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Pramodan.M vs Smitha.M.P

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Court : Kerala

Decided On : Sep-30-2019

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr.Justice T.V.Anilkumar

Appeal No. : Mat.Appeal/375/2012

Appellant : Pramodan.M

Respondent : Smitha.M.P

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 30TH DAY OF SEPTEMBER 2019 / 8TH ASWINA, 1941 Mat.Appeal.No.372 OF 2012 AGAINST THE JUDGMENT IN OP 81/2011 DATED 30-11-2011 OF FAMILY COURT, THALASSERY

APPELLANT/PETITIONER: PRAMODAN M., AGED 41 YEARS, S/O.KUMARAN MASTER,SENIOR BANK ACCOUNTANT,CHALLIKKANDY HOUSE,CHORAYAMKUNDU, (P.O)MUZHAPPALA,KANNUR DISTRICT. BY ADV.

SRI.P.U.SHAILAJAN RESPONDENT/RESPONDENT: SMITHA M.P. AGED 31 YEARS D/O.BHASKARAN,HOUSEWIFE,'SHREYAS',THAZHE KAVINMOOLA(P.O),MAMBA,KANNUR DISTRICT.670611 R1 BY ADV. SRI.P.M.PAREETH THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30.09.2019, ALONG WITH Mat.Appeal.375/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE & THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR MONDAY, THE 30TH DAY OF SEPTEMBER 2019 / 8TH ASWINA, 1941 Mat.Appeal.No.375 OF 2012 AGAINST THE JUDGMENT IN OP 98/2011 OF FAMILY COURT, THALASSERY DATED 30.11.2011 APPELLANT/RESPONDENT: PRAMODAN.M AGED 41 YEARS S/O.KUMARAN MASTER, CHALIKKANDY HOUSE, CHORAYAMKUNDU, (PO) MUZHAPPALA, KANNUR DISTRICT. BY ADV. SRI.P.U.SHAILAJAN RESPONDENT/PETITIONER: SMITHA.M.P AGED 31 YEARS D/O.BHASKARAN, HOUSEWIFE, `SHREYAS', THAZHE KAVINMOOLA, (PO)MAMBA, KANNUR DISTRICT-670 611. R1 BY ADV. SRI.MOHAMMED SHAMEEL R1 BY ADV. SRI.P.M.PAREETH THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30.09.2019, ALONG WITH Mat.Appeal.372/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of September 2019 SHAFFIQUE, J These two appeals arise out of a matrimonial issue between the couple. O.P.No.81/2011 was filed by the husband seeking divorce on the ground of cruelty and desertion. O.P.No.98/2011 had been filed by the wife seeking restitution of conjugal rights. Both the original petitions were heard together and by common judgment the petition filed by the husband for divorce was dismissed against which he filed Mat.A.No.372/2012 and the petition filed by the wife for restitution of conjugal rights was allowed against which the husband filed Mat.A.No.375/2012.

2. The learned counsel for the appellant submits that the court

below committed serious error in dismissing the petition for divorce and allowing the petition for restitution of conjugal rights, in so far as the evidence in the case was not properly appreciated. On the other hand, the learned counsel for the respondent/wife while supporting the

judgment of the Family Court submits that neither cruelty nor the

desertion has been proved in the case.

3. The short facts of the case are as under and the parties are

described as shown in O.P.No.81/2011 unless otherwise stated: The petitioner and respondent got married as per Hindu religious rites and ceremonies on 06.07.1998 and a girl child was born in the wedlock on 21.7.1999. According to the petitioner, at the time of the marriage his wife was studying for B.Sc and he asked her to go for M.Sc course and therefore she attended a college for M.Sc immediately after the marriage and during that time she was residing at her parental house. She stayed at the matrimonial home only for a period of 3 days

continuously. Occasionally, she used to come and leave the matrimonial home. In the meantime, a child was born and even after completing the M.Sc course, she was not willing to come and reside with him. According to him, she was behaving in a cruel manner against himself and his parents. He alleged physical as well as mental

cruelty. She was not interested to live with him. The petitioner pleaded that she had left the matrimonial home on 14.6.2003 and thereafter though he tried for mediation, the respondent was not willing to come back to him. Whenever he attempted to see his child she did not even permit him to see the child or to have any interaction with the child. According to him, the action of the respondent amounts to mental cruelty. He also pointed out certain instances where he was assaulted and hot coffee was poured on the face of his parents.

4. The respondent/wife denied the allegations. According to

her, she is a loving wife and she was unable to live in the matrimonial home continuously on account of the cruelty by the petitioner's parents and the brother-in-law. In the objection and also in the petition filed for restitution of conjugal rights she claimed to be a loving wife and would like to reside with the petitioner.

5. Evidence in the case consisted of the oral testimony of the petitioner as PW1 and respondent as RW1. No documents were produced in the case.

6. After considering the oral testimony of the couple, the

Family Court found that the allegation of cruelty was not proved and accordingly dismissed the petition for divorce. It was also found that it is the petitioner who is responsible for keeping away his wife from the matrimonial home and therefore direction had been issued for restitution of conjugal rights.

7. During evidence, though the respondent/wife had taken up

a contention that she was not residing in the matrimonial home on account of the cruelty by the parents of the petitioner and brother-in- law, while she was examined as RW1 she admitted the fact that the parents of the petitioner has not committed any cruelty towards her. What exactly was the reason for her in not residing in the matrimonial home has not been properly explained. The allegation of cruelty by the brother-in-law had not been specifically stated or proved. In fact it was admitted by her that she was living separately from the

matrimonial home. But according to her it was only from the year

2007. But the petitioner has a case that from 14.6.2003, she was

living separately from him. Even during the said period, it was only an occasional contact between them. Initially she was studying for M.Sc course and later the specific reason for her to remain away from the matrimonial home according to her was the cruelty by her parents and brother-in-law of the petitioner. During evidence, she admits the fact that the parents was not cruel towards her. The said reason is found to be false. This aspect has been completely overlooked by the Family

Court while appreciating the evidence. That apart, it is the case of PW1 that he was not even permitted to see his child while she was remaining away from the matrimonial home. The fact that the wife was remaining away from the matrimonial home for a considerably long period without valid reason itself amounts to mental cruelty as has been held by the Apex Court in Samar Ghosh v. Jaya Ghosh (2007 (2) KLT SN 55 (C.No.76)SC.

8. Under such circumstances, this is a case in which the

husband has been completely ignored for a considerably long period. Of course, the respondent/wife had a case that she was sent away from the matrimonial home on 11.3.2007 and thereafter the husband

had not cared to take her back. But it is in evidence of PW1 that attempts were made for conciliation and the respondent was not budging. It is also in evidence that she is the only daughter of her parents and she had insisted that the husband should come and reside with her and she was not willing to reside in a house where his parents and sister were residing.

9. Taking into consideration all these facts, we are of the view

that in addition to the fact that she had been keeping away from the matrimonial home for a considerably long period itself amounts to mental cruelty, it is also borne out that the marriage between the couple is irretrievably broken. Under such circumstances, this is a fit case in which the Family Court ought to have allowed divorce and dismiss the application for restitution of conjugal rights.

In the result, the Mat. Appeals are allowed as under:

(i) The judgment in O.P.No.81/2011 is set aside and the original petition is allowed. The marriage between the petitioner and respondent shall stand dissolved by a decree of divorce.

(ii) The judgment in O.P.No.98/2011 is set aside and the original petition is dismissed. Sd/- A.M.SHAFFIQUE, JUDGE Sd/- T.V.ANILKUMAR, JUDGE True copy kp P.A. To Judge.

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