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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 19-08-2026**

CORAM

**THE HON'BLE MS. JUSTICE P.T. ASHA**

**AND**

**THE HON'BLE MRS.JUSTICE N. MALA**

**CMA No. 4025 of 2019**

S.Rani,  
W/o. Sampath,  
Sozhakanur Village,  
Thiruvamathur Post,  
Villupuram Taluk and District.

..Appellant(s)

Vs

Sampath,  
S/o. Krishnan,  
Sozhakanur Village,  
Thiruvamathur Post,  
Villupuram Taluk and District.

..Respondent(s)

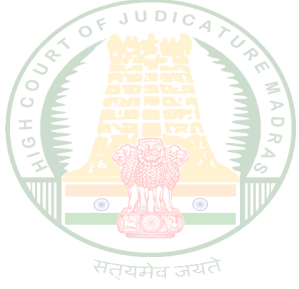
Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the Judgement and Decree dated 16.10.2015 made in H.M.O.P. No.8 of 2015 on the file of the Family Court, Villupuram.

For Appellant(s):

Mr.K.S.Ilangovan  
for M/s.Achari and Antoni Asso.

For Respondent(s):

Mr.T.Dhanyakumar



## **JUDGMENT**

**(Judgment of the Court was delivered by N.Mala J.)**

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(1) Civil Miscellaneous Appeal is filed against the fair and final order in H.M.O.P.No.8/2015 on the file of the Family Court, Villupuram, dismissing the petitioner's petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

(2) The parties will be referred to as per their litigative status in the Family Court.

(3) The petitioner states that she married the respondent on 10.07.2008, as per the Hindu Rites and Customs and in the presence of her parents and relatives in a Hindu temple near All Women Police Station, Villupuram. According to the petitioner, even before the marriage, the petitioner and the respondent were romantically involved and the respondent had also sexually exploited her on numerous occasions, resulting in her pregnancy. According to the petitioner, she requested the respondent several times to marry her, but instead of marrying her, the respondent asked her to terminate the pregnancy. The petitioner stated, that the respondent's mother and sister physically abused her and therefore, she filed a complaint on 27.06.2008, before the All Women Police Station, Villupuram, with a request to get her married to the respondent. According to the petitioner, on her complaint, an enquiry was conducted, which revealed that the respondent was responsible for the petitioner's pregnancy. In the enquiry,



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the respondent admitted his relationship with the petitioner and the consequent pregnancy and further agreed to marry the petitioner. Abiding with advice of the police, the respondent married the petitioner as per the Hindu Rites and Customs and for sometime they lived as husband and wife. The petitioner stated that the respondent used to kick her on her stomach as a result of which she gave birth to a still born baby. The petitioner stated that she was driven out of the matrimonial home by the respondent's parents and his sister against which, she protested by undertaking a fast before the District Collectorate Office. The petitioner thereafter also filed a complaint on 25.05.2009, before the Tamil Nadu State Commission for Women. On the basis of the complaint an enquiry was conducted and the petitioner was advised to approach the Civil Court for redressal of her grievance. Since all attempts by the petitioner to join the respondent proved futile, she approached the legal aid authority for assistance. Later, the petitioner issued legal notice to the respondent, to which, the respondent replied with untenable and false grounds. The petitioner left with no other remedy, filed the aforesaid petition for the aforesaid relief.

(4) The respondent specifically denied each and every one of the allegations made by the petitioner in the petition. The respondent specifically denied his romantic involvement with the petitioner, her pregnancy and the marriage. The respondent contended that the petitioner was a Christian by religion and therefore the petitioner was bound to prove the validity of the marriage. The respondent denied the contention of the petitioner, that they lived for some time

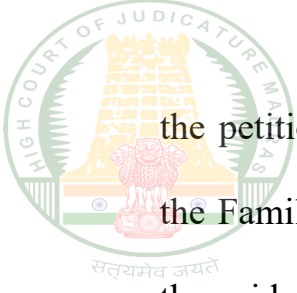


as a husband and wife and that, he and his family members drove her out of the matrimonial home. The respondent further contended that the petitioner had filed several criminal complaints under the Domestic Violence Act and a petition for damages. The respondent therefore contended that there were no merits in the petition and the same deserved to be dismissed.

(5) Before the Family Court, the petitioner examined two witnesses and filed 10 documents. The respondent examined four witnesses (R.W4, evidence eschewed) and filed six documents. The Family Court, after framing the necessary issues and on consideration of the evidence on record, on issue No.1, held that the petitioner had failed to prove the marriage on 10.07.2008, between herself and her husband. On issue No.2, the Family Court found that at the time of marriage, the 2<sup>nd</sup> respondent was a Christian by religion, and that the same was proved by the respondent. On issue No.3, the Family Court found that the marriage between the petitioner and the respondent was not valid. On issue Nos.5 and 6, the Family Court held that, since issues 1 to 3 were found against the petitioner, she was not entitled to the relief of restitution of conjugal rights or any other relief. On such findings, the Family Court dismissed the petition. Aggrieved by the fair and final order of the Family Court, the petitioner/wife has preferred the above Civil Miscellaneous Appeal.

(6) We heard both the learned counsels and perused the materials placed on record.

(7) The factual finding of the Family Court on the various allegations made by



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the petitioner are not traversed, since this Court finds the reasons assigned by the Family Court for such factual findings are based on proper appreciation of the evidence on record. In the absence of any perversity in the said findings, we find no reason to interfere with the factual findings of fact of the Family Court.

(8) The legal issue that is raised in this Civil Miscellaneous Appeal is whether the petition filed by the petitioner, a Christian by religion for restitution of conjugal rights invoking Section 9 of the Hindu Marriage Act, on the basis of the alleged marriage, which took place on 10.07.2008, as per the Hindu Rites and Customs is maintainable?

(9) To answer the said issue it has to be first seen if factually it is established that the petitioner belongs to Christian religion. To prove that the petitioner belongs to Christian religion, the respondent examined R.W2 and R.W3, and marked Exs.R5 and R6, through them. R.W2, Amudha is a Head Mistress, Sozhaganur Panchayat Union Primary School. Through her, Ex.R5 was marked, which is the Register of admissions and withdrawals. In Ex.R5, the petitioner's caste and religion are mentioned as Christian Adi Dravidar. The petitioner studied upto class V in the said school. R.W3, Kala, Head Mistress, Edapalayam Panchayat Union Middle School, was examined and through her, Ex.R6 was marked. Ex.R6, is also a Register of admissions and withdrawals. In the said school register, the petitioner was recorded as a Christian belonging to Adi Dravidar Community. Even the petitioner's nephew, P.W2, in his evidence, testified that their family professed Christianity. The evidence of



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P.W2 in cross-examination is as follows:

“என்னை வல்லப்பதாஸ ' என்றும் அழைப்பார்கள்... என' தந்தை பெயர் ஞானப்பிரகாசம், என' சித்தப்பா பெயர் மிக்கேல், நாங்கள் ' கிருஸ்துவ மதத்தைச ' சேர்ந்தவர்கள், ஒதியதூர் சர்ச்சுக்கு தான் நாங்கள் செல்வோம், என் தாத்தா, பாட்டி எந்த சர்ச்சுக்கு சென்றார்கள் என்று எனக்குத் தெரியாது. நாங்கள் ' பாரம்பரியமாக கிருஸ்துவ மதத்தைச ' சேர்ந்தவர்கள். மனுதாரர் ராணி என் அத்தை"

(10) From the aforesaid documentary evidences and the testimony of the petitioner's own nephew it is clear that the petitioner is a Christian by religion.

(11) The next question to be decided is whether the marriage between the petitioner, Christian by religion and the respondent, Hindu is valid as per the provisions of the Hindu Marriage Act. It is trite that to file a petition under Section 9 of the Hindu Marriage Act, a valid marriage has to be first established. We shall now examine few judgments that throw light on the applicability of the Hindu Marriage Act, to a marriage between a Hindu and a Non-Hindu. The law on the subject of validity of a marriage of a Hindu with a Non-Hindu is settled by the Hon'ble Supreme Court and Division Bench of this Court. In the case of *Gullipilli Sowria Raj vs. Bandaru Pavani alias Gullipili Pavani*, reported in (2009) 1 SCC 714, the Hon'ble Supreme Court while



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considering similar issue of the validity of a marriage between a Hindu with a Christian under the provisions of the Hindu Marriage Act held as follows:

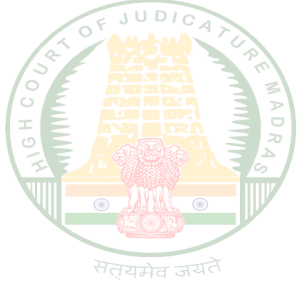
*“16. Although, an attempt has been made to establish that the Hindu Marriage Act, 1955 did not prohibit a valid Hindu marriage of a Hindu and another professing a different faith, we are unable to agree with such submission in view of the definite scheme of the 1955 Act. In order to appreciate the same, we may first refer to the Preamble to the Hindu Marriage Act, 1955, which reads as follows:*

*“An Act to amend and codify the law relating to marriage among Hindus.”*

*(emphasis added)*

*As submitted by Mr Rao, the Preamble itself indicates that the Act was enacted to codify the law relating to marriage amongst Hindus.*

*17. Section 2 of the Act which deals with application of the Act, and has been reproduced hereinabove, reinforces the said proposition. Section 5 of the Act thereafter also makes it clear that a marriage may be solemnised between any two Hindus if the conditions contained in the said section were fulfilled. The usage of the expression “may” in the opening line of the section, in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms, indicates that a marriage can be solemnised between two Hindus if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnised. The expression “may” used in the opening words of Section 5 is not directory, as has been*

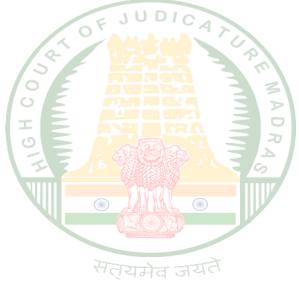


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sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein.”

(12) The aforesaid judgment was followed by the Division Bench of this Court in the case of ***K.Shanmugha Raja @ Raja vs Shanthakumar***, passed in ***Civil Miscellaneous Appeal No.1474 of 2017***, dated ***30.11.2018***. The Division Bench while considering a similar issue of maintainability of a petition for divorce under the Hindu Marriage Act, with respect to a marriage of a Hindu with a Christian held as follows:

*“31.The above decisions rendered by the Honourable Supreme Court as well as the Division Bench of the respective Courts are squarely applicable to the facts of the present case. In the present case, admittedly, at the time of marriage, the appellant was a Hindu and the respondent a Christian and therefore, the invocation of the provisions contained under the Hindu Marriage Act by the appellant to dissolve the marriage solemnised between him and the respondent is legally not sustainable. The Original Petition filed by the appellant, a Hindu, against the respondent, a Christian by invoking the provisions of The Hindu Marriage Act is per se not maintainable and it is liable only to be rejected. Therefore, we have no hesitation to hold that the Original Petition filed by the appellant before the Family Court is not maintainable and the Family Court*

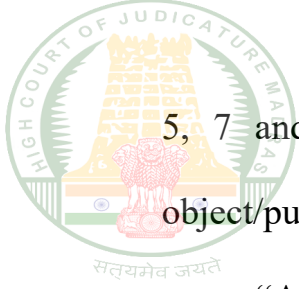


*erred in holding that the Original Petition filed by the appellant is maintainable and triable by it.”*

WEB (13) It is pertinent to note here that it is not the petitioner's case that she falls under any of the explanations provided under Section 2 of the Hindu Marriage Act. Therefore, in the light of the law laid down by the Hon'ble Supreme Court and a co-ordinate Bench of this Court, to which we are bound, we hold that the marriage between the petitioner and the respondent is not a valid marriage, under the provisions of Sections 2, 5 and 7 of the Hindu Marriage Act.

(14) The learned counsel for the petitioner has raised a very ingenious argument that, for the purpose of Section 9 of the Hindu Marriage Act, it is not necessary that both the parties should be Hindus. The learned counsel referring to Section 9 submitted that the terms used therein are only “husband” and “wife” and not Hindu husband and Hindu wife. The learned counsel for the petitioner further submitted that the use of the common noun's i.e. “husband” or “wife” without the prefix “Hindu” in Section 9 of the Hindu Marriage Act, sufficiently establishes that it is not necessary for the purpose of Section 9 that both the parties should be Hindus. The learned counsel therefore submitted that the petitioner was very much entitled to invoke the provisions of Section 9 of the Hindu Marriage Act, for restituting the conjugal rights of the petitioner.

(15) In order to examine the tenability of the learned counsel's submission, we deem it necessary to refer to the preamble and related provisions of Sections 2,



5, 7 and 9 of the Hindu Marriage Act, which will throw light on the object/purpose, and the scheme of the Act. The Preamble reads as follows:

“An Act to amend and codify the law relating to Marriage among Hindus.”

(16) Section 2 of the Act speaks of the applicability of the Act and its reads as under:

Section 2 of the Hindu Marriage Act, 1955 reads as follows:

*“ 2. Application of Act.- (1) This Act applies -*

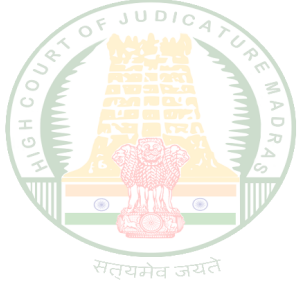
*(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;*

*(b) to any person who is a Buddhist, Jaina or Sikh by religion; and*

*(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.*

*Explanation. - The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-*

*(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs*



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*by religion;*

*(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and*

*(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.*

*(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.*

*(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.”*

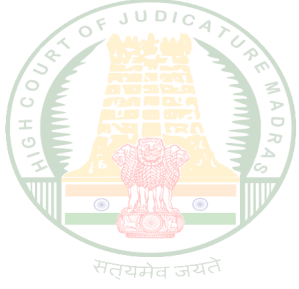
(17) Section 5 of the Hindu Marriage Act, reads as follows:

*“5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-*

*(i) neither party has a spouse living at the time of the marriage;*

*[(ii) at the time of the marriage, neither party-*

*(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*



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(b) *though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

(c) *has been subject to recurrent attacks of insanity ;]*

(iii) *the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;*

(iv) *the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;*

(v) *the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;”*

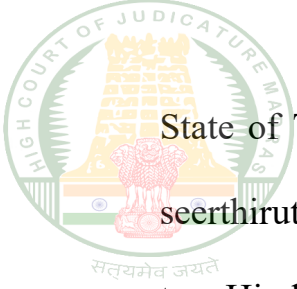
(18) Section 7 of the Hindu Marriage Act, reads as follows:

***“7.Ceremonies for a Hindu marriage.-***

*(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.*

*(2) Where such rites and ceremonies include the saptpadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”*

(19) It would be relevant to point out here that Section 7(A) was inserted by the



State of Tamil Nadu, making a special provision regarding suyamariythai and seerthiruththa marriages. Under the said special provisions, a marriage between two Hindus could be solemnised in the presence of relatives and friends or other persons by each of the parties to the marriage declaring in any language which is understood by the parties and by at least two persons, in whose presence the marriage is solemnised, that each takes the other to be his wife or, as the case may be, her husband, or by tying of the thali.

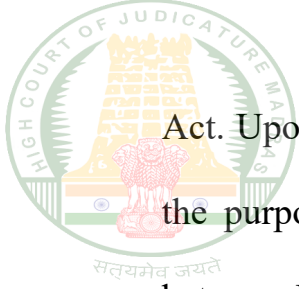
(20) Section 9 of the Hindu Marriage Act reads as follows:

***“9. Restitution of conjugal rights.-***

*When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

*Explanation. Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”*

(21) The preamble as is well known is the key to open the minds of the Makers of the legislation. The preamble is a part of the Act which throws light on the intent and design of the Act and indicates the purpose, scheme and scope of the

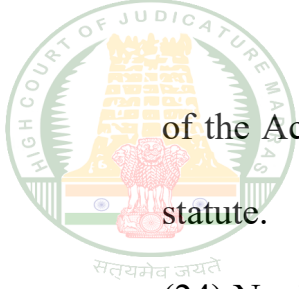


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Act. Upon a reading of the preamble of the Hindu Marriage Act, it is clear that the purpose or object of the Act, is to codify the law relating to Marriages between Hindus. The intent of the statute spoken through the preamble makes it clear that it applies to Hindu marriages. Section 2 speaks of the applicability of the Act and lays down that any person who is a Hindu by religion or born in Hindu family with Hindu father and mother, in any of its forms such as Virashaivas, lingayats or a follower of Brahmo, Prarthana or Arya Samaj or any person who is a Buddhist, Jain or Sikh is also a Hindu by religion. Thus, any person except a Muslim, Christian, Parsi or Jew is a Hindu. The explanation expands the applicability of the Act to persons mentioned therein. Section 5 lays down the conditions for a valid Hindu marriage. Section 5 clearly provides that a valid Hindu marriage is one which is solemnised between two Hindus subject to conditions laid down therein being fulfilled. Section 7 speaks of ceremonies of marriage and states that if the ceremonies include the saptapadi, on completion of the 7<sup>th</sup> step the Marriage becomes complete and binding.

(22) In our view, the argument of the learned counsel for the petitioner in effect amounts to treating Section 9 of the Hindu Marriage Act, as a stand alone provision. If the argument of the petitioner's counsel is accepted it will lead to isolating Section 9 of the Act from the other provisions of the Act.

(23) It is trite that in legal interpretation of statutes an independent provision of law cannot be read in isolation to the rest of the statute. For interpreting a particular provision, the Preamble of the Act, related provisions and the scheme



of the Act as a whole have to be considered, to determine the real intent of the statute.

(24) No doubt, in Section 9 of the Hindu Marriage Act, the expressions used are “husband” or “wife”. Since the common nouns “husband” and “wife” are used in Section 9 of the Hindu Marriage Act without the prefix, “hindu”, it cannot be held that it applies to Non-Hindus also.

(25) We are of the firm view that the scheme of the Act as established from the preamble and its provisions cannot be overridden by mere use of common noun's in Section 9 of the Act. Eventhough the common noun, “husband” or “wife” are employed in Section 9, we are of the view that the jurisdiction to invoke Section 9 is based on the satisfaction of the provisions of Sections 2, 5 and 7 of the Act. All the provisions specifically speak of a marriage between Hindus. Even the Tamil Nadu State amendment under Section 7(A) speaks of marriage between two Hindus. Section 2 of the Act as already mentioned relates to the applicability of the Act. Section 2 explicitly spells out that the entire Act applies only to persons who belong to the Hindu, Buddhist, Jaina or Sikh religion and not to Muslim, Christian, Parsi or Jew by religion. We are therefore of the view that since the Act does not apply to Non-Hindus, only the persons who are Hindus as described in Section 2 of the Act can legally be recognised as husband or wife even for the purposes of Section 9 of the Act. In other words, when the Act is made applicable only to Hindus, the reference to “husband or wife” under Section 9 will mean only a Hindu husband and Hindu



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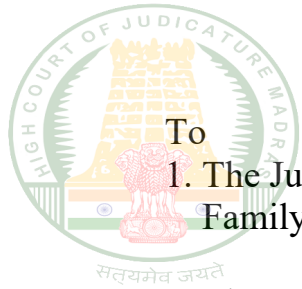
wife. Therefore, we find no merit in the argument of the learned counsel for the petitioner and hence, the same is rejected. Therefore, unless and until both the parties to a marriage belong to Hindu religion, it cannot be called as Hindu marriage and hence the Hindu Marriage Act shall not apply.

(26) In view of the above discussions, the original petition filed by the petitioner, a Christian against the respondent, Hindu by invoking the provisions of Section 9 of the Hindu Marriage Act is *per se* not maintainable and liable to be rejected. We have no hesitation to hold that the original petition filed by the petitioner before the Family Court is not maintainable. Therefore, we hold that the Family Court was right in rejecting the original petition of the petitioner.

(27) In view of the above discussions, we find no merit in the Civil Miscellaneous Appeal and hence, the same is dismissed. Therefore, the judgment and decree dated 16.10.2015 made in H.M.O.P.No.8 of 2015 on the file of the Family Court, Villupuram, is confirmed. However, there shall be no order as to costs.

(P.T.A.,J.) (N.M.,J.)  
19-08-2026

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No  
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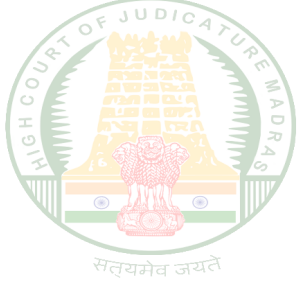


To

1. The Judge,  
Family Court, Villupuram.

2. The Section Officer,  
V.R. Section, High Court,  
Madras.

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CMA No. 4025 of 2



**P.T.ASHA J.**  
**and**  
**N.MALA J.**

**dsn**

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