

C.M.A(MD)Nos.804 and 805 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.09.2026

DELIVERED ON : 08.10.2026

CORAM :

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MRS. JUSTICE M.D.SUMATHI

**CMA(MD) Nos. 804 and 805 of
2022**

{CNR: HCMD010757802022}

and

C.M.P(MD)No.7377 of 2022



Case QR

... Appellant

- Vs. -

... Respondent

Prayer in CMA(MD)No.804 of 2022 : Civil Miscellaneous Appeal under Section 19 of the Family Court Act, to call for the records relating to the fair order and decretal order dated 01-07-2022 passed in HMOP.No.228 of 2020 by the Family Court, Theni and set aside the same.



C.M.A(MD)Nos.804 and 805 of 2022

Prayer in CMA(MD)No.805 of 2022 : Civil Miscellaneous Appeal filed

under Section 19 of Family Court Act, to call for the records relating to the fair order and decreetal order dated 01-07-2022 passed in HMOP.No. 354 of 2020 by the Family Court, Theni, and set aside the same.

For Appellant : Mr.D.Malaichamy

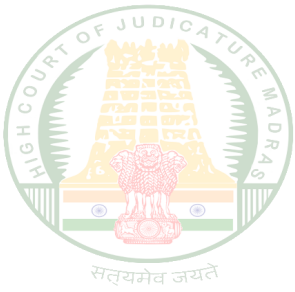
For Respondent : Mr.M.S.Jeyakarthick

COMMON JUDGMENT

[Judgment of the Court was made by **M.D.SUMATHI, J.**]

These Civil Miscellaneous Appeals have been filed under Section 19 of the Family Courts Act, 1984, challenging the common order and decree dated 01.07.2022 passed by the learned District Judge, Family Court, Theni, in H.M.O.P.Nos.228 of 2020 and 354 of 2020.

2. Since both the appeals arise out of the same matrimonial dispute between the same parties and the Family Court had considered both the petitions jointly and disposed of them by a common order, thereby they are taken up together and disposed of by this common judgment.



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3. For the sake of convenience, the parties will be referred to as per their ranking before the Family Court.

4. The marriage between the appellant/husband and the respondent/wife was solemnized on 23.10.2005 at Sri Subramanya Swamy Temple, Kariyapatti. It was a love marriage and the marriage was subsequently registered on 24.10.2005. The parties were blessed with two children, namely, , born in the years 2006 and 2011 respectively.

5. The respondent/wife instituted H.M.O.P.No.228 of 2020 before the Family Court, Theni, seeking dissolution of the marriage under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty.

6. According to the wife, from the inception of the matrimonial life, the husband subjected her to harassment, physical violence and mental cruelty. She alleged that the husband suspected her fidelity and had also assaulted and harassed her. It was further alleged that the husband had attempted to cause harm to her life, compelling her to

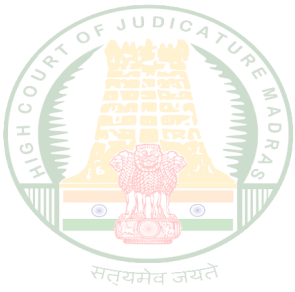


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approach the police and lodge a complaint on the file of Elathur Police station in Crime No.230/2019. According to her, in view of the conduct of the husband and the threat to her safety, it had become impossible for her to continue the matrimonial relationship.

7. The husband resisted the petition and denied the allegations of cruelty. According to him, he had taken care of the wife and children according to his financial capacity. He contended that he had worked hard and provided a comfortable life to the wife and had also supported her education.

8. The principal averment of the husband was that the wife had developed an illicit relationship with his paternal uncle's son, namely, Ramkumar. According to the husband, Ramkumar, had come to their house as a guest on 15.07.2019 and, during his stay, the husband noticed the alleged intimacy between the wife and Ramkumar. The husband stated that he warned the wife and attempted to preserve the matrimonial relationship in the interest of the children.

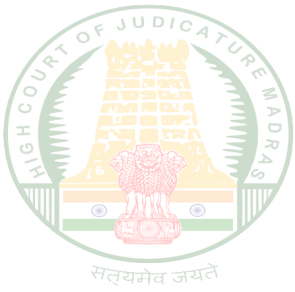


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9. According to the husband, despite his warning, the wife continued her relationship with Ramkumar and, on 18.09.2019, left the matrimonial home along with him. The husband thereafter lodged a complaint before the police. According to him, the wife subsequently returned and gave an assurance that she would live with him. The husband claimed that, even thereafter, the wife was unwilling to resume normal matrimonial life.

10. The husband further alleged that the wife had caused an injury to herself and thereafter lodged a false complaint against him alleging that he had caused the injury. He therefore contended that the allegations of cruelty made against him were false and that the wife was attempting to take advantage of her own conduct to obtain a decree of divorce.

11. While H.M.O.P.No.228 of 2020 filed by the wife was pending, the husband instituted H.M.O.P.No.354 of 2020 under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights.



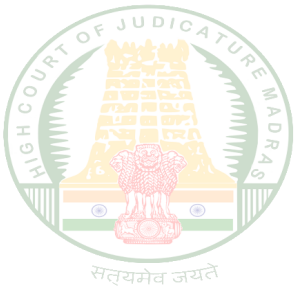
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12. The husband reiterated the allegations contained in his counter in H.M.O.P.No.228 of 2020 and contended that he was willing to resume matrimonial life with the wife. According to him, notwithstanding the conduct attributed to the wife, he was prepared to forgive her and take her back, particularly having regard to the welfare of their children.

13. The wife resisted H.M.O.P.No.354 of 2020. She denied the allegations made against her and reiterated the allegations of cruelty made by her in H.M.O.P.No.228 of 2020. She therefore sought dismissal of the husband's petition for restitution of conjugal rights.

14. The Family Court, taking note of the fact that both petitions arose out of the same matrimonial dispute, ordered joint consideration of the matters and passed a common order.

15. In H.M.O.P.No.228 of 2020, the wife was examined as P.W.1 and Exs.P1 to P5 were marked. The husband was examined as R.W.1 and Exs.R1 to R5 were marked. One Vadivelan was examined as R.W.2 and Ex.X1 was marked through him.



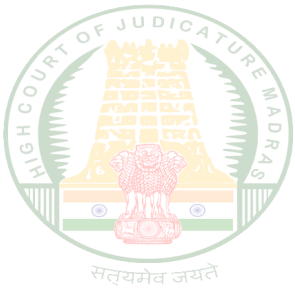
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16. In H.M.O.P.No.354 of 2020, the husband was examined as P.W.1 and Vadivelan was examined as P.W.2. Exs.P1 to P14 and Ex.X1 were marked. The wife was examined as R.W.1 and no documents were marked on the side of the wife.

17. After considering the pleadings, oral evidence and documentary evidence, the Family Court framed the following points for consideration:

- (i) Whether the wife was entitled to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955?
- (ii) Whether the husband was entitled to a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955?

18. The Family Court found that there was no dispute regarding the marriage or the birth of the two children. It further noticed that the marriage was a love marriage and that the parties had lived together for more than 14 years. The Family Court took note of the fact that the principal dispute arose after Ramkumar, the husband's paternal uncle's son, came to stay in the matrimonial home.



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19. The Family Court considered the evidence of the wife and observed that her denial of the allegation of an illicit relationship with Ramkumar was not a strong or categorical denial. The Court also noticed her admission in cross-examination regarding her leaving the matrimonial home on 18.09.2019 and going to Cuddalore along with Ramkumar.

20. The Family Court also considered the statements said to have been given before the police and the other materials placed before it. The Family Court thereafter considered the matrimonial relationship between the parties and observed that mutual trust is an essential element of a peaceful matrimonial life. It found that, having regard to the allegations and counter-allegations made by the parties and the circumstances brought out in evidence, the possibility of the parties living together peacefully had become remote.

21. The Family Court further observed that although the husband stated that he was willing to accept the wife, the allegations had already been made known to the family members, police and the local community and that such circumstances would affect the day-to-day



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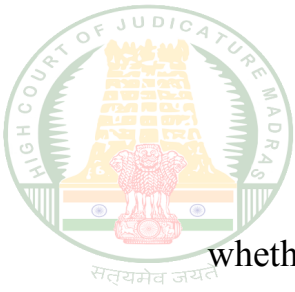
matrimonial relationship.

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22. Ultimately, the Family Court concluded that there was no possibility of the parties living together and that the matrimonial relationship had reached a stage where continuation of the relationship was not practically possible. Accordingly, H.M.O.P.No.228 of 2020 filed by the wife was allowed and the marriage solemnized on 23.10.2005 was dissolved by a decree of divorce. Consequently, H.M.O.P.No.354 of 2020 filed by the husband for restitution of conjugal rights was dismissed. Aggrieved by the said common order, the husband has preferred the present appeals.

23. In C.M.A.(MD) No.804 of 2022, the challenge is to the decree of divorce granted in H.M.O.P.No.228 of 2020. And In C.M.A. (MD)No.805 of 2022, the husband challenges the dismissal of H.M.O.P.No.354 of 2020 filed by him seeking restitution of conjugal rights.

24. The principal grounds raised by the appellant are that the Family Court erred in granting divorce without properly appreciating

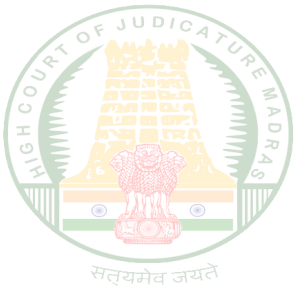


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whether the allegations of cruelty were established; that the finding of the Family Court was based on assumptions and presumptions; and that the observation that the husband ought to have sought divorce while the wife ought to have sought restitution of conjugal rights was unwarranted.

25. It is further contended that, even assuming that the conduct attributed to the wife was proved, the Family Court ought to have granted restitution of conjugal rights instead of dissolving the marriage. The appellant also contends that the Family Court failed to consider the welfare of the children and ought to have provided an opportunity for the parties to resume their matrimonial life. The appellant further relies upon his alleged willingness to forgive the wife and resume matrimonial life and contends that the said conduct ought to have weighed in favour of granting restitution of conjugal rights.

26. We have carefully considered the rival submissions, the pleadings, the materials available on record and the common order of the learned Judge, Family Court.



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27. In view of the rival submissions and the grounds raised in

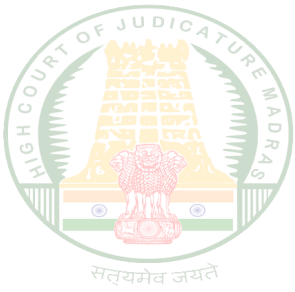
the appeals, the following points arise for consideration:

(i) Whether the Family Court was justified in allowing H.M.O.P.No.228 of 2020 and granting a decree of divorce in favour of the wife?

(ii) Whether the Family Court was justified in dismissing H.M.O.P.No.354 of 2020 filed by the husband for restitution of conjugal rights?

(iii) Whether the common order of the Family Court warrants interference by this Court?

28. At the outset, there is no dispute with regard to the marriage between the parties solemnised on 23.10.2005 and the birth of their two children. It is also not in dispute that the parties had lived together for a substantial period of time. The principal question is whether, on the evidence available on record, the Family Court was justified in concluding that the matrimonial relationship had broken down to such an extent that the parties could not reasonably be expected to resume their matrimonial life.

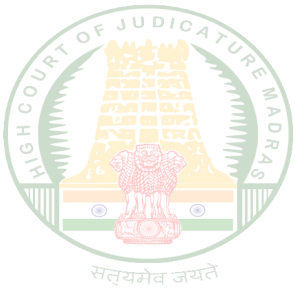


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29. The evidence has to be considered as a whole and not by isolating individual statements. The Family Court had the advantage of examining the parties and appreciating their evidence. The findings recorded by the Family Court are based upon the evidence adduced before it.

30. A significant aspect of the case is the allegation relating to Ramkumar. The husband specifically alleged that the wife had developed an illicit relationship with him. The Family Court noticed that the wife did not give a categorical and convincing denial of the said allegation. The Family Court also took note of her evidence concerning her leaving the matrimonial home on 18.09.2019 along with Ramkumar.

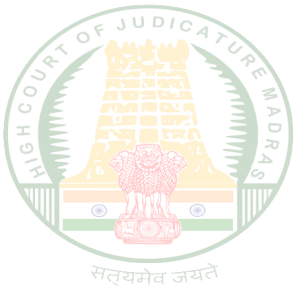
31. The Family Court also considered the materials relating to the complaints and statements made before the police. The documents produced before the Court were not considered in isolation, but were examined along with the oral evidence adduced by the parties and the overall circumstances of the case.



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32. It is true that the husband has stated that he was willing to take back the wife. However, the mere expression of willingness on the part of one spouse cannot, by itself, establish that a workable matrimonial relationship can be restored. The Court is required to examine whether, in the circumstances of the case, there exists a genuine and realistic possibility of the parties resuming a peaceful matrimonial life. A matrimonial relationship cannot be revived merely by a unilateral expression of willingness when the circumstances disclose that the basic foundation of the relationship has been seriously eroded.

33. In the present case, serious allegations have been exchanged between the parties. The wife has alleged physical and mental cruelty against the husband, whereas the husband has levelled serious allegations concerning the conduct of the wife and her alleged relationship with another person. These allegations have not remained confined to the matrimonial relationship, but have also become the subject matter of police complaints and matrimonial proceedings. In such circumstances, the Family Court was justified in examining whether the mutual trust, which constitutes one of the fundamental foundations of a matrimonial relationship, continued to exist between the parties.

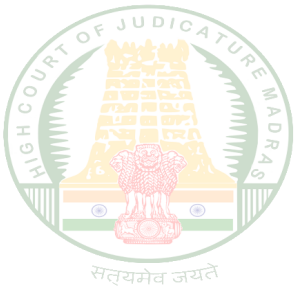


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34. The importance of mutual trust, companionship and the possibility of reconciliation has also been recognised by the Hon'ble Supreme Court in ***Amutha v. A.R. Subramanian, 2024 SCC OnLine SC 3822***, wherein it was observed as follows:

“31.Marriage is a relationship built on mutual trust, companionship, and shared experiences. When these essential elements are missing for an extended period, the marital bond becomes a mere legal formality devoid of any substance. This Court has consistently held that prolonged separation, coupled with inability to reconcile, is a relevant factor in deciding matrimonial disputes. In the present case, the length of separation and the evident animosity between the parties make it clear that there is no possibility of the marriage being revived.”

35. The above principle is particularly relevant to the facts of the present case. The issue before the Court is not merely whether one party has expressed a desire to resume the matrimonial relationship, but whether, considering the prolonged discord, the serious allegations exchanged between the parties, the police complaints and the consequent erosion of mutual trust, there remains a realistic possibility of the parties living together peacefully as husband and wife.



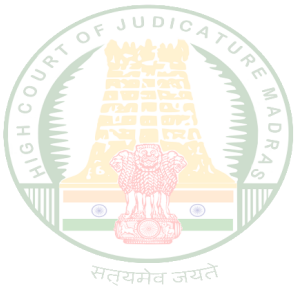
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36. The same principle has to be understood in the light of the observations of the Hon'ble Supreme Court in ***Chetan Dass v. Kamla Devi, (2001) 4 SCC 250***, wherein the Court observed as follows:

“Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse.”

37. The Hon'ble Supreme Court further cautioned that the concept of an irretrievably broken marriage cannot be applied as a straight-jacket formula for granting a decree of divorce and that the question has to be considered in the background of the facts and circumstances of each case.

38. Thus, the aforesaid decisions do not suggest that a marriage can be dissolved merely because the parties have differences or because one party alleges that the marriage has broken down. Rather, they require the Court to examine the entire matrimonial relationship, including the existence of mutual trust, companionship, respect, affection, the capacity for reasonable adjustment and, most importantly, whether there remains a genuine possibility of reconciliation.

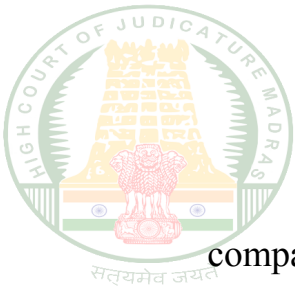


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39. In the present case, the Family Court has undertaken such an examination. After considering the entire circumstances of the case, including the oral and documentary evidence, the complaints and statements before the police, the serious allegations exchanged between the parties and the overall conduct of the parties, the Family Court has recorded a categorical finding that there was no possibility of the parties living together.

40. Therefore, the mere statement of the husband that he is willing to take back the wife cannot, in the face of the surrounding circumstances and the evident erosion of mutual trust, be treated as sufficient to establish that the matrimonial relationship can be meaningfully restored. The finding of the Family Court is based upon the cumulative effect of the evidence and circumstances placed before it and cannot be said to be perverse or unsupported by evidence.

41. In these circumstances, the conclusion of the Family Court that there was no real possibility of the parties resuming a peaceful matrimonial life cannot be faulted. The finding is consistent with the principle that marriage is founded upon mutual trust, respect,



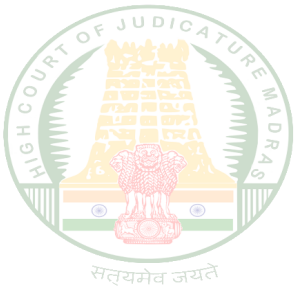
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companionship and affection, and that where these essential elements have been substantially eroded over a prolonged period, the Court is entitled to assess whether the matrimonial bond continues to have any meaningful prospect of revival.

42. The appellant has placed considerable reliance upon the welfare of the children and contended that the matrimonial relationship ought to have been preserved for their benefit.

43. There can be no dispute that the welfare of children is an important consideration in matrimonial proceedings. However, the welfare of children cannot be understood to mean that parties should necessarily be compelled to continue a matrimonial relationship which has ceased to be workable.

44. The Court has to balance the welfare of the children with the realities of the matrimonial relationship. In the present case, the Family Court, after considering the evidence, found that the relationship between the parties had reached a stage where their continued cohabitation was not reasonably possible.

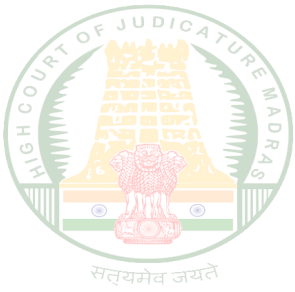


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45. It is also pertinent to note that a child breathes not only air, but also the atmosphere that exists between his father and mother. When the relationship between the parents loses its cordiality, when love is replaced by bitterness and togetherness by constant discord, even the four walls of a home cease to be a home for the child.

46. The child may have toys, comforts and all material facilities, but he cannot have a peaceful sleep, a joyful childhood, or a sense of belonging if every day he has to witness his parents standing as strangers under the same roof. He grows up listening not to lullabies, but to arguments; he sees not affection, but indifference. In such a broken emotional environment, the child becomes a silent sufferer - confused, insecure and torn between two people he loves most.

47. It is therefore not enough to give a child a house to live in. What a child truly needs is a home, a home built on mutual respect, love and cordiality between his parents. Without that cordial bond between father and mother, there can be no peace in the child's heart, and without peace in his heart, there can be no healthy growth in his life.



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48. At the same time, the dissolution of the matrimonial relationship between the spouses does not bring an end to the relationship between a father and his children. A decree of divorce may sever the legal bond of marriage between the husband and wife, but it does not sever the moral, emotional and parental obligations of a father towards his children. The father continues to owe a duty to care for, support, guide and protect the children and to remain meaningfully involved in their lives. The dissolution of the marriage cannot be treated as a ground for the father to distance himself from his parental responsibilities or to deny the children the care, affection, guidance and emotional support to which they are entitled.

49. In the present case, even if the matrimonial relationship has come to an end, the appellant cannot regard such dissolution as bringing an end to his responsibilities towards the children. On the contrary, it becomes all the more necessary for him to discharge his parental responsibilities with greater maturity and sensitivity, so that the children do not suffer further on account of the breakdown of the matrimonial relationship. The Court cannot lose sight of the fact that the children are not responsible for the differences between their parents and ought not to

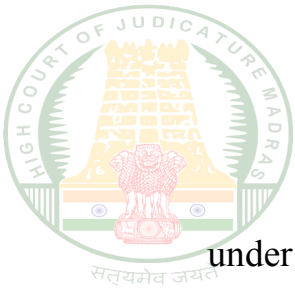


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be made to bear the consequences of such differences. The father's responsibility towards the children is not merely a financial obligation; it also encompasses his moral responsibility to provide care, affection, guidance, emotional security and a sense of parental presence.

50. Merely because the marriage between the parties has been dissolved, the appellant cannot be permitted to contend that his obligations towards the children have also come to an end. If, as contended by him, the welfare of the children is genuinely his concern, such concern must necessarily be reflected in his conduct as a father and in his willingness to shoulder the responsibilities that accompany parenthood. The children require not merely financial provision, but also the assurance that their father continues to stand by them, irrespective of the relationship between their parents.

51. Therefore, while the welfare of the children cannot be made a ground to compel the parties to remain in a matrimonial relationship which has ceased to be workable, the same welfare necessarily imposes a continuing obligation upon both parents to ensure that the children are adequately cared for and emotionally supported. The appellant remains

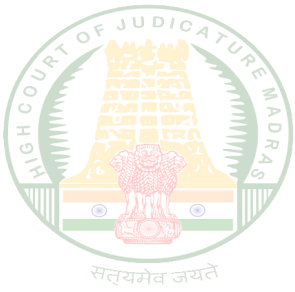


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under a continuing parental and moral obligation to take care of the children, to extend his support and guidance to them and to ensure that they do not feel abandoned merely because the matrimonial relationship between their parents has come to an end.

52. Therefore, the contention relating to the welfare of the children, by itself, cannot be a ground to interfere with the decree granted by the Family Court. At the same time, the dismissal of the matrimonial relationship between the parties should not be understood as absolving the appellant of his continuing responsibilities as a father. The decree of divorce puts an end to the marital relationship, but it does not put an end to parenthood.

53. The appellant has specifically contended that, since he was willing to forgive the wife and resume matrimonial life, the Family Court considered the circumstances in which the parties had been living separately and the serious allegations exchanged between them. The Court also considered the evidence relating to the conduct of the wife and the subsequent events.



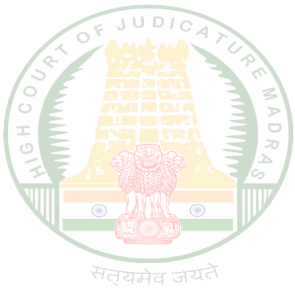
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54. The Family Court rightly appreciated that the Court cannot compel parties to resume matrimonial life where the evidence indicates that the relationship has lost the foundation of mutual trust and there is no realistic possibility of peaceful cohabitation.

55. The Family Court has recorded a plausible conclusion arising from the evidence. We therefore find no error in the dismissal of H.M.O.P.No.354 of 2020.

56. The Family Court has considered the pleadings, examined the parties and witnesses, marked the documents and thereafter recorded findings on both the petitions by a common order. The grounds raised by the appellant essentially seek a re-appreciation of the evidence. However, no perversity, material illegality or substantial error in the appreciation of evidence has been demonstrated before us.

57. The findings of the Family Court are neither arbitrary nor contrary to the evidence on record. The mere fact that another view may theoretically be possible is not sufficient to warrant interference with a reasoned finding of the Family Court.



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58. For the foregoing reasons, we answer the points for consideration as follows, that the Family Court was justified in allowing H.M.O.P.No.228 of 2020 and granting a decree of divorce between the parties, and the Family Court was justified in dismissing H.M.O.P.No. 354 of 2020 filed by the husband for restitution of conjugal rights.

59. Accordingly, both the Civil Miscellaneous Appeals are **dismissed**, confirming the common order and decree dated 01.07.2022 passed by the learned District Judge, Family Court, Theni, in H.M.O.P.Nos.228 of 2020 and 354 of 2020. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] & [M.D.S., J.]
08.10.2026

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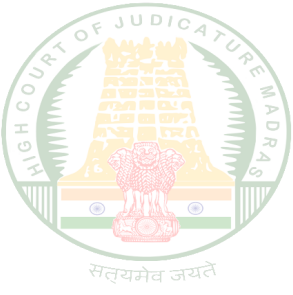
To

1. The District Judge, Family Court, Theni.

2. The Section Officer,

V.R Section, Madurai Bench of Madras High Court, Madurai.

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**G.R.SWAMINATHAN, J.
AND
M.D.SUMATHI, J.**

PJL

Judgment made in

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08.10.2026