the parties have been living separately and that this Court should consider grant of the relief of divorce. He also pointed out the allegations in F.C.O.P.No.102 of 2021, which is now pending before the Family Court at Namakkal, which petition had been filed by the respondent seeking restitution of conjugal rights. It is contended that in that petition, the respondent had only spoken about the share in the land and that such share should be granted. But, however, that is an issue, which has to be examined only by the Family Court at Namakkal, which is seized of the pleadings in F.C.O.P.No.102 of 2021.

15. Learned counsel for the respondent stated that the respondent is willing to stay with the appellant for her sake and also for the sake of her son. He stated that the allegations of desertion were not correct and no ground relating to cruelty had been established.

16. We have carefully considered the arguments of the learned counsel for the parties.

17. In the instant case, the marriage between the appellant and the respondent took place on 02.09.2011. A male child was also born on



22.05.2014. It is the case of the appellant that the respondent left to her mother's house for the Valaikapu festival and did not come back. On the other hand, it is the case of the respondent that the appellant had demanded jewels and prevented her from entering into the marital house and to lead a normal life. The contention of the learned counsel for the appellant that divorce has to be granted since there has been an irretrievable breakdown of marriage cannot be accepted, as that is not a ground for divorce, as provided in the statute. In the evidence, the appellant also admitted that he had retained some jewels of the respondent. Naturally, when that is the case, there is always a possibility of minor quarrels in the family, which cannot be considered as cruelty being inflicted by the respondent on the appellant. On the other hand, it is the appellant, who is responsible for the same.

18. Learned counsel for the appellant stated that since the respondent had deserted the marital house, that should be taken as mental cruelty. We do not agree with that.

19. Desertion is an independent and separate ground and cruelty is a separate ground for seeking divorce. Cruelty will have to be made out especially during the course of evidence.

20. In the instant case, there is no evidence adduced of infliction of cruelty and, therefore, the appellant has fallen back to the ground of desertion. Even under the ground of desertion, the respondent had reasons to stay with her mother. There were continuous quarrels particularly over taking over the jewels



and not returning them back. It is also to be stated that the appellant had retained the jewels of the respondent. The demand of the respondent for a share in the property for the purpose of security is only justified. That cannot be stated as a ground of cruelty inflicted on the appellant. When the appellant has been the cause for the same, he cannot take advantage of his own wrong and put the blame on the respondent.

21. We are not inclined to interfere with the well considered and well reasoned judgment of the trial Court.

22. In the result, this Civil Miscellaneous Appeal stands dismissed. No costs.

(C.V.K.,J.) (K.R.S.,J.)
26-03-2026

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

DIXIT

To

Family Court,
Namakkal.



WEB COPY

CMA No.1900 of 2



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

DIXIT

CMA No. 1900 of 2020

26-03-2026