

Gireesh vs Radhika

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Court : Kerala

Decided On : Aug-31-2021

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Dr. Justice Kauser Edappagath

Appeal No. : Mat.Appeal/1160/2016

Appellant : Gireesh

Respondent : Radhika

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE DR.JUSTICE KAUSER EDAPPAGATH TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943 MAT.APPEAL NO. 1160 OF 2016 AGAINST THE JUDGMENT IN O.P.No.596/2014 OF FAMILY COURT, OTTAPPALAM, PALAKKAD -----

APPELLANT/S: GIREESH, AGED 38 YEARS, S/O.V.SUBRAMANIAN (LATE), AGED 38 YEARS, THRIVENI VEEDU, PATHUKUDI, MANNARKKAD P.O., MANNARKKAD TALUK, PALAKKAD DISTRICT, PIN-678582. BY ADV SRI.JACOB SEBASTIAN RESPONDENT/S:

RADHIKA, D/O.BALAKRISHNAN, AGED 32 YEARS, KRISHNANKOVIL PAVADI, PAZHAMBALAKKODE P.O., ALATHUR TALUK, PALAKKAD DISTRICT, PIN-678554. THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 10.08.2021, THE COURT ON 31.08.2021 DELIVERED THE FOLLOWING: MAT.APPEAL No.1160/2016 2

JUDGMENT

Dated this the 31st day of August, 2021

A.Muhamed Mustaque, J.

This appeal was filed challenging dismissal of the petition filed for divorce, under section 13(1)(ia) of the Hindu Marriage Act, 1955. The husband is the appellant, who was the petitioner before the Family Court. The appellant married the respondent in accordance with the Hindu religious rites and ceremonies on

paralysed. His mother was also old. The appellant was employed at Gulf. He returned from Gulf in the month of December, 2009. His father died in the meanwhile. The case of cruelty raised as the ground for divorce is traceable to the initial phase of married life. The appellant's case was that the respondent used to pick up quarrel with his mother and never cared to nurse his ailing

father. The mediators intervened and pacified both. The MAT.APPEAL No.1160/2016 3 relationship continued for some more time. Two children were also born in the wedlock. However, the appellant's case was that his ordeal as experienced from the initial stage never came to an end. On account of constant bickering and quarrel, he filed a petition for divorce in the year 2014.

2. The respondent refuted all the allegations. On the

other hand, she raised a counter claim that, she was illtreated at matrimonial home. The evidence in this case consisted of oral evidence of the appellant as PW1, PW2 - the brother of the appellant's father, and PW3 - a neighbour. They all deposed about the constant quarrel and their intervention in the matter. Some documents were marked including a mediation agreement as

Ext.A5. On the side of the respondent, the respondent was examined as RW1.

3. Though the Family Court noted about the mediation, and admission of picking up quarrel on the side of the MAT.APPEAL No.1160/2016 4 respondent, nevertheless, did not consider Ext.A5 for the reason that the mediators had not signed such agreement.

4. Along with IA No.2690/2018, certain documents were

sought to be produced before this Court as additional evidence. Certified copy of the complaint, final report, certified copy of the deposition in criminal case and judgment are the additional documents. These additional evidence would go to show that the appellant and his mother were implicated in a criminal case at the instance of the respondent for an offence under Section 498A of Indian Penal Code. The appellant pressed for acceptance of these documents to prove that the appellant and his mother were falsely implicated in a criminal case. According to the appellant, this is yet another reason to prove the alleged cruelty. The appellant and his mother were acquitted in the case as per the order of the

Judicial Magistrate of First Class on 3/5/2018. Since the documents are subsequent documents, and have a bearing on the MAT.APPEAL No.1160/2016 5 conduct and character of the respondent, we are of the view that these additional documents can be received in evidence. Accordingly, we allow this application and received the additional documents in evidence.

5. Appellant who was examined as PW1, deposed in tune

with his pleading. According to him, he never had any peace of mind after the marriage. Often, the respondent abused his mother verbally. According to the appellant, the respondent even refused to take care of his ailing father. The intervention of the mediator in this regard was very significant. PW2, the relative of the appellant, deposed that in the mediation, the respondent and her father ensured desisting from making any quarrel in the future. Similarly, PW3, the neighbour, deposed that respondent used to curse appellant and his mother and on one occasion he pacified parties.

6. We have gone through the pleadings and oral testimonies of PW1 to PW3. All are consistent in regard to the quarrel taken

place at the matrimonial home. The respondent had no explanation as to the quarrel. On the other hand, in Ext.A5, she assured desisting from making any such issue in the future. The constant disagreement and heated arguments appears to have prevailed in the matrimonial home for a long period. It appears that the respondent could not digest the presence of ailing father and aged mother in the initial stage of marriage itself. If the respondent had not contributed to the vitiated atmosphere at the home, she would not have undertaken in Ext.A5 that she would desist from picking up quarrel with the family members in future, We would have desisted from granting a divorce on the ground of cruelty, if the incidence of quarrelling, was isolated and few, but on the other hand, continuous nature of picking up quarrel with husband and family would depict and reflect the conduct and

MAT.APPEAL No.1160/2016 7 character of the respondent. If the respondent is engaged in the habit of quarrelling frequently, to vitiate peaceful atmosphere of the home, it is nothing but mental cruelty.

7. The oral testimony of PW1 to PW3, supported by A5,

clearly establish the pattern of behaviour of the respondent. Further, the respondent registered a false complaint implicating the appellant and his mother under section 498A. Annexure A1 is the complaint. She originally filed the complaint before the JFCM, Mannarkkad narrating the incidence of cruelty meted out to her. The learned Magistrate referred the complaint for investigation. The police, thereafter, filed the final report and took cognizance of the offence. While she was in the box, she gave evidence. She retracted her testimony and deposed before the Magistrate that appellant never harassed or abused her or her family demanding dowry. Consequent upon such stand taken by the respondent before the Magistrate Court, the learned Magistrate had no

option, but to acquit the appellant and his mother. Filing of false complaint implicating husband and his aged mother amounts to mental cruelty. They were unnecessarily dragged before the Magistrate Court, This conduct, though subsequent to the filing of the petition, would further support the allegations of cruelty referred to, in the petition for divorce. We, in such circumstances, have no hesitation to hold that the appellant made out a case for divorce on the ground of cruelty. We, therefore, set aside the impugned judgment and allow this appeal. The marriage between the appellant and the respondent solemnized on 12.06.2008 will stand dissolved by a decree of divorce.

Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- DR. KAUSER EDAPPAGATH,
JUDGE ms/lgk/31.08.2021