

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.07.2018

Judgment Pronounced on : 26.10.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1044 of 2018

A.Jayaraj

... Appellant/Petitioner

Vs

A.Gloria

... Respondent/Respondent

Prayer :-Civil Miscellaneous Appeal filed under Section 55 of Divorce Act, against the order and decretal order passed in D.O.P.No.21 of 2016 by the Principal District Judge, Tiruppur on 29.07.2016.

For Appellant : Mr.J.N.Naresh Kumar

For Respondents : Mr.C.Veeraraghavan

JUDGMENT

The appellant herein has approached this Court challenging in this appeal, the order of the Principal District Court, Tiruppur, dismissing appellant's petition seeking divorce under Section 10 (1) (x) of the Indian Divorce Act.

2. The case of the appellant is that he was married to the respondent on 24.01.2003, that a girl child was born to them, and that till 2006, the terms between the spouses were cordial. But in 2006, the respondent began suspecting the fidelity of the appellant as she happened to see a SMS that was sent to the appellant's cellphone by some stranger, probably by mistake. While so, in 2009, the respondent was appointed as a school teacher, and ever since, the respondent has been playing hide and seek with the appellant and never exhibited any willingness to stay with the appellant and perform her connubial responsibilities. She had made it a habit to leave her matrimonial home with her child to her parents' house, and any amount of persuasion by the appellant and other elders including the Spanish priest of the Church could bring any change in her attitude. Since the respondent was steadfast in her decision not to join the appellant, realising the futility of waiting for her, the appellant had shifted to Dharapuram, which is nearer to the village where he was working as a school teacher. While so, the respondent's father (appellant's father-in-law) died, and this was not even intimated to the appellant, and on coming to know of that, the appellant visited his wife along with his two friends, but they were insulted and driven away. Left with little option,

the appellant issued a legal notice on the respondent, but the respondent has sent a reply accusing that the appellant had become an alcoholic, and that he had become a menace for peaceful living. It is in this circumstance, the appellant moved the Court below with his petition for divorce.

3. Before the lower Court, the respondent did not appear to contest. The appellant has examined himself as P.W.1 and has marked exhibits Exts.P1 to P5.

4. Instead of passing an ex parte order, the District Court has passed an order on merit alleging that the appellant's/petitioner's effort to prove the allegation is not adequate enough.

5. Point for consideration :

Has the Court below erred in substituting its reason for evidence in the case ?

6. The learned counsel for the appellant submitted that, in the petition the appellant has alleged that right from 2009 till 2016, his living has become unbearable as the respondent has become irresponsible, that she would behave hysterically and that she would frequently abandon her husband and to opt to stay with her mother. In short, his case was that the respondent's attitude and activities were so irresponsible that the appellant could not live in the matrimony, unless he constantly condone the daily accumulation of mental cruelty.

7. The learned District Judge has held that there does not seem to exist any substantial difference between the parties as to warrant a dissolution of marriage. It is a clear case where the Court has chosen to substitute what it considered as an ideal state of affairs for a family, and has delivered an order based on the personal values of the judge, which does not seem to match the evidence on record. Clearly the learned District Judge seems to have overstepped the limits of law and appears to have been judgmental about petitioner's allegation rather than judging the cause based on evidence.

8. When this court weighed the materials before it, it finds considerable merit in the submission of the appellant's counsel. The appellant has made adequate allegations against the respondent, and the legal process has given the respondent an opportunity to deny it. In matrimonial causes, the court cannot insert or introduce an ideal mean and cannot expect the spouses to conform to it. Each case has its own complexion defined by the attitude and temperament and the values of the spouses. It is hence important that the Court should caution itself of its own prejudices in judging a cause before it, and try not to prescribe any standard for granting a decree of dissolution of marriage in the absence of any rebuttal evidence.

9. Viewing the entire evidence, independent of the said observations of the learned District Judge, this Court finds that the evidence on record is satisfactory enough to hold that the appellant has established his case for seeking dissolution of his marriage.

10. In the result, the appeal is allowed and the order passed in D.O.P.No.21 of 2016 by the Principal District Court, Tiruppur on 29.07.2016 is hereby set aside and the marriage between the parties hereto stands dissolved. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal District Judge
Tiruppur.

2.The Section Officer,
VR Section
High Court, Madras.

+ 1 cc to Mr. J.N. Naresh Kumar, Advocate Sr.73725

CMA.No.1044 of 2018

KJI(CO)
EU(12/12/2018)

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