

Anees Vs. Alias

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Court : Kerala

Decided On : Jan-14-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Anees

Respondent : Alias

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY, THE 14TH DAY OF JANUARY 2013 24TH POUSHA 193 Mat.Appeal.No. 273 of 2009 ()
----- AGAINST THE JUDGMENT IN OP.40/2003 DATED 29 11.2008 APPELLANT/RESPONDENT: ----- SMT.ANEES, D/O.MATHAI, AGED ABOUT 5 YEARS, KAKKURAN HOUSE, VENGOOR KARA, VENGOOR EAST VILLAGE, KUNNATHUNADU TALUK. BY ADVS.SRI.K.K.BABU SRI.K.RAVIKUMAR RESPONDENT(S)/RESPONDENT: ----- ALIAS, S/O.VARKYEY, AGED ABOUT 5 YEARS, AYYAMPILLY HOUSE, PAINADATH,PEEVHAIKKADU KARA, KOTHAKULANGARA SOUTH VILLAGE, ALUVA TALUK. BY ADV.SRI.M.V.SABU THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 14-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: DG PIUS C.KURIAKOSE , & S.S.SATHEESACHANDRAN, JJ.

..... MAT Appeal. No.273 of 2009
..... Dated this the 14th day of January,
2013.

JUDGMENT

S.S.Satheesachandran, J The respondent wife has filed the appeal challenging the decree of divorce granted in favour of her husband by the Family Court, Ernakulam. The husband filed the petition seeking dissolution of marriage on the grounds of cruelty and desertion by the wife. The ground of cruelty canvassed was found against but that of desertion found favour with the court below. That resulted in granting the impugned decree ordering the severing of the marital relationship of the parties.

2. Some of the admitted facts have to be taken note of before considering the challenges raised to impeach the decree assailed in the appeal. Marital relationship of the parties hardly subsisted for a period of 11 months though a girl child was born out of the wedlock, who, at the time of filing of the petition, has
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2. already been given away in marriage after attaining majority. Suffice to state that case of desertion was canvassed, which alone need be considered for disposal of this appeal, nearly 21 years after separation of the spouses. Admittedly, at least 1= decades before filing the present proceedings, the wife had moved a petition claiming maintenance for herself and the daughter from the husband/father, and that was granted by the Magistrate. That order continues to be in force.

3. Nearly a decade later after the grant of maintenance husband moved a petition for Restitution of Conjugal Rights. Though it was submitted before us that in the light of objections filed by the wife resisting the restitution of conjugal rights he did not pursue the matter we notice that no material was produced to show that the above petition was withdrawn with the permission of the Court. That petition for restitution of conjugal rights was filed in 1997. Later the present petition for dissolution of marriage on the two grounds stated above was moved after amendment under Act 51 of 2001 came into force which enabled the husband to

canvass ground of desertion also, MAT Appeal. No.273 o

3. not earlier available under the statute, for divorce.

4. The wife has a case that the husband is maintaining relationship with another lady, one Lilly. Though the husband has disputed it, we find from Exhibit B1, certified copy of a registered document executed by the father of the husband that the executant of that document has accepted Lilly as his wife. No explanation has been offered by the husband to dispute the assertion made by his father that Lilly has been treated by the family members as his wife. Needless to point out where the case of desertion is set up the deserting spouse has to establish that desertion had been made by the other spouse without reasonable cause. On the proved facts and circumstances present in the case where it is shown that the husband maintained a relationship with another lady named Lilly during the subsistence of the marriage with the wife then it is a case where his case of desertion is to be discarded as unworthy of any merit. We find that the learned Judge, Family Court has casually considered the issues involved in the case without looking into the proved facts and circumstances presented by the materials MAT Appeal. No.273 o

4. produced. Decree of divorce granted by the court below is unsustainable and we set aside that decree. Original petition filed by the husband shall stand dismissed. Appeal is allowed directing both sides to suffer their costs. Sd/- PIUS C.KURIAKOSE, JUDGE Sd/- S.S.SATHEESACHANDRAN, JUDGE //TRUE COPY// P.A TO JUDGE DG

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