

A.C. Mathivanan and Another

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Court : Chennai Madurai

Decided On : Aug-03-2016

Judge : K.K. Sasidharan & B. Gokuldas

Appeal No. : C.M.A.(MD). No. 767 of 2016

Judgement :

(Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act against the order and decree dated 05.03.2016 passed by the Family Court Judge, Tirunelveli in HMOP No.232 of 2015.)

B. Gokuldas, J.

1. The Civil Miscellaneous Appeal is directed against the judgment and decree, dated 05.03.2016, made in H.M.O.P.No.232 of 2015, whereby and whereunder, the Family Court, Tirunelveli, dismissed the petition filed by the appellants for divorce by mutual consent.

2. According to the appellants, their marriage was solemnised on 20.05.2013 as per Hindu rites and customs and due to certain misunderstanding, they are living separately from 18.07.2014 onwards. Since they were not able to live jointly as husband and wife and there is no possibility of re-union, with free and mutual consent, a joint petition was filed by them in H.M.O.P.No.232 of 2015 before the Family Court, Tirunelveli, under Section 13-B of the Hindu Marriage Act, 1955, (hereinafter referred as the Act) for dissolution of marriage by a decree of divorce.

3. Before the Family Court, the appellants were examined as PW1 and PW2 respectively and it has come out in their evidence that their marriage was solemnised on 20.05.2013 and they were living separately from 18.07.2014.

4. The Family Court found that the parties have not mentioned the reasons for their separation and hence, dismissed the joint petition for divorce. Hence, the appellants are before us.

5. Today, when the matter is taken up for hearing, both the appellants and their counsel are present. The appellants informed us that they were living separately from 18.07.2014 onwards and there is no cohabitation between them from 18.07.2014. The appellants have also filed an affidavit to that effect today. The affidavit, dated 03.08.2016, filed by the appellants is taken on record.

6. The learned counsel for the appellants in support of the relief placed reliance on a decision reported in 1990-1-L.W. 64 (Sankaran.N. v. S.Revathi).

7. The only reason assigned by the Family Court to dismiss the petition is that the parties have not assigned the reasons clearly for not being able to live together. Whatever may be the reason psychological or otherwise, it stands established that the parties, namely the husband and the wife, have not been able to live together and they have been living separately from 18.07.2014 onwards. The parties have mutually agreed that their marriage should be dissolved. This is all Section 13-B of the Act requires and when the said ingredient stands satisfied, it is not possible to throw out the joint petition against the wishes of the parties.

8. Section 13-B of the Hindu Marriage Act, 1955 reads as follows:-

13-B. Divorce by mutual consent. :

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the

marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

9. Sub-Section (2) of Section 13-B only wanted the Court to satisfy as to whether the marriage has been solemnised and that the averments in the petition are true. In case the parties have been living separately one year before the initiation of joint petition for divorce and there was no scope for re-union, normally, the Court has no other option than to grant a decree of divorce. The period of six months after the date of presentation is prescribed with a view to give the parties reasonable time to have a re-look in the matter. It is only when the matter is moved by the parties after six months and before 18 months of initial presentation, jurisdiction is given to the Court to analyse the materials and arrive at a satisfaction with regard to the correctness of the statements made in the petition including the solemnization of marriage. In case the marriage is a failure and the parties wanted to put an end to the marital bond, the Court should respect the sentiments and grant the divorce. It is not the intention of the legislature to deny divorce, in spite of parties taking a conscious decision to part ways. The Court cannot enlarge the scope of an enquiry under Sub-section (2) of Section 13-B of the Hindu Marriage Act and act like a fact finding authority. In short, once it is convinced that it would not be possible for the parties to live together and that they have opted to dissolve the marriage peacefully, the endeavour of the Court must be to grant a decree of divorce rather than compelling the parties to live separately even thereafter.

10. The reason assigned by the Family Court that parties have not assigned the reasons clearly for not being able to live together is of no relevance at all in a matter like this. It is not for the Court to probe into such reasons and decide as to

whether parties were justified in living separately. That is not the scope of a petition filed under Section 13-B of the Hindu Marriage Act. Therefore, we are of the view that the order of the Family Court is misconceived. The Family Court has committed an error in dismissing the joint petition for dissolution of marriage by a decree of divorce for the reasons expressed by it.

11. The ingredients of Section 13-B of the Act having been made out and substantiated by the appellants, we are inclined to grant a decree for divorce.

12. The judgment and decree of the Family Court, Tirunelveli, in H.M.O.P.No.232 of 2015 are set aside. We grant a decree for divorce dissolving the marriage of the appellants.

13. The Civil Miscellaneous Appeal is allowed. No costs.

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