



C.M.A.(MD)No. 73 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 08.01.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Albin

... Appellant/1st Respondent

Vs.

1.Yakkobu Pavul @ Ganesan

...1st Respondent / Petitioner

2.Tharmaraj

...2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of Divorce Act, to set aside the fair and decretal order dated 30.04.2019 made in I.D.O.P.No.207 of 2018 on the file of the Family Court, Kanniyakumari at Nagercoil and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.R.Murugan

For Respondents : Mr.S.C.Herold Singh – for R1

No appearance – for R2



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JUDGMENT

WEB COPY (Judgment of this Court was delivered by **R.POORNIMA, J.**)

The Appellant/1st respondent/Wife has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 30.04.2019 passed in I.D.O.P.No.207 of 2018 on the file of the Family Court, Kanniyakumari at Nagercoil.

2.Brief case of the petition before the lower Court is as follows:

(a) The petitioner and the first respondent are Christians. Their marriage was solemnized on 23.06.1996 according to Christian rites before the Marriage Registrar, Thoothukudi. Out of the said wedlock, two male children were born, namely, Arun Ashick on 17.11.1997 and Arun Ajay on 23.07.2002.

(b) After the birth of the children, the first respondent developed illicit intimacy with the second respondent and began living in adultery with him. Thereafter, on 09.09.2009, the first respondent left the matrimonial home along with the two children. On the very same day, the first and second respondents entered into a marriage agreement before the Sub-Registrar Office, Parasala, vide Document No.1031/2009,



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and started living together, thereby deserting the petitioner. Therefore, he prayed to grant divorce.

3. The respondent denied all the allegations contained in the petition, including the allegation of adultery. According to the respondent, the second respondent is only a friend of the petitioner. The petitioner, along with the first respondent, had borrowed money from one Nagarajan @ Nagupillai and lent the same to third parties. They had also advanced loans through the first respondent.

3.1. The respondent stated that she has no acquaintance with the second respondent or his wife, Umayal Rani, and that it was the petitioner alone who brought the second respondent to her residence.

3.2. The petitioner had lent a sum of Rs.1,75,000/-, which was borrowed from Thiru Nagarajan @ Nagupillai at a monthly interest rate of 36%. Out of the said interest, the petitioner collected 18% for himself and paid the remaining 18% to the said Nagarajan @ Nagupillai. Subsequently, the second respondent was unable to repay the amount, and the petitioner repeatedly demanded repayment.

3.3. The wife of the second respondent was earning money through a self-help group. Since the second respondent had borrowed the



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money without her knowledge, and in order to repay the same, the second respondent falsely informed his wife that he was having an illegal affair with a lady and that he required a sum of Rs.2,00,000/- to put an end to the said relationship. Believing the same, the wife agreed.

3.4. Thereafter, the second respondent approached the petitioner seeking help. The petitioner consented and deliberately selected this respondent and requested her to cooperate in the said plan. A forged document was prepared with the connivance of the petitioner. The petitioner threatened the first respondent that she should accept the same, failing which he would commit suicide.

3.5. Therefore, in order to protect the petitioner and the children, the first respondent was constrained to accept the said arrangement. Thereafter, the petitioner sent the first respondent along with the second respondent for the purpose of entering into a marriage agreement. A document was registered in this regard; however, the original of the said document was in the possession of the petitioner alone. Subsequently, the petitioner demanded repayment of the money from the first respondent. In the meantime, the wife of the second respondent insisted on meeting the woman with whom her husband was alleged to have had an illicit relationship. At that point, the petitioner



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falsely represented to her that the first respondent was the said woman.

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3.6. Consequently, the second respondent lodged a complaint on 17.03.2010 before the All Women Police Station, Kanniyakumari. Pursuant thereto, respondents 1 and 2 appeared before the Police Authorities and categorically stated that there was no illicit relationship between them and that the alleged marriage agreement was a false document. The same was duly recorded by the police officials. It is further stated that the first respondent has no relationship whatsoever with the second respondent.

3.7. It is also contended that the petitioner has failed to maintain the first respondent and their children and has instituted a false case against her. Hence, the respondents prayed that the petition be dismissed.

4. During trial, on the side of the petitioner, P.W.1 was examined and Ex.P1 to Ex.P5 were marked. On the side of the respondents, 1st respondent was examined as R.W.1 and the 2nd respondent was examined as R.W.2 and Ex.R1 to Ex.R10 were marked.

5. The trial Court, after considering the evidence and



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records, allowed the petition and appointed the 1st respondent as guardian for the minor children, till they attain majority and also directed the petitioner to pay a sum of Rs.7,500/- to the minor children for maintenance, till they attain majority and the petitioner was giving visitation rights.

6. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Appellant/1st respondent/wife against the divorce order.

7. Mr.R.Murugan, learned counsel appearing for the appellant assailing over the divorce order, made the following submissions:-

(i) That the Court below ought not to have granted divorce on the ground of adultery, when there is no sufficient evidence on record to prove the same and even only on presumption found that the 1st respondent/husband prove the plea of desertion.

(ii) That the 1st respondent/husband failed to prove the ground of cruelty and desertion as defined under the Indian Divorce Act.

(iii) That the trial Court rely upon Ex.P2 the marriage



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agreement which is forged one and failed to accept the reasons stated by the respondents 1 and 2 which is a void one and a void document cannot be relied upon by the trial Court. There is no sufficient proof against the wife to prove the ground of adultery with the 2nd respondent and hence, the learned counsel for the appellant prayed to allow the Civil Miscellaneous Appeal.

8. The learned counsel for the 1st respondent/husband argued that the wife separated the husband during the year 2009 and entered into an registered marriage agreement with the 2nd respondent and started living with him by deserting the husband and also the children. Subsequently, the wife of the 2nd respondent having three children appeared before the All women Police Station, Kanniyakumari and lodged a complaint. Both the respondents 1 and 2 agree to revoke the agreement and also the 1st respondent undertook not to interfere with the family of the 2nd respondent. After the above complaint she once again attempted to live with the petitioner and also filed complaints and maintenance petition filed through her son in order to make the husband run from pillar to post and also to further harass the petitioner and therefore, prayed for dismissal of the appeal.



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

10. In this case, the point for consideration is :

Whether the order passed by the trial Court is proper or liable to be set aside?

11. Point :

The petitioner and first respondent are Christians. The 1st respondent/petitioner/husband filed the divorce petition under Section 10(1) (i), (ix), (x) of the Indian Divorce Act, 1955, seeking divorce on the ground of adultery, desertion and cruelty.

12. The principal contention of the appellant is that the trial Court erroneously relied upon the divorce deed and granted a decree of divorce, based on the same, which, according to the appellant, is not valid in the eye of law. It is no doubt, true that any agreement entered into between the parties purporting to dissolve a marriage cannot be treated as a valid or enforceable contract. However, in the present case, the husband did not rely upon the said marriage/divorce deed for the



purpose of enforcing any contractual right. The document was produced only to substantiate his contention with regard to the conduct of the parties and the circumstances under which the matrimonial relationship stood disrupted.

13. The grounds for dissolution of marriage as provided under Section 10(1) of the Indian Divorce Act are extracted hereunder:

“10. Grounds for dissolution of marriage.—

(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

(i) has committed adultery; or

.....

(ix) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.”



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14. Both spouses admitted that the marriage between the petitioner and the first respondent was solemnized on 23.06.1996 in accordance with Christian rites and customs, and that two male children were born out of the said wedlock in the years 1997 and 2002 respectively. Subsequently, on 09.09.2009, the first and second respondents entered into a marriage agreement, which was duly registered before the Parasala Registrar Office.

15. According to the appellant, in her counter statement, her husband was involved in several financial transactions through the first and second respondents. The second respondent had borrowed a sum of Rs.2,00,000/- and was unable to repay the same. In order to raise money from his wife, he allegedly created a false narrative as though he had an illicit relationship with the first respondent, to which the petitioner also agreed. It is further stated that the first respondent was compelled to accept the said allegation under threat and blackmail, as the petitioner had threatened to commit suicide if she refused.

16. The first respondent, being the wife, purportedly consented to the marriage agreement with the second respondent only to



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assist her husband and to prevent him from carrying out his threat of suicide. Such a version is wholly unbelievable, as no woman would agree to act as a concubine to a third person at the request of her own husband. Further, it is inconceivable that such consent would be given with full knowledge that a registered marriage agreement was to be executed.

17. Further, the appellant/first respondent has not produced any document to substantiate her claim that her husband was involved in money transactions through her or that the second respondent had borrowed money from him. On the contrary, the petitioner relied upon Ex.P5, which establishes that subsequent to the marriage, the first respondent and the second respondent entered into a sale transaction. Under the said document, the second respondent executed a sale deed in favour of the first respondent in respect of five cents of land with a house belonging to him. The first respondent has not offered any explanation regarding this transaction in her counter statement.

18. Apart from the above, the petitioner also marked Ex.P4, which is information obtained under the RTI Act. The said document



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reveals that the wife of the second respondent had lodged a complaint before the Superintendent of Police alleging that her husband had failed to send money for her and the children's expenses. It was further alleged that the second respondent brought a woman and introduced her as his wife and insisted that the complainant attend to all her needs. Upon her refusal, she was driven out of the house. The complainant also alleged that the second respondent had married the petitioner's wife and compelled her to give consent for divorce.

19.During the enquiry, the first respondent submitted a written statement admitting that she had an illicit relationship with the second respondent and had married him without obtaining a divorce from the petitioner. She further consented to separate from the second respondent and assured that she would live with her husband, namely the petitioner. She also undertook not to create any problem for the second respondent and agreed to revoke the agreement entered into between herself and the second respondent. The said statement was given on 17.03.2010.

20.Similarly, the second respondent also admitted before the



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Investigating Officer that he had an affair with the first respondent and that due to the said relationship, he developed problems with his wife and could not live with her. Pursuant to the complaint lodged by his wife, he undertook not to treat her with cruelty and to pay his salary to her. Ultimately, both parties were mediated and the issue was settled.

21. After having given such an undertaking before the Police officials, the first respondent has now taken a stand that the marriage agreement was executed by her under compulsion by the petitioner/husband. This stand is wholly contrary to the voluntary undertaking given by her before the police. Though the appellant/first respondent claimed that she had no acquaintance with the second respondent, the sale transaction entered into between them in the year 2010 clearly disproves the same. The explanation offered by her for entering into the marriage agreement is wholly unacceptable. It is an admitted fact that she affixed her signature in the said marriage agreement. Further, the second respondent submitted a written statement before the Kanniyakumari Police under Ex.P6, admitting the marriage with the first respondent, which corroborates the averments of the petitioner/husband.



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22. The petitioner/husband has clearly proved the act of adultery. The first respondent has not taken any independent steps against her husband alleging that he compelled her to enter into an illegal agreement with an unknown person. Only after the filing of the divorce petition, she has come forward with a new and contradictory version, which is not worthy of acceptance. It is also proved that the appellant/first respondent deserted the petitioner without any reasonable or justifiable cause.

23. Thus, the grounds of adultery and desertion have been duly proved. The act of adultery has also caused mental cruelty to the petitioner/husband. Therefore, the divorce petition was rightly allowed on all grounds. This Court finds no reason to interfere with the well-considered order of the trial Court. Accordingly, we find no merit in the Civil Miscellaneous Appeal and the same is liable to be dismissed. The point is answered accordingly.

24. In the result, the Civil Miscellaneous Appeal is dismissed. The fair and decretal order passed in IDOP.No.207 of 2018



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dated 30.04.2019, by the Family Court, Kanniyakumari at Nagercoil are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(G.K.I., J.) & (R.P., J.)
08.01.2026

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM

To

1.The Judge,
Family Court,
Kanniyakumari at Nagercoil

Copy to

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



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G.K.ILANTHIRAIYAN , J.
AND
R.POORNIMA, J.

RM

Judgment in
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