



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1046 of 2016

Alphonse Raj

... Appellant

Vs.

M.Arockia Mahizh Malar

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of Divorce Act, to set aside the judgment and decree passed in I.D.O.P.No.159 of 2013 on the file of the District Judge, Kanyakumari Division at Nagercoil dated 14.07.2016.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.S.Pillai Manikantan

JUDGMENT

The appellant and the respondent got married to each other on 06.01.2003 at St.Jebamalai Matha Churth, Melaperuvilai, Kanyakumari District. A female child viz., Aalin Simon Victoria was born on 25.03.2007 and a male child Allen Simon Raj was born on 27.01.2009. Thereafter, difference had arisen between the parties. Therefore, they have been living apart from each other. The respondent wife left the marital home on 04.07.2009. She has been living away ever since.

2.The appellant filed I.D.O.P.No.159 of 2013 on the file of the District Court, Kanyakumari District at Nagercoil for dissolving the marriage on the ground of cruelty. The appellant examined himself as P.W.1. He marked Exs.P1 to 13. The appellant was not cross examined. At this stage, when the case was listed before the trial Court, the advocates were on boycott. The learned trial Judge took up the case on merits. The learned Judge was of the view that the uncontroverted allegations of the petitioner/husband were not sufficient to grant a decree of divorce. As already pointed out, the petition was filed under Section 10(i)(x) of Divorce Act, 1869. The appellant is obliged to establish by preponderance of probability that the wife treated him with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with



the respondent. In this case, such a standard of cruelty has not at all been established. Therefore, the learned Judge rightly dismissed the petition by order dated 14.07.2016. Aggrieved by the same, the petitioner/husband filed this appeal.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the appellant submitted that the petition was dismissed without even giving him an opportunity of hearing. He would therefore pray for an order of remand.

5. At this stage, this Court suggested to the parties that they bury the hatchet. Two children, a boy and a girl were born of the wedlock. It is stated that the boy is having some learning difficulties. The appellant appeared in person before me. He fairly stated that he would continue to extend all support material and moral, to the children.

6. This Court suggested to the respondent to consider the possibility of dissolving the marital tie on some agreed terms. The parties deliberated for a while and thereafter made a joint submission that the marriage could be dissolved by mutual consent. Therefore, invoking the powers available under Section 10(A)(i) of Divorce Act, 1869, I proceed to dissolve the marriage between the parties on the basis of the following terms:

(i) The appellant shall pay a sum of Rs.10,000/- every month to the respondent as maintenance.

(ii) The appellant shall arrange to convey by way of settlement the property measuring 13 cents in R.S.No.507/1 of Alur village in Kanyakumari District in favour of the children viz., Aalin Simon Victoria and Allen Simon Raj. It is made clear that the properties are settled only in favour of the children and that it would not be open to the respondent to alienate the same. It is of course open to the respondent to enter possession and even improve the same by putting up any construction. It is also made clear that the respondent shall not be entitled to encumber or alienate the said settled property in any manner.

(iii) The appellant shall also bear the educational expenses of the children and also the marriage expenses of the daughter as and when the occasion arises.

(iv) The appellant, as the father is the natural guardian for the children and he is also entitled to visitation rights.

7. In view of the above, the marriage that took place between the appellant and the respondent on 06.01.2003 stands dissolved.



The appellant shall arrange to complete the registration formalities and also hand over a copy of settlement deed to the respondent on or before 31.01.2018.

8.The appeal is allowed as indicated above. No costs.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The District Judge, Kanyakumari Division at Nagercoil.

2.The Record Keeper,V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1cc to Mr.S.PILLAIMANIKANDAN,Advocate,SR. 92685

+1cc to Mr.M.P.SENTHIL,Advocate,SR. 92781

C.M.A. (MD) No.1046 of 2016

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