



C.M.S.A(MD)Nos.26 & 27 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

Date of Reserved	06.11.2025
Date of Pronounced	19.01.2026

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.S.A.(MD)Nos.26 and 27 of 2019

Meera : Appellant in both cases

Vs.

Manivannan : Respondent in both cases

PRAYER in CMSA(MD).No.26 of 2019: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act, to set aside the fair and executable order, dated 01.02.2019 made in HMCMA.No.02 of 2017 on the file of the Additional District Judge, FTC, Theni reversing the well considered fair and executable order, dated 10.02.2017 made in HMOP.No.42 of 2009 on the file of the Sub Judge, Uthamapalayam.



C.M.S.A(MD)Nos.26 & 27 of 2019

PRAYER in CMSA(MD).No.27 of 2019: Civil Miscellaneous Second

Appeal filed under Section 28 of the Hindu Marriage Act, to set aside the fair and executable order, dated 01.02.2019 made in HMCMA.No.10 of 2017 on the file of the Additional District Judge, FTC, Theni reversing the well considered fair and executable order, dated 10.02.2017 made in HMOP.No.42 of 2009 on the file of the Sub Judge, Uthamapalayam.

For Appellant
in both cases : Mr.R. Suriya Narayanan

For Respondent : Mr.K.Gandhi
in both cases Senior Counsel
for Mr.R.J.Karthikeyan

COMMON JUDGMENT

The Appellant/wife has filed Civil Miscellaneous Second Appeals in CMSA (MD) Nos. 26 and 27 of 2019 against the fair and executable order dated 01.02.2019 made in HMCMA.Nos. 02 and 10 of 2017 on the file of the Additional District Judge, FTC, Theni, whereby the said Court reversed the fair and executable order dated 10.02.2017 passed in HMOP No.42 of 2009 by the Subordinate Court, Uthamapalayam.



WEB COPY

2. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

3.The brief case of the petitioner in HMOP.No.42 of 2009 are as follows:

(a) The marriage between the appellant/wife and the respondent/ husband was solemnized on 23.12.1994. At the time of marriage, the petitioner was given 70 sovereigns of gold jewels and a sum of Rs.1,00,000/- worth Sridhana. Besides, the marriage expenses was incurred by her parents. Due to the dowry harassment, the petitioner left the matrimonial home on 12.09.2004 without taking her belongings and she went to her parents house wearing only her night dress. To evade the consequences of dowry harassment, the respondent filed a petition in HMOP.No.80 of 2006 for restitution of conjugal rights before the Subordinate Court, Periyakulam and obtained *ex-parte* decree, while continuously threatened her to kill her. Therefore, the petitioner filed HMOP.No.74 of 2007 for divorce. The respondent also consented to the same by filing a memo and accordingly, the marriage between the petitioner and the respondent was dissolved on 20.08.2007. Thereafter,



C.M.S.A(MD)Nos.26 & 27 of 2019

she has not filed any petition for return the articles or interim maintenance. In the mean time, the respondent contracted, a second marriage, with Nithya for the 2nd time. At present the petitioner is living in great difficulty and is unable to maintain herself including meeting expenses for food, residence and medical expenditure.

(b) The respondent is owning landed and house property in the state of Tamil Nadu, as well as Kerala and is also receiving huge rental income and share from out of the above properties.

(c) After the divorce, the respondent has no right to retain the jewel and other belongings of the petitioner. Hence the petitioner filed the present petition seeking return of the jewels, dresses, utensils, certificates, bank account passbook, cheque book and all other articles mentioned in the schedule of properties. She also claimed a sum of Rs.1,00,00,000/- for maintenance.

4. The petition was resisted by the respondent / husband by disputing the averment contained in the petition. In his counter he denied the possession of the jewels and belongings of the petitioner was alleged to be in his custody. The respondent contended that the petitioner was provided with 16 ½ sovereigns of jewels by his family and that the entire



C.M.S.A(MD)Nos.26 & 27 of 2019

marriage expenditure were borne solely by his parents. The respondent denied the ownership of property and the income as alleged. The petitioner had already filed a divorce petition and that the same was allowed by the Subordinate Court, Periyakulam.

5. According to the respondent, the petitioner's father had borrowed money and instead of repaying the same, instigated the petitioner to file complaint against the respondent by making false allegations. He further stated that there was no misunderstanding between the petitioner and respondent, however the petitioner left the matrimonial home stating that she would go to her parent's home and stay there for 10 days. However, she failed to return and thereafter, deserted the respondent without any reasonable cause. Despite repeated attempts made by the respondent to reconcile and bring the petitioner back to the matrimonial home, her parents failed to cooperate and the attempts ended in vain. Consequently, he filed a petition for restitution of conjugal rights in HMOP.No.80 of 2006. But she failed to contest the case or rejoin with him. Thereafter, she filed a petition in HMOP.No.74 of 2007 seeking for divorce and the respondent also consented for the same. After dissolution of marriage the petitioner and her father came to



C.M.S.A(MD)Nos.26 & 27 of 2019

the respondents house and took all the belongings . She made imaginary and false allegations claiming that her jewellers and other belongings were kept in the respondent's house and has instituted the present petition with ulterior motive. The respondent further stated that she is having sufficient means to maintain herself and also she is working as a teacher and earning monthly income and therefore, prayed that the petition is liable to be dismissed.

6. On the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P19 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R7 were marked. Ex.X1 to Ex.X3 were marked.

7. The trial Court, after considering the evidence and records, dismissed the petition with regard to permanent alimony of Rs.1,00,00,000/- and other belongings. However, the trial Court ordered to pay a sum of Rs.5,00,000/- towards permanent alimony. Aggrieved by the said order the wife filed HMCMA.No.2 of 2017 and the husband filed HMCMA.No.10 of 2017. The first appellate Court, after considering the evidence and records, allowed the appeal in



C.M.S.A(MD)Nos.26 & 27 of 2019

HMCMA.No.10 of 2017 and dismissed the appeal in HMCMA.No.2 of

2017. Aggrieved over the same, the wife now preferred these Civil Miscellaneous Second Appeals with the following among other grounds :

1. The 1st appellate Court wrongly held that the appellant came with unclean hands by suppressing the fact that she has property but failed to see that the suppression is not an intentional and the facts remain that though the cardamom estate in her name, the same is not fetching any income to her and hence the observation of the lower Court is wrong.

2. The Court below failed to see that the appellant was temporarily working as a lecturer for about 11 months for consolidated pay up to April 2014 as under Ex.X1, X2 and X3 and Ex.R5, R6 and R7, the same would not give any presumption that she has sufficient means to maintain after the said period or at the time of filing the petition, but the Court below based on the same, wrongly concluded that the appellant has means to maintain her and hence, not entitled for permanent alimony and dismissed her claim is illegal.

3. The Court below failed to see that it is not necessary to maintain the petition for the appellant to show that she is in poverty or pauper but it is enough to show that there is no sufficient income to maintain herself



C.M.S.A(MD)Nos.26 & 27 of 2019

and the same is clearly established by her and appreciated by the trial court.

4. The Court below wrongly observed that the appellant is not entitled to get permanent alimony as she only filed a divorce petition in H.M.O.P.74 of 2007, and got divorce after the decree of restitution of conjugal rights in H.M.O.P.80/2006 filed by the respondent, is perverse and illegal.

5. That the fair order and decretal order of the Courts below are liable to be set aside and hence, the learned counsel for the appellant prayed to allow these Civil Miscellaneous Second Appeals.

8. The only issue that arise for consideration in these Civil Miscellaneous Second Appeals are as follows :

1) Whether the appellant /wife who was obtained the decree of divorce as against her husband in the year 2007 is entitled to maintain a separate claim for permanent alimony ?

9. Heard the learned counsel on either side and perused the materials available on record.



10. Point No.1

WEB COPY

During cross examination the petitioner admitted that the she has not produced any document to substantiate her claim that the husband was earning income as stated in the petition. She further admitted that in the complaint filed by her against the respondent, before the Social Welfare Officer and the private complaint filed by her father against the husband, in the enquiry report it was stated that no dowry harassment was made. It was admitted that the petitioner alone left the matrimonial home on her own and never returned to the respondent. The petitioner further admitted that during the pendency of divorce petition and the petition for restitution of conjugal rights, She didn't made any claim for the articles, jewels and certificates. It was also proved by evidence that she was employed and derived income.

11. One Nithya, the 2nd wife of the respondent was examined as P.W.2 stated that the respondent showed her some of the jewels, sarees belonging to the petitioner, and further stated that some other the jewels belonging to the petitioner were mortgaged with a bank. However, during cross examination she admitted that she had separated from the respondent and had filed a maintenance case against him in which the



C.M.S.A(MD)Nos.26 & 27 of 2019

petitioner was examined as a witness and evidence was adduced in her favour. She further admitted that she was not aware of who had purchased the jewels and also stated that she did not know in which bank it was mortgaged. The evidence of P.W.2 reveals that due to misunderstanding, she separated and filed a maintenance case against the respondent and she does not have good relationship with him. Further, the petitioner assisted her in the maintenance case filed by her. From her evidence, it is evident that she harboured a grievance against the respondent and was not aware of which jewels belonged to the petitioner. Therefore, the evidence of PW2 does not inspire in the confidence of Court.

12. Significantly, the father of the petitioner who was examined as P.W.3, admitted during his cross examination that the petitioner owns 13 acres of land at Kerala. He admitted that the value one acre of land is about Rs.5,00,000/- and she earns a sum of Rs.1,00,000/- per acre. Though the petitioner claimed permanent alimony on the ground that she was not able to maintain herself, it has been established that she is employed in a private concern and is also possessed of sufficient property from which she derives income. Further, the respondent cannot



C.M.S.A(MD)Nos.26 & 27 of 2019

be faulted as he had filed a petition for restitution of conjugal rights, in which the petitioner neither appeared, nor expressed her willingness to resume, cohabitation with him. On the contrary, she filed a petition for divorce, for which the respondent consented for divorce. Even in both the petitions she indeed not claimed that her jewels were in the custody of the respondent, she ought to have claimed their return as well as maintenance in those petitions, however, she has not claimed any maintenance nor seek return of jewels and other belongings. She filed the petitions for claiming jewels and maintenance only after 4 years from the date of divorce and after the 2nd marriage of the respondent, which clearly indicates that the petitions were filed with malafide intention. However, she failed to prove that the jewels and other belongings were in the custody of the respondent and also failed to establish that she was not in a position to maintain herself.

13. The First Appellate Court, after proper consideration of the facts, rightly dismissed the petition, and its findings warrant no interference. This Court also finds that there are no materials available to allow the application and to interfere with the finding first appellate Court.



C.M.S.A(MD)Nos.26 & 27 of 2019

14. Such being the position, this Court do not find any infirmity in the findings of the Courts below. Accordingly, the Point No.1 is answered accordingly. I do not find any merit in these Civil Miscellaneous Second Appeals and hence, the same are liable to be dismissed.

15. In the result, these Civil Miscellaneous Second Appeals are dismissed. The common judgment and decree dated 01.02.2019 made in HMCMA.Nos.2 and 10 of 2017 on the file of the Additional District Judge, FTC, Theni, are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2026

Index : Yes / No
NCC : Yes / No

rm



C.M.S.A(MD)Nos.26 & 27 of 2019

To
WEB COPY

1. The Additional District Judge, FTC, Theni
2. The Subordinate Court, Uthamapalayam.

Copy to

1. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A(MD)Nos.26 & 27 of 2019

R.POORNIMA, J.

rm

Common Judgment in
C.M.S.A.(MD)Nos.26 and 27 of 2019

19.01.2026