

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Mat.Appeal.No. 547 of 2015 ()

AGAINST THE JUDGMENT IN OP 498/2009 of FAMILY COURT, PALAKKAD DATED
12-08-2011

APPELLANT/PETITIONER:

SIVADASAN, AGED 46 YEARS,
S/O.KANNAN, RAPADI, MARIYAPPADATH
KIZHAKKENCHERRY, ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT/RESPONDENT:

AJITHA, AGED 35 YEARS
D/O.MANICKAN, CHAMARIKKAD VEEDU, KADAMBIDIYIL
CHITTILENCHERRY, ALATHUR, PALAKKAD-678 541.

BY ADV. SMT.NILA. C.V.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
Mat.A.No.547 of 2015
.....

Dated this the 9th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

Considering the nature of disposal of the case made by the court below, we felt that the appeal can be disposed of after hearing both sides on merits. So the appeal is admitted and disposed of today itself after hearing both sides.

2. The petitioner in the lower court is the appellant herein. He filed O.P.No.498/2009 on the file of the Family Court, Palakkad under Section 9 of the Hindu Marriage Act seeking a decree for restitution of conjugal rights. The marriage between the appellant and respondent was solemnized on 20.5.2007 and thereafter they were living together as husband and wife. Though, the respondent became pregnant, she had aborted the pregnancy without the appellant's consent. She left the house on 21.8.2008 stating that she wanted to participate in the marriage of daughter of a neighbour. Thereafter she did not return. Though a notice was issued asking her to come back, she sent reply stating false allegations. So the petitioner filed

an application for restitution of conjugal rights. The respondent appeared and filed counter denying the allegations. The main contentions raised in the counter statement are that age difference between the appellant and the respondent was suppressed and the marriage was solemnized fraudulently and there was no consummation of marriage and the allegation of pregnancy and subsequent abortion etc alleged are not correct. He is a drunkard and used to beat her. So she was compelled to leave the house. The appellant is not entitled to get a decree for restitution of conjugal rights and prayed for dismissal of the application. PWs 1 and 2 were examined and Exts.A1 and A2 were marked on the side of the appellant and respondent was examined as RW1 and after considering the evidence on record, the court below dismissed the application stating that the respondent has reasonable cause to stay away from the appellant. Aggrieved by the same, the present appeal has been filed.

3. Counsel for the appellant submitted that the only allegation was that there was age difference of 13 years and that was suppressed and the marriage was solemnized. There

was no finding as to any cruelty was caused making the respondent to stay away from the appellant made out in the judgment. The court below was not justified in dismissing the application.

4. On the other hand, counsel for the respondent submitted that in fact the appellant was suffering from impotency and that was not mentioned in the earlier counter as she did not want to disclose the same at that time. Further a petition for divorce has already been filed and evidence was over and it is posted for hearing now.

5. The appellant, who is the husband of the respondent, had filed an application for restitution of conjugal rights alleging that the respondent herein is staying away from the matrimonial house without any reasonable cause. Though a notice was issued, she sent reply with false allegations. A reading of the counter statement will go to show that the age difference between the appellant and the respondent was suppressed and the marriage was conducted fraudulently and also she had alleged cruelty of beating. But, unfortunately the court below had come to the conclusion that the alleged

suppression of age difference and conducting of the marriage fraudulently as alleged by the respondent has not been proved, but no finding was recorded by the court below regarding the reason for the respondent to stay away from the company of the petitioner before rejecting the application for restitution of conjugal rights filed by the husband against the wife. Unless the court below is satisfied that she is residing separately on account of sufficient cause, the court below ought to have allowed the application for restitution of conjugal rights. It only stated that the respondent established that she is residing separately for just reasons. What is the reason for staying separately had not been discussed and no finding has been arrived at by the court below on appreciation of evidence. So under the circumstances, the judgment passed by the court below dismissing the application is liable to be set aside and the matter has to be remitted back to the court below for fresh consideration in accordance with law. Parties are directed to adduce further evidence including amendment of pleadings, if any required, if any divorce petition has been filed, since we have remanded this case, it is for the Family Court to consider

this petition also along with the divorce petition otherwise there is a possibility of conflicting decisions being rendered by the court below on the issues between the parties. So the court below is directed to try this case also along with the divorce petition namely OP.No.786/12 pending before that court. Parties are directed to appear before the court below on 30.7.2015. The court below is directed to dispose of both the cases at the earliest.

With the above directions and observations, this appeal is allowed and remanded to the court below for fresh disposal.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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