



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.158 & 212 of 2015

C.M.A. (MD) No.158 of 2015

F.Premela ... Petitioner/Petitioner

Vs.

N.Cicil Rajasingh ... Respondent/Respondent

Prayer: Appeal filed under Section 55 of the Divorce Act, to call for the records relating to the impugned order and decree passed by the District Judge, Kanyakumari Division at Nagercoil dated 15.12.2014 in I.D.O.P.No.121 of 2012.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.T.Arul

C.M.A. (MD) No.212 of 2015

F.Premela ... Petitioner/Respondent

Vs.

N.Cicil Rajasingh ... Respondent/Petitioner

Prayer: Appeal filed under Section 55 of the Divorce Act, to call for the records relating to the impugned order and decree passed by the District Judge, Kanyakumari Division at Nagercoil dated 15.12.2014 in I.D.O.P.No.149 of 2012.

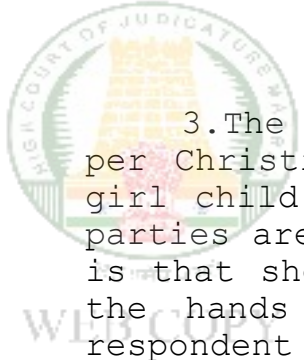
For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.T.Arul

COMMON ORDER

The wife is the appellant in both the cases. The appellant filed I.D.O.P.No.121 of 2012, seeking Divorce. The respondent herein filed I.D.O.P.No.149 of 2012 seeking restitution of conjugal rights. While the petition filed by the appellant was dismissed, the one filed by the respondent was allowed. Therefore two appeals have been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel for the parties.



3.The marriage between the parties took place on 12.06.2009 as per Christian rites and customs. Both are Homeopathy Doctors. A girl child was born on 13.05.2010. But for the last 7 years, the parties are living apart from each other. The case of the appellant is that she was subjected to severe physical and mental cruelty at the hands of her husband. When the appellant conceived, the respondent insisted that she must abort it.

4.The respondent even went to the extent of threatening the appellant that he would disown the paternity of the child. The respondent did not take care of the new born child and completely neglected them.

5.It was alleged that the respondent was facing some criminal proceedings and that in that regard he needed a sum of Rs.5,00,000/-. He was pressurizing the appellant to arrange the money.

6.The respondent strongly denied the allegations made by the appellant. He claimed that he wanted to resume cohabitation with his wife. The appellant examined herself as P.W.1 and neighbour as P.W.2. The respondent examined himself as D.W.1. The appellant narrated her version. If the version projected by the appellant is accepted as such, it certainly would bring the present case within the purview of Section 10 (i) (x) of the Divorce Act. In matters such as this it is not possible to obtain independent corroboration. The appellant is a doctor. So is the respondent. It is admitted that within one year from the marriage the parties have been living apart.

7.The learned Trial Judge applied a very high standard of proof in this case. A reading of the testimony of the appellant inspires confidence in the mind of this Court. The appellant has alleged that she was harassed at the hands of the respondent. The respondent has fairly admitted that he was implicated in a criminal case and that he had to pay money to the family of the deceased. This again probablises the allegation of the appellant that the respondent pressurized her to arrange a sum of Rs.5,00,000/-. Though it may not be characterized as dowry demand, it is certainly an act of cruelty on the part of the respondent. The appellant was justified in contending that it would be harmful and unsafe for her to live with the respondent.

8.The learned Trial Judge erred in declining to grant the decree of divorce. The learned Trial Judge also erred in allowing the petition filed by the respondent for restitution of conjugal rights. I therefore set aside the order dated 15.12.2014 in I.D.O.P.No.121 of 2012 and I.D.O.P.No.149 of 2012 on the file of the District Judge, Kanyakumari Division at Nagercoil. I.D.O.P.No.121 of 2012 is allowed and the marriage that took place between the appellant and respondent on 12.06.2009 at London Mission (SIUC) Christhu Kovil Pastorate Church at Palliyadi stands



dissolved.
dismissed.

I.D.O.P.No.149 of 2012 filed by the respondent stands
Both the appeals stands allowed. No costs.

Sd/-

Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar

To

The District Judge,
Kanyakumari Division,
Nagercoil.

Copy To:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 2 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR Nos. 84147 & 84148
+ 2 CC TO Mr.T.ARUL, ADVOCATE IN SR Nos. 84317 & 84318

TSG/DSS

TE/KKR/SAR-II : 15/11/2017 : 3P/7C

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