

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

CMA. No. 1682 of 2011

and

M.P. No. 1 of 2011

John @ K. Manickavel

...

Appellant

Vs

1. Jemina Persis

2. Gnanaduraia

...

Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 55 of the Divorce Act, 1869, against the fair and final order dated 20.01.2011 made in I.D.O.P. No. 146 of 2008 on the file of Principal District Court, Erode.

For Appellant : Ms. Zeenath Begam
for Mr. T . Murugamanickam

For R1 : Mr. Shase
for Mr. R. Marudhachalamurthy

For R2 : Not ready in notice

JUDGMENT

The Appellant is the Petitioner in I.D.O.P. No. 146 of 2008. The Appellant is the husband of the First Respondent and he had filed the said I.D.O.P. No. 146 of 2008 to dissolve the marriage between them on the ground of Adultry & Children. The specific case of the Appellant is that the First Respondent was having an adulterous relationship with the Second Respondent. To substantiate the same, the Appellant had filed a copy of the plaint in O.S. No. 71 of 2009 filed by the wife of the Second Respondent for maintenance wherein in Paragraph (6), the Second Respondent's wife had alleged and averred as follows:

"6. The Plaintiff came to know that the defendant, was having illicit intimacy with Jessima (The First Respondent herein) of Tiruchi. She was a married lady having two children. On account the illicit intimacy her husband by name Manickam had abanded her with 2 children."

2. The I.D.O.P (Indian Divorce Original Petition) was contested by the 1st Respondent's wife and eventually the Trial Court came to the conclusion that on the facts of the case, the Appellant has not discharged the burden of proof by letting in any positive evidence to show that the Appellant's wife ie., the First Respondent was in an adulterous relationship with the Second Respondent. The relevant portion of the order reads as under:

" 9. He also further admitted that the case has been decided without determining the issue as to whether the Second Respondent was having illicit intimacy with the First Respondent or not. So, in the absence of any concrete findings that the First Respondent had illicit intimacy with the Second Respondent, the averments made by the Petitioner that the First Respondent had illicit intimacy with the Second Respondent would not be an acceptable one. It is true that P.W.1 in his cross-examination has admitted that the said Second Respondent was known to him and his parents, since he was working under the father of the First Respondent."

"13. The adultery pleaded by the Petitioner would not be possible, when the children were living along with the Petitioner and the First Respondent. So, mere coming of Second Respondent to help the construction of the house, would not that they have an illegal contact between them. Though the First Respondent has alleged that the Petitioner has illegal contact with one loyal, no other persons who were near the clinic which was run by the Petitioner were examined to prove the said fact."

3. Heard, the Learned Counsel appearing for the Appellant and the Learned Counsel appearing for the Respondents.

4. The learned counsel appearing for the Appellant would submit that the wife of the Second Respondent had herself stated that the Second Respondent was having an illicit relationship with the First Respondent and therefore there was adequate proof to show that the Second Respondent was living in adultery and therefore, the Lower Court was erred in dismissing the I.D.O.P. No. 146 of 2008.

5. Per Contra, the learned counsel for the First Respondent-wife of the Appellant submits that there are no findings to substantiate the allegation to show that the First Respondent was having adulterous relationship with the Second Respondent.

6. I have considered the evidences on record and the pleadings of the parties before the lower Court including O.S. No. 71 of 2009 filed by the Second Respondent wife for maintenance.

7. The Appellant has not proved adulterous relationship between his wife ie., the First Respondent and the Second Respondent herein. There is no evidence on record to substantiate the claim of Adultery/Adulterous Relationship. I do not find any merits in this appeal. The order of the Learned Principal District Judge, Erode is well reasoned and requires no interference. The impugned order passed by the Learned Principal District Judge, Erode has to be therefore upheld.

8. In view of the above, the appeal filed by the Appellant is liable to be dismissed and is hereby dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To

1. The Principal District Judge,
Erode.

Copy to:

The Section Officer,
Vernacular Section, Madras High Court.

+1cc to M/s.M.Guruprasad, Advocate SR.99272

C.M.A. No. 1682 of 2011
and
M.P. No. 1 of 2011

PPA (CO)
CB(21/02/2020)