

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.1410 of 2018

K.Suganya .. Appellant / Petitioner

vs.

A.Bhuvanendran ... Respondent / Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree dated 05.02.2018 in H.M.O.P.No.1000 of 2017 on the file of the Additional Principal Family Court, Coimbatore.

For Appellant : Mr.N.Manokaran

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the appellant. Despite service of notice, none appears for the respondent as was the case before the Court below.

2.Appellant is the wife of the respondent. Alleging that the respondent is living in adultery, a petition for divorce was filed in H.M.O.P.No.1000 of 2017. The appellant examined herself as P.W.1. The Family Court dismissed the petition filed on the ground that the adulterer has not been arrayed as party respondent and the allegation has not been proved. Challenging the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant would submit that the proceedings are summary in nature and when the respondent has not controverted the averments and the evidence given, the Family Court ought to have allowed the petition. The respondent is continuously living in adultery and that is the reason why he has not come before this Court. He has also begotten a child through adulterer. There is no need to implead

the adulterer as party respondent in law. Therefore, the appeal will have to be allowed.

4.We find considerable force in the submissions made by the learned counsel appearing for the appellant. It is not mandatory in all cases to implead the person who is stated to be living in adultery with the husband or wife of the spouse. In the case on hand, the appellant being the wife, cannot be expected to produce the documentary evidence to prove adultery. In fact, she has produced Ex.P6. It is a photograph evidencing the proximity between the respondent and the adulterer. The Family Court was not correct in rejecting the aforesaid material, which has never been denied or disputed. We are dealing with a case where the allegation is made by the wife against the husband. As submitted by the learned counsel appearing of the appellant, the proceedings are summary in nature. Therefore, the Court will have to assess the quality of evidence available before it instead of asking the parties to give any other evidence which may not be available. Obviously, the respondent is not willing to come before us at present. He was also not appearing before the Family Court. The Family Court ought to have taken into consideration the aforesaid facts.

5.In such view of the matter, we are satisfied that a ground for divorce is made out, particularly, in the light of the undisputed statement made in the petition for divorce coupled with the evidence of P.W.1. Accordingly, the order of the Family Court dated 05.02.2018 is set aside the Civil Miscellaneous Appeal is allowed. Consequently, H.M.O.P.No.1000 of 2017 is ordered. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

mmi

Sub Assistant Registrar

To

The Additional Principal Judge,
Additional Family Court, Coimbatore.

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.N.Manoharan, Advocate, S.R.No.30724

C.M.A.No.1410 of 2018

RSI(CO)
SSM(10/06/2019).