

Bindu S.Kumar vs Smithesh

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Court : Kerala

Decided On : Jul-30-2024

Judge : Honourable Mr. Justice Devan Ramachandran, Honourable Mrs. Justice M.B. Snehalatha

Appeal No. : Mat.Appeal/1105/2015

Appellant : Bindu S.Kumar

Respondent : Smithesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN & THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946 MAT.APPEAL NO. 1105 OF 2015 AGAINST THE JUDGMENT DATED 18.05.2015 IN O.P.NO.862 OF 2011 OF FAMILY COURT, PALAKKAD

APPELLANT/RESPONDENT: BINDU S.KUMAR AGED 35 YEARS D/O. CHANDRIKA SANTHAKUMARAN, THEKKEKALAM, KONGAD P.O., PALAKKAD - 678 631. BY ADVS. SRI.SAJAN VARGHEESE K. SRI.LIJU. M.P RESPONDENT/PETITIONER: SMITHESH AGED 38

YEARS S/O. SANKARANKUTTY, KALAN KALLINGAL HOUSE, KONGAD P.O., PALAKKAD DISTRICT. BY ADV SRI.JACOB SEBASTIAN THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mat.Appeal No.1105 of 2015 2

JUDGMENT

Devan Ramachandran, J.

The appellant has approached this Court impugning the

order of the learned Family Court, Palakkad, in O.P.No.862 of

2011 filed by the respondent - her husband, seeking divorce on the ground of cruelty. The appellant vehemently argues that the findings of the learned Trial Court, that she behaved in a cruel manner to the respondent, are untenable and without any factual or evidentiary basis; and then seeks that all of them be vacated.

2. Interestingly, even though the appellant impugns the

judgment as stated above, her learned Counsel - Sri.Liju M.P,

confined his plea that, if the other side is agreeable, then the observations against his client be vacated and the dissolution of the marriage be confirmed on the ground of irretrievable breakdown of marriage. He stated that he is making this Mat.Appeal No.1105 of 2015 3 submission because, though the evidentiary input in this case to establish cruelty is woefully wanting, the fact remains that the parties have been living separately for more than 15 years now, thus being impossible for them to live together any longer.

3. We, therefore, asked Sri.Jacob Sebastian - the learned Counsel for the respondent, about the afore suggestion and he also acceded to it, but pleading that the decree of divorce be confirmed.

4. In view of the afore and since it is admitted by both

sides that they have been living separately for more than 15 years now, we are certain that, whatever be the imputations that may be attributed to each other, their continuance as husband and wife is now totally impossible.

5. We are, therefore, without doubt that the marriage has broken down irretrievably and that the allegations and counter-allegations on the ground of cruelty, has been rendered irrelevant by the passage of time. Mat.Appeal No.1105 of 2015 4

6. In the above circumstances, with the consent of both sides, we allow this appeal and vacate all the findings of the learned Family Court, Palakkad, qua the alleged cruelty

experienced by the husband against the wife; however, confirming the decree for dissolution of their marriage on the ground it having irretrievably broken down. It is so ordered. DEVAN RAMACHANDRAN M.B.SNEHALATHA sp/31/07/2024

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