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CMA(MD) No. 1272 of 2026



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02-09-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

CMA(MD) No. 1272 of 2026

1.

2.

..Petitioner(s)

Vs

Nil

..Respondent(s)

Prayer : Civil Miscellaneous Appeal filed under section 19 of Family Court Act to set aside the Fair and Decretal order in S.M.O.P.No. 216 of 2026 dated 19.08.2026, on the file of the Learned Family Court, Thanjavur, pass such further or other order as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner(s):

Mr.M.Rajarajan

**JUDGMENT****(By G.R.Swaminathan, J.)**

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The marriage between the first appellant and the second appellant was solemnized and registered on 29.05.2008 under the Special Marriage Act. Two girl children were born through the wedlock. Differences arose between them. They chose to part amicably. They filed SMOP No.216 of 2026 on the file of the Family Court, Thanjavur for dissolving their marriage by mutual consent. The Family Court dismissed the SMOP vide order dated 19.08.2026 on the ground of lack of territorial jurisdiction. Assailing the same, this civil miscellaneous appeal has been filed.

2.Both parties are present in person before us. We had a detailed interaction with them. The first appellant is a Judicial Officer presently working in Thanjavur and the second appellant is a home-maker. The second appellant in clear terms informed us that both of them have taken a conscious decision to have the matter dissolved by mutual consent. The first appellant undertook before us that he will continue to discharge his obligations as a father. It is seen that appropriate terms have been arrived at. They have been set out in the petition itself. The parties are residing separately for the last three years.



3. There is a saying in Tamil *"Even if the Lord grants a boon, the priest will not allow it"*. The statute provides for dissolution of marriage

without much of an adjudication when there is consensus between the spouses. But it is not enough if the law alone is willing.. The Judge too must play ball. In this case, the Judge chose to go by the literal text of the law.

Section 31 of the Special Marriage Act, 1954 which deals with territorial jurisdiction reads as follows:-

"31. Court to which petition should be made

(1) Every petition under Chapter V or Chapter VI shall be presented to the district Court within the local limits of whose original civil jurisdiction

(i) the marriage was solemnized; or

(ii) the respondent, at the time of the presentation of the petition, resides; or

(iii) the parties to the marriage last resided together; or [(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive.

(2) Without prejudice to any jurisdiction exercisable by the Court under sub-section (1), the district Court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident



therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.”

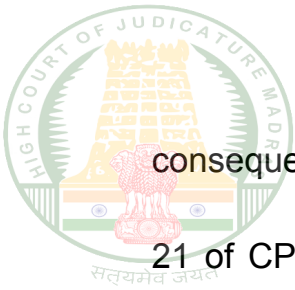
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The marriage between the parties took place at Trichy. The wife is a resident of Trichy. Their matrimonial home was also at Trichy. Therefore, the Judge of the Family Court, Thanjavur cannot be faulted for holding that the Tanjore Court lacked the territorial jurisdiction to entertain the petition. Of course, when a plaint is presented in a court that does not have jurisdiction, it must be returned. It cannot be rejected or dismissed (vide Order VII Rule 10 of CPC). Though CPC may not apply to proceedings before the Family Court, the underlying principle is equally applicable to petitions/plaints filed before the Family Court also. Therefore, the court below erred in dismissing the petition. In fact, the parties filed a memo before the court below that the petition may be returned. But this request was negated by the court below on the ground that since evidence had already been taken, the Judge cannot make an administrative decision of returning the plaint and that only a reasoned judicial order should be passed. Order VII Rule 10 of CPC states that a plaint can be returned at any stage of the suit. Applying the same principle, we hold that merely because evidence had been taken, the Trial Judge could not have come to the conclusion that she lacked the power to return the petition.



4. We, however, intend to consider this issue of territorial jurisdiction on merits also. A petition filed under Section 28 of the Special Marriage Act, 1954 jointly is akin to a petition filed under Section 13B of the Hindu Marriage Act. Section 31 of the Special Marriage Act is in pari materia with Section 19 of the Hindu Marriage Act, 1955. In mutual consent divorce petitions, there will not be any respondent. When a matrimonial court declined to take the petition only on the ground that there was no respondent, the High Court of Karnataka interfered and held that since the spouses are making a joint presentation, they both will be petitioners and the question of showing anybody as respondent will not arise (**Arathi v., 1996 SCC OnLine Kar 38**).

5. The issue as to territorial jurisdiction does not have a bearing on the inherent competence of the court. An objection to territorial jurisdiction does not go to the root of the subject matter of the suit and would not render a final decree as void (**Sneh Lata Goel v. Pushplata (2019) 3 SCC 594**). Section 21 of CPC also states that the appellate or revisional court will not allow objection as to the place of suing to be taken unless such objection was taken in the trial Court at the earliest opportunity and before the settlement of issues. This alone would not suffice. It must also be shown that there has been a



consequent failure of justice. The policy of the legislature underlying Section

21 of CPC has been to treat objections to territorial jurisdiction as technical

(**Kiran Singh v. Chaman Paswan AIR 1954 SC 340**). The objection to

territorial jurisdiction is one which does not go to the competence of the court

and can therefore be waived (**Hira Lal Patni v. Sri Kali Nath (AIR 1962 SC**

199). Section 24 of CPC contains the general power of transfer and

withdrawal. The High Court has the power to transfer any suit or appeal or

other proceeding pending in any subordinate court to any other court. This is

yet another indicator that territorial jurisdiction does not go to the root of the

matter. Whenever transfer of matrimonial petitions are sought, convenience

of the wife is given utmost importance (**Sunita Singh v. Kumar Sanjay, AIR**

2002 SC 396). The Hon'ble Bombay High Court in **Shekhar Harchand Indra**

v. Sangeeta Shekhar Indra, 2012 SCC OnLine Bom 394 held as follows :

5. However, considering the erstwhile provision of law, a petition could not be filed by the aggrieved wife within local limits of the jurisdiction where she was residing. Thus, as it was found not adequate or fair to the woman, so with a view to meet that hardship, by way of amendment Sub section (iii-a) is inserted. The term residence invites a flexible understanding. The section does not speak about any specific period of residence of the petitioner-wife, before she wants to present a petition at a particular place. This section expressly provides a wider interpretation.

6. Reality in the life is required to be taken into account while interpreting the section. If wife leaves her matrimonial home, then she may take shelter at her maiden home or she may reside with



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her relatives, friends or as a paying guest. She may avail option of setting her own home too. There is possibility that her parents may not like her decision to leave her matrimonial home and option to reside with the parents naturally shuts down and the woman has to stay of her own or at the mercy of her relatives. She may not have a permanent roof but like refugee she may shift from one place to other.

7. Therefore, to meet such difficult situation, and to give an opportunity to overcome the hardship, sub-section (iii-a) facilitates the wife to file a petition where she is residing on the date of presentation of the petition. Phrase “residing on the date of presentation” is used carefully and thoughtfully, hence to be understood in the same spirit. Thus, there is no specific period of stay of residence is mentioned so is not required to determine the territorial jurisdiction.”

6. We will go a little further. A bare look at the precedents would show that the convenience of the wife is taken into account for deciding the place of trial. If the wife jointly presents a petition for mutual consent divorce along with her husband and the court concerned cannot be said to be an utterly alien one, it should be considered as a court to which the petition can be presented within the meaning of Section 31 of the Special Marriage Act, 1954. In the case on hand, the husband/first appellant is working as a Principal District Munsif in Thanjavur. Therefore, the Family Court, Thanjavur is very much a court in which one of the parties is residing. The wife has no objection to move the said court. She is figuring as the second petitioner. As already noted,



objection as to territorial jurisdiction can be waived. Section 31 of the Special Marriage Act as well as Section 19 of the Hindu Marriage Act have been worded in such a way as to take into account the convenience of the wife. If the wife finds it convenient to present the petition for mutual consent divorce in the court within whose limits the husband is residing, the court concerned is obliged to entertain the same. Honouring the spirit that permeates law is more important than paying mere lip service to its letter. Consent of the parties cannot confer jurisdiction – this principle would not fully apply in the case of territorial jurisdiction.

7. Section 31 (1)(ii) states that the petition can be presented to that District Court within whose local limits the respondent, at the time of presentation of the petition, resides. The wife is thus entitled to file the petition in the place where the husband resides. That is a choice which the statute gives to the petitioner. The husband can be notionally transposed as a respondent. Viewed in that angle, the Family Court does have the territorial jurisdiction as per Section 31 of the Special Marriage Act, 1954. We, therefore, hold that the joint presentation of a mutual consent divorce petition in the Family Court/District Court within whose local limits the husband is



residing has to be entertained by that Court and not returned or dismissed on the ground of lack of territorial jurisdiction.

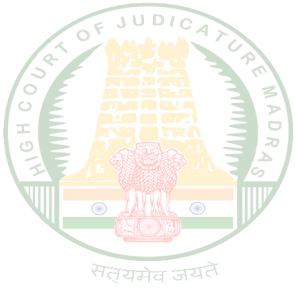
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8.This petition satisfies all the requirements set out in Section 28 of the Act. The parties are residing separately for more than three years. They have not been able to live together. They have mutually agreed that the marriage should be dissolved. Evidence has been adduced in this regard by the parties before the court below. We are satisfied that the averments in the petition are true. Considering the overall facts and circumstances, we deem it fit to waive the cooling period of six months.

9.In this view of the matter, the impugned order is set aside and the civil miscellaneous appeal is allowed. It is declared that the marriage solemnized between the first appellant and the second appellant on 29.05.2008 stands dissolved by a decree of mutual consent. No costs.

(G.R.S.,J.) (M.D.S.,J.)
02-09-2026

Index: Yes/No
Neutral Citation: Yes/No
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