

Joy vs Molly Joy

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Court : Kerala

Decided On : Dec-03-2021

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : RPFC/255/2021

Appellant : JOY

Respondent : Molly Joy

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
FRIDAY, THE 3RD DAY OF DECEMBER 2021 / 12TH AGRAHAYANA,
1943 RPFC NO. 255 OF 2021 AGAINST THE ORDER DATED
08.03.2021 IN M.C.NO.88/2018 OF FAMILY COURT, MALAPPURAM
REVISION PETITIONER/RESPONDENT: JOY S/O.ITTAN, FLOAT
NO.34, BEHIND PUNCH WILL HOTEL NAGAR, SOLAPUR ROAD,
AHAMMED NAGAR P.O., MAHARASHTRA-414001,
PRESENT/CORRECT ADDRESS: JOY N.I, AGED 61 YEARS, PLOT
NO.34/35, YASHWANT COLONY, SOLAPUR ROAD NAKA,
DAREWADI, AHMEDNAGAR CAMP-P.O., MAHARASHTRA, PIN-414
002. BY ADVS.SRI.P.VENUGOPAL SMT.FERHA AZEEZ

SMT.SRUTHY.S RESPONDENT/PETITIONER: MOLLY JOY AGED 53 YEARS D/O.PAILY, KEEPADAYIL HOUSE, ERUMAMUNDA P.O., NILAMBUR TALUK, MALAPPURAM DISTRICT, PIN-679334. THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 03.12.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 03rd day of December, 2021 This revision is filed against an order passed by Family Court, Malappuram (for short the court below) on 08.03.2021 in M.C.No.88/2018.

2. It is contended by Sri.P.Venugopal, the learned

counsel for the revision petitioner that by the impugned order

the court below has ordered monthly maintenance allowance at the rate of Rs.8,000/- and directed the revision petitioner to pay the same to the respondent from the date of the petition. According to him, the revision petitioner had taken several contentions in the counter statement filed before the court below and one among those was that an adulterous life is led by the

respondent. According to him, he has sought for placing reliance on Exts.D1 to D9 in his venture to establish adulterous life of the respondent, but, the court below discarded those documents by a single sentence without the contents of the documents being dealt with or without its relevancy and admissibility in evidence being looked into. According to him by doing so, the court below has acted in a highly unjustified manner.

3. It is further contended by the learned counsel that

the court below has also dealt with the judgment dismissing O.P.No.174/2012, which has been filed by the revision petitioner against the respondent seeking for dissolution of marriage on the grounds of adultery, desertion and cruelty. The court below had made an observation in the impugned order that the Original Petition

was dismissed on 14.11.2019 on finding that actually the revision petitioner had deserted the respondent and abandoned her since 30.10.1991. The court below also found on the basis of the evidence adduced in O.P.No.174/2012 that the revision petitioner is living with another lady before 1996 and children were also begotten in that wed lock and therefore, the revision petitioner has deserted the respondent and accordingly

O.P was dismissed declining the relief sought. According to the learned counsel, the court below is unjustified in delving on those aspects especially when none of the parties to the M.C had raised a pleading to that extent. It is urged by the learned counsel that the court below ought not to have relied on those to dismiss the M.C.

4. The further contention advanced was that the revision petitioner is a retiree from Military and thus a pensioner at

present. According to him he is staying at Ahmednagar at Maharashtra and since the trial was held during the pandemic period he was unable to attend the court below and to adduce

evidence before it. As far as the third point is concerned, no claim was raised by the revision petitioner that he had applied for getting an opportunity to adduce evidence and that was declined by the court below. An application stating that in view of the travel ban or any other restriction imposed, he was prevented from attending the court and adducing evidence at the relevant time and seeking for further time for the purpose is not seen filed.

5. The contention of the learned counsel was that the revision petitioner could not contest the case effectively. According to him, he could not adduce oral evidence to establish

adultery. According to him, Exts.D1 to D9 produced by him if appreciated properly by the court below his contention of adultery could have been satisfactorily established.

6. In paragraph 6, it has been observed by the court below as follows; " The respondent had tried to prove Exts.D1 to D9 during cross-examination of PW1. PW1 did not admit many of those documents. Ext.D1 is a copy of the

order in O.S.221/2011 filed by her for a declaration

of civil death of respondent. Admittedly respondent had not enquired about petitioner nor had cohabited with her after 30th October 1991. He did not seek a divorce also. Therefore, it is found that the respondent when examined as PW1 was controverted with Exts.D1 to D9 documents but she did not admit those. The revision petitioner did not adduce any further evidence to prove those documents.

7. Revision petitioner also did not advance a case that he had applied for an opportunity to adduce evidence before the court below on the basis of his personal inability to attend at the relevant time and that was denied by the court. He remained idle.

8. The documents produced by the revision petitioner

and marked in evidence were Exts.D1 to D9. Ext.D1 is nothing but a copy of the judgment and Decree in O.S.No.221/2011 of Munsiff Court, Malappuram, Ext.D2 is copy of FIR No.265/2001 of Malappuram Police Station, Ext.D3 is copy of FIR No.235/1998 of Malappuram Police Station, Ext.D4 is copy of Deposition of PW2 in S.C.No.284/1999 of Additional District Court-2, Manjeri, Ext.D5 is copy of complaint filed before Consumer Disputes Redressal Forum, Malappuram, Ext.D6 is copy of judgment in S.C.No.284/1999 of Additional District Court-2, Manjeri, Ext.D7 is copies of letter correspondences alongwith postal cover between the respondent/petitioner and her lover Sundaran, Ext.D8 is copy of the deposition of the respondent/petitioner before the C.I of Police Malappuram and Ext.D9 is the copy of depositions of Shaji (PW2), brother of respondent/petitioner (M.C.No.174/2012).

9. A witness list was not found filed by the revision petitioner proposing to examine witnesses on his side. Exts.D1

to D9 from the very nature of documents are irrelevant for proving adultery. Therefore revision petitioners claim for remand of the case after setting aside the order assailed in the revision is untenable and only to be discarded.

10. It appears that O.P.No.174/2012 was a case pending

before the court below and was dismissed by it. True that the court below had made reference in the impugned order about O.P.No.174/2012 and its consequences. But, that cannot be said

to have influenced the court below to allow the M.C. The consideration of M.C against the revision petitioner and allowing of it was on a different footing that adultery pleaded by the him was not established and that the claims of the respondent on her entitlement for monthly maintenance allowance, due to her inability to maintain on her own and on the capacity of the revision petitioner to maintain her were not disproved by the revision petitioner.

11. The challenge of the revision petitioner on the

quantum of monthly maintenance allowance stands ordered is also an unfounded one. It is spoken by the respondent during examination as PW1 that the revision petitioner is a retiree from Military and is getting Rs.40,000/- monthly as pension. The said claim was not controverted by the revision petitioner. Though the respondent alleged to have owned landed properties, the revision petitioner failed to prove yielding of income therefrom. In the context on hand, Rs.8,000/- ordered by the court below by the impugned order in favour of the respondent is just and reasonable. This Court finds no reason to interfere with. Revision is dismissed in limine for the above reasons. sd/- MARY JOSEPH JUDGE NAB

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