

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 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

Mat.Appeal.No. 852 of 2014 ()

AGAINST THE JUDGMENT IN OP 520/2013 of FAMILY COURT,
MUVATTUPUZHA, DATED:18.08.2014.

APPELLANT(S)/PETITIONER:

ANU MARIA PAUL, AGED 24 YEARS,
D/O PAUL, RESIDING AT PAUL NIVAS, MANNOOR KARA,
KEEZHILLM P.O., IYRAPURAM VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S)/RESPONDENT:

K.K.RENJITH, AGED 33 YEARS,
S/O. KAMALOLBAVAN, RESIDING AT KARIKKAKUZHI HOUSE,
KOTTAPPADY KARA & VILLAGE, KOTHAMANGALAM TALUK,
ERNAKULAM DISTRICT - 686 691.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 16-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

Mat. Appeal No.852 of 2014

Dated this the 16th day of June, 2015

JUDGMENT

K. Ramakrishnan, J

Petitioner in O.P.No.520/2013 on the file of the Family Court, Muvattupuzha, is the appellant herein. The petitioner filed the petition for divorce before the court below under Section 27(2) (ii) of Special Marriage Act and Section 7 of the Family Courts Act, 1984.

2. It is alleged in the petition that the marriage between the petitioner and the respondent was solemnized on 23.10.2008 as per Special Marriage Act before the Special Marriage Officer, Guddalore, and they were living separately since June 2009. Respondent filed O.P.No.1306/2009 before the Family Court, Ernakulam under Section 22 of the Special Marriage Act for seeking a decree for restitution of conjugal rights and after the formation of the Family Court, Muvattupuzha, it was

transferred to Family Court, Muvattupuzha, where it was re-numbered as O.P.No.9/2012 and that O.P. was allowed as per judgment dated 09.07.2012, but even thereafter there was no re-union between the petitioner and the respondent and the marriage between them has been irretrievably broken down and there is no possibility of re-union. So the petitioner filed this petition for dissolution of marriage.

3. Respondent appeared and filed counter denying the allegations. According to him, the present petition was filed by the petitioner at the instigation of her parents, though she is ready and willing to come and live with him. But according to respondent in the counter, after the decree for restitution of conjugal rights, they resided together for two days in a resort at Munnar and thereafter she left the place stating that she would come back to the matrimonial home, but thereafter she did not come. The respondent filed E.P.No.1/2014 and O.P.No.9/2012 and that

was pending. No oral evidence was adduced on the side of the petitioner and Exts.A1 to A6 were marked on her side. The respondent was examined as RW1. No documents were marked on her side.

4. After considering the evidence on record, court below came to the conclusion that the evidence of RW1 has not been controverted by the petitioner by going to the witness box and thereby she had failed to prove the allegations in the petition and dismissed the petition for dissolution of marriage. Aggrieved by the same, the above appeal has been preferred by the appellant / petitioner in the lower court.

5. Though notice was served on the respondent he remained absent.

6. Heard the counsel for the appellant.

7. The counsel for the appellant submitted that the only ground on which the petition dismissed was that,

she did not go to the witness box to prove allegations and prayed for an opportunity to prove the case and for that purpose, he wanted this court to set aside the judgment and remand the case for fresh disposal by giving an opportunity to adduce evidence on the side of the petitioner.

8. The fact that, there was marriage between the petitioner and the respondent as per the provisions of the Special Marriage Act is proved by Ext.A1 certificate issued by the Special Marriage Officer, Guddalore and admission on the part of the respondent as well. There is no dispute regarding the fact.

9. It is also seen from the pleadings and the documents produced that, earlier the petitioner filed a petition for declaring the marriage as null and void and that was dismissed by the court below, against which Mat.Appeal.No.590/2012 was filed before this court and later it was withdrawn evidenced by Ext.A3 judgment. It is

also in away admitted that the respondent herein filed O.P.No.9/2012 for restitution of conjugal rights and that was allowed as per Ext.A2 judgment and execution petition E.P.No.1/2014 was pending evidenced by Ext.A4 petition. Though there was an allegation that the restitution of conjugal right was not put in effect either by the petitioner or by the respondent, the respondent had gone to the witnesses box and examined as RW1 and denied the same. But the petitioner did not go to the witness box to controvert that evidence and that was taken as a ground by the court below for coming to the conclusion that the allegations in the petition has not been proved by the petitioner for rejecting the prayer for dissolution of marriage. So considering the circumstances, we feel that an opportunity has to be given to the petitioner to adduce evidence regarding the allegations made in the petition seeking a decree for dissolution of marriage since it is a

personal matter which can be proved only by adducing evidence by the party to the marriage alone.

10. So under the circumstances, we feel that an opportunity has to be given to the petitioner to prove the case for which the decree and judgment passed by the court below in O.P 520/2013 has to be set aside and the matter has to be remitted to the court below for fresh disposal in accordance with law. So the appeal is allowed and the order passed by the court below, dismissing the O.P.No.520/2013 is set aside and the matter is remitted to the court below for fresh disposal in accordance with law. The lower court is directed to give an opportunity to the petitioner to adduce oral evidence if she wants to adduce and also to amend the pleadings and if such an application is filed, the court below is at liberty to consider and dispose of the petition in accordance with law. If any oral evidence is adduced by the appellant, then an opportunity has to be

given to the respondent to controvert the evidence and so the respondent is also be given an opportunity to adduce further evidence on this aspect and then court below is directed to dispose of the case afresh in accordance with law. If any amendment is allowed, then court below is directed to give opportunity to the respondent to file additional statement as well.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge

SS