

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

Mat.Appeal.No. 754 of 2011 ()

AGAINST THE JUDGMENT IN OP 358/2010 of FAMILY COURT,
PALAKKAD, DATED 22-07-2011

APPELLANT(S)/PETITIONER:

KALAMANI, W/O.M.MURALEEDHARAN,
DEEPIKKA, KODIYIL VEEDU, PARALI P.O.,
PALAKKAD.

BY ADV. SRI.A.R.GANGADAS

RESPONDENT(S)/RESPONDENT:

M.MURALEEDHARAN, S/O.SATHYABHAMA,
SREENILAYAM, PALASSERY, ODANOOR,
PARALI P.O., PALAKKAD DISTRICT-678 612.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

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

Mat. Appeal No.754 of 2011

Dated this the 14th day of July, 2015

JUDGMENT

K. Ramakrishnan, J

Petitioner in O.P.No.358/2010 on the file of the Family Court, Palakkad, is the appellant herein. The petition was filed by the petitioner herein for dissolution of marriage under Section 13(1-A) [Section was wrongly quoted as 13(1-a)] of Hindu Marriage Act.

2. It is alleged in the petition that the respondent married the petitioner on 06.04.1984 at Guruvayoor Temple and lived as husband and wife. Thereafter they started residing separately. So respondent filed O.P.No.46/1984 before the Sub Court, Palakkad, under Section 10 of the Hindu Marriage Act for a decree for judicial separation. The application was allowed and a decree for judicial separation was passed between the petitioner and respondent on 10.07.1986. They were

residing separately even prior to the petition for judicial separation. There has been no resumption of co-habitation between the petitioner and respondent for a period of one year prior and after the decree for judicial separation till the date of filing of the petition for divorce. So the petitioner is entitled to get the marriage dissolved, solemnized between them on 06.04.1984.

3. Though respondent was served with notice, he did not appear in the proceedings. The petitioner was examined as PW1 and Ext.P1 was marked on her side and she filed proof affidavit also reiterating the averments mentioned in the petition. After considering the evidence, court below dismissed the application on the ground that, the delay in filing the application has not been explained. Aggrieved by the same, the present appeal has been preferred by the appellant / petitioner before the court below.

4. Though notice was served on the respondent, he did not appear in the case.

5. Heard the counsel for the appellant.

6. The counsel for the appellant submitted that the decree for judicial separation was passed as early as on 10.07.1986 and thereafter there is no co-habitation and they were living separately even prior to that. If there is no co-habitation between the petitioner and the respondent even after one year of passing of the decree for judicial separation, that is a ground for granting divorce. The delay in filing the application is not a ground for rejecting the application. So the court below ought to have allowed the application.

7. It is an admitted fact that the marriage between the appellant and respondent was solemnized on 06.04.1984 from Guruvayoor Temple and thereafter they were living together as husband and wife. It is also an admitted fact that, respondent herein who is the husband of the appellant filed O.P.No.46/1984 before the Sub Court, Palakkad, under Section 10 of the Hindu Marriage Act for a decree for judicial separation and the Sub Court had passed

a decree for judicial separation between the petitioner and respondent on 10.07.1986. It is also mentioned in the petition itself that, even prior to the petition in that case they were living separately and even after the disposal of the case, there was no co-habitation between them and the separation continued till the filing of the present petition. The fact that the respondent did not appear in that case also will go to show that, he does not want to resume co-habitation with the petitioner.

8. Section 13(1-A) of Hindu Marriage Act reads as follows:

[(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnised before the commencement of this Act, that the husband

had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner.

(ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or [bestiality;or]

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years]

9. If there is no resumption of co-habitation between the parties for a period of one year or upwards after the passing of the decree for judicial separation, then that itself is a ground for dissolving the marriage between the parties under that Section. Mere delay in filing the application is not a ground to dismiss the application. So the court below had erred in dismissing the application for dissolution of the marriage on the ground that the delay in

filing the application for divorce, though the decree for judicial separation was passed in the year 1986 is unsustainable in law and the same is liable to be set aside and the petitioner is entitled to get a decree for dissolution of marriage between the petitioner and the respondent solemnized on 06.04.1984.

So the appeal is allowed, the decree and judgment passed by the court below, dismissing the application is set aside and the O.P. is allowed dissolving the marriage between the appellant and respondent solemnized on 06.04.1984 at Guruvayoor Temple.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge

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