

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.(NPD).No.3069 of 2004

M.Alphonse Antony

.. Appellant

Vs.

1. Fathima Rosalind Rajee
2. Arumugham

.. Respondents

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act, against the fair and decretal order dated 23.07.2003 in I.D.O.P.No.160 of 2000 on the file of the Family Court, Coimbatore.

For appellant : Mr.N.E.A.Dinesh

For respondents: R-1 - counsel died

R-2 - not ready in notice

JUDGMENT

(The Judgment of the Court was delivered by R.Subramanian,J)

The husband who has filed the petition for divorce, which was dismissed by the trial Court, has preferred this appeal.

2. The grounds on which the divorce was sought for, are cruelty, desertion and adultery. According to the appellant-husband, the first respondent-wife never cared for him and has in fact set up a separate residence from January 1986 and living with the second respondent herein.

3. The said petition was resisted by the wife contending that it is the husband who is guilty of cruelty and is living with another woman, by name Christy. It is only with a view to marry her, the husband has sought for divorce.

4. The trial Court, upon consideration of the oral and documentary evidence, has in fact found that the appellant-petitioner-husband has been living with the said Christy. The husband has also admitted the same in his evidence as P.W.1. From the said evidence, the learned Family Judge has concluded that the husband is not entitled for a decree of divorce. On the allegation of cruelty, the learned Family Court Judge has also found that the allegations are not very serious in nature. They are daily occurrences in

the normal family life. On the said conclusion, the learned Family Court Judge has dismissed the O.P.

5. We have heard Mr.N.E.A.Dinesh, learned counsel for the appellant. The counsel for the first respondent is no more. In view of the judgment that is being delivered in this appeal, it is not necessary to wait for service of notice on the second respondent.

6. Learned counsel for the appellant contended that there is no proof for the appellant living with the said Christy and he would also claim that the allegations of cruelty have been brushed aside by the learned Family Judge.

7. We are unable to countenance any of the submissions made by the learned counsel for the appellant, in view of the fact that the appellant as P.W.1, has admitted in his evidence that he has been living with the said Christy. Upon a complaint by the first respondent-wife to the Police, the Police came to his house and took the appellant and the said Christy to the Police Station and a statement was given by them that they will not continue the adulterous relationship. In the light of the said admission, we are unable to interfere with the findings of the learned Family Judge.

8. As regards the claim of cruelty, the learned Family Judge has discussed the evidence and found that the allegations of cruelty have been made only to justify or continue the relationship with the said Christy. We

do not find any irregularity in the said finding.

9. Therefore, we do not see any ground to interfere with the impugned order of the learned Family Judge. Accordingly, the appeal is dismissed, confirming the impugned judgment of the Family Judge. No costs.

(P.S.N.J) (R.S.M.J)
04.01.2017

CS

Copy to

1. The Judge, Family Court, Coimbatore.
2. The Record Keeper, V.R. Section, High Court, Madras.

PUSHPA SATHYANARAYANA, J
and
R.SUBRAMANIAN, J

CS

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