



C.M.S.A.No.78 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2026

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.S.A.No.78 of 2024

R.Rathinavelu

...Appellant

vs.

1.R.Suseela
2.Jessy

...Respondents

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act, 1955, to set aside the judgment and decree dated 29.08.2024 passed in HMCMA No.1 of 2022 on the file of the District and Sessions Court at Tirupattur, reversing the decree and judgment dated 13.10.2022 passed in H.M.O.P.No.167 of 2015 on the file of the Sub-ordinate Judge, Tirupattur.

For Appellant : Mr.PA.Sudesh Kumar

For R-1 : Mr.Elizabeth Ravi



C.M.S.A.No.78 of 2024

JUDGMENT

This Civil Miscellaneous Second Appeal is filed against the judgment and decree dated 29.08.2024 passed in H.M.C.M.A.No.1 of 2022 on the file of the District and Sessions Court, Thirupattur, reversing the judgment and decree dated 13.10.2022 passed in H.M.O.P.No.167 of 2015 on the file of the Sub Court, Thirupattur. The petitioner in H.M.O.P has preferred this appeal.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. The appellant/husband filed the original petition before the Sub Court, Thirupattur in H.M.O.P.No.167 of 2015 for grant of divorce on the grounds of cruelty and desertion.

4. Case of the petitioner/husband is that the marriage with the first respondent (R.Suseela) was held on 21.08.1997 as per Hindu customary rights in the presence of friends alone at Kuppam, Lakshmipuram, Varadharajar Koil, (State of Andhra Pradesh), and the same was registered at the Office of the Sub Registrar of Natrampalli on 27.08.1997. Thereafter, they lived at the residence of the petitioner for six months. The first respondent was living as she liked and she would not respect the



family members of her husband. The first respondent's mother was in a political party and they were giving all sorts of trouble to him. Thereafter, for a year, both husband and wife lived at Jolarpet. As the petitioner got a job at a Pharmaceutical Company, they shifted their residence to Chennai for six months. The first respondent created unnecessary issues with relatives and they returned to Jolarpet and they lived at Edayampatti for eight months and thereafter, for a year, they lived behind KKC Cinema Theatre and thereafter, they resided for a year at Vakanampatti.

4.1. During the said period, the first respondent used to quarrel with his mother and she used to beat him. The first respondent would also quarrel with neighbours often, due to which they had to shift their residence. Meanwhile, he met with an accident and he was under continuous treatment. Meanwhile, the first respondent had developed illegal intimacy with one Aruna, who is the owner of the Vinayaka Hardwares and the first respondent was avoiding her husband/petitioner. In 2005, they went to the petitioner's village and on 01.12.2006, a female baby was born to his wife. The petitioner got a job at Bangalore and hence, he went to Bangalore.

4.2. In the year 2009, the petitioner got a job at Railways and he worked at Howra, Culcutta and got transferred to Chennai in the year

Page No.3/13



2011. He was transferred to Jolarpet in the year 2012. The first respondent did not do any work at home. The first respondent often would state that she is going to commit suicide and told him not to have any contact with his friends or relatives. Meanwhile, the first respondent purchased household articles on installment basis and the second respondent used to come to their residence to collect the installment amount.

4.3.The first respondent developed illegal intimacy with the second respondent and the petitioner came to know about the same and when he asked the first respondent, she gave blunt answers. Once, he witnessed that the first and second respondents were in a compromising position at his residence. Having seen the petitioner, the second respondent went out of his residence. On 11.10.2013, the first respondent went to her parents' house with all her clothes. But, the mother of the first respondent lodged a vague complaint at Naatrampalli Police Station and thereafter at Vaniampadi Women Police Station and a case was registered against him in Crime No.13 of 2013 under Section 498(A) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. Since 11.10.2013, they have been in separation. For the abovestated reasons on the grounds of cruelty and desertion, an order of divorce was sought for.



C.M.S.A.No.78 of 2024

5. On behalf of the first respondent, it was contended that without intimating anything, the petitioner went to Mellupalayam and Erode for six months. The petitioner does not live along with his wife and children. But, the first respondent was cooperating with her husband as a dutiful wife. In the year 2013, he did beat her and she was forced to go out of her matrimonial home and she has been residing at her parents' residence. Though marriage details and lodging a complaint before the Police Station have been admitted by the first respondent, she opposed the date of marriage as 15.08.1997 instead of 21.08.1997. The reasons sought by the petitioner in the original petition are totally incorrect.

6. The Trial Court, based on Ex.P1/Marriage Extract, concluded that the marriage between the petitioner and the first respondent was held on 21.08.1997.

7. The allegations levelled by the petitioner have been strongly denied by the first respondent. Ex.P3/FIR has been registered at the instance of the first respondent's mother Nirmal Raja. It is relevant to note that the said FIR was quashed by this Court. The first respondent, while she was in the box, has acceded to the fact that she has been living at her parents residence since 2013.



C.M.S.A.No.78 of 2024

8. One Palani has been examined as P.W.2. P.W.2 has deposed about the illicit intimacy details of the first respondent. P.W.2/Palani would depose that he witnessed the quarrel between the first respondent and the wife of Aruna. But, R.W.1 (first respondent) has strongly denied that she did not have any illicit intimacy with said Aruna (Proprietor of Vinayaga Hardwares).

9. A letter said to have been written by the first respondent is marked as Ex.P5. When it was shown to R.W.1 (first respondent), she denied that the letter was not written by her. Thereafter, the petitioner did not take any steps to send Ex.P5/letter to Forensic Department.

10. A maintenance case was filed by the first respondent in M.C.No.86 of 2017, wherein the Sub Court, Thirupattur, ordered Rs.5,000/- p.m. On appeal by the petitioner, the same was set aside by this Court.

11. The petitioner/husband has raised some allegations against his wife/first respondent on the grounds of cruelty and desertion. He has pleaded that an order of divorce be granted against his wife/first respondent.



12. *Per contra*, the first respondent does not admit the allegations raised by the petitioner/husband. On the other hand, R.W.1 would state that it is the petitioner who was absconding then and there totally failed to take care of his wife and children and it is her husband who deserted her.

13. From the evidence of P.W.1 and R.W.1, it is pellucid that they got married in the year 1997 and lived together till 2013. Even P.W.1, during his cross-examination has admitted that from the year 2005 to 2013, both lived at the petitioner/husband's native house. It is relevant to note that it is only the first respondent's mother lodged a complaint that her daughter was missing and a criminal case was registered against the petitioner. It is learnt that as per Exs.P6 and Ex.P7, the first respondent filed a maintenance case against her husband. She also filed a case under the Protection of Women from Domestic Violence Act against the petitioner. On a careful perusal of the evidence of P.W.1 and R.W.1, P.W.1 has raised so many allegations against his wife and except his self-serving evidence, no other witness was examined to prove the said allegations.

14. In the matrimonial cases, burden of proof lies on the petitioner. As regards the degree of probability, it is not beyond reasonable doubt, but, based on preponderance of probabilities.



C.M.S.A.No.78 of 2024

15. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times.

16. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.

17. Useful reference may be made as to the observations of the Apex Court in the matters of granting of divorce on the ground of cruelty in *Dr.N.G.Dastane Vs. Mrs.S.Dastane reported in 1975 (2) SCC 326*, the Hon'ble Supreme court has held that:



WEB COPY

“27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a “matrimonial offence”. Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.”

18. It is relevant to refer the observations made by the Hon'ble Supreme Court in *V.Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the



WEB COPY

society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

19. In *Samar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:

“101. (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

20. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherché scientifique i.e. “free scientific research”...”.



C.M.S.A.No.78 of 2024

21. No doubt P.W.1 and R.W.1 have been living in separation since 2013. The allegation raised by P.W.1 have been stoutly denied by R.W.1. Their marriage is not an arranged marriage. Both of them lived together for 16 years without any issue. P.W.1 would state that when he asked about her illicit intimacy with one Aruna (uncle), she deserted the matrimonial home and went to her parents' house. But, the said fact is not admitted by R.W.1. For the past 12 years, the petitioner and the first respondent have been in separation. No doubt, they have developed incompatibility. Illegal intimacy issue raised by the petitioner is not proved by him and except his self-assertion, no other acceptable evidence is available in this regard. From the cumulative analysis of the evidence of both sides, the petitioner has not made out a strong case, as the first respondent has denied the allegations raised against her. This Court is of the considered view that the petitioner has not proved his case.

22. The First Appellate Court has discussed all issues in detail and held that the petitioner has failed to prove his case and dismissed the HMCMA. In such circumstances, this Court is of the considered view that the petitioner had failed to prove his case. This Court does not find any infirmity or perversity in the finding of the First Appellate Court. This Court



C.M.S.A.No.78 of 2024

also does not find any good reason to upset the findings of the First Appellate Court.

WEB COPY

23. Based on the aforestated narrative, this Civil Miscellaneous Appeal stands dismissed. Sequel to this, the judgment and decree dated 29.08.2024 passed in H.M.C.M.A.No.1 of 2022 on the file of the District and Sessions Court, Tirupattur, stands confirmed. No costs.

23.01.2026

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
apd

To

1. The District and Sessions Judge, Tirupattur,
2. The Sub-ordinate Judge, Tirupattur.
3. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.S.A.No.78 of 2024

R.KALAIMATHI, J.

apd/skn

C.M.S.A.No.78 of 2024

23.01.2026