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Rajani Vs. Subramonian

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Court : Kerala

Decided On : Dec-22-1988

Reported in : AIR1990Ker1; I(1990)DMC561

Judge : K.S. Paripoornan and; M. Fathima Beevi, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 13(1)

Appeal No. : M.F.A. No. 169 of 1985

Appellant : Rajani

Respondent : Subramonian

Advocate for Def. : T.P. Rajan, Adv.

Advocate for Pet/Ap. : K.K. Usha, Adv.

Disposition : Appeal allowed

Judgement :

Fathima Beevi, J.

1. Subramonian, an Engineering Graduate, married on 25-8-1974 Rajani, then a post-graduate student. The couple lived together until 1982 and three children are born to them. In the meantime, Rajani continued her studies and completed the LL.B. Course and is now gainfully employed. She separated from her husband in

1982 and started living along with the three children in her parental home.

2. Rajani filed a petition under Section 13(1)(a) of the Hindu Marriage Act for dissolution of the marriage on the ground of cruelty. The petition was numbered as O.P. 77 of 1984before the Sub Court, Eranakulam. The husband denied the allegations and moved the court for restitution of conjugal rights. The two petitions were jointly tried. The parties were examined and documents proved.

3. The learned Subordinate Judge by the common order dated 12-12-1984 disposed of the petitions. The learned Judge found that the cruelty alleged has not been established. The wife was however granted a decree for judicial separation under Section 13A of the Act. The husband's application for restitution of conjugal rights was dismissed with the reservation that if there is no reunion within a period of two years, he may move afresh.

4. This appeal is preferred by the aggrieved wife, the petitioner in O. P. No. 77 of 1984. The parties had approached the court in 1982. The proceedings regarding custody of the children are pending. There had been serious endeavour for bringing about reconciliation between the parties at all stages of the litigation. The attempt proved futile.

5. We heard counsel on both sides on merits. The point that falls for consideration in the appeal is whether in the facts and circumstances of the case, the appellant is entitled to have the marriage dissolved by a decree of divorce on the ground of cruelty.

6. To satisfy the requirement under Section 13(1)(a) of the Hindu Marriage Act the appellant has to establish that after the solemnisation of the marriage she was treated by the husband with cruelty. The allegation made by the appellant is required to be proved by preponderance of probabilities. The case of the appellant is that soon after the marriage the respondent made a demand for fabulous amount as dowry and started ill-treating her, that he behaved without any love or affection and had by his conduct forced her to live with her parents. The respondent maintained that there was no ill-feeling between the respondent and the appellant and the litigation had been inspired by the appellant's relatives on

account of the difference of opinion regarding the employment of the appellant. In the witness box the appellant narrated her harrowing tale. The respondent challenged thesame and affirmed the circumstances which, according to him led to discordance. There is no independent evidence either way. From the attitude of the parties it is abundantly clear that there is no chance for any reunion and that the marrige is irretrievably broken. It is only in the interest of the children who are in the age group of 6 to 12 that a chance appears to have been given by the learned Subordinate Judge for the parents to reunite.

7. After hearing the counsel on both sides, we directed the parties to appear before us. We heard them in person. We are satisfied that the appellant has no intention to join the husband and the offer made by the respondent to provide an ideal matrimonial home, congenial to the welfare of the children and the happiness of the wife, lacks bona fides. It is only ruse to avoid legal consequences. In such circumstances, we have to examine the evidence on record dispassionately and with a view to determine whether cruelty as a matrimonial offence has been proved or the stalemate is to continue for ever.

8. Cruelty as a ground for dissolution of marriage has necessarily to be proved by the petitioner by establishing a course of conduct on the part of the respondent adversely affecting the petitioner. Matrimonial conduct constituting cruelty is treatment in respect of matrimonial duties and obligations. Mutual love and affection and the concern of one for the opposite spouse form the foundation of a happy family life. The court is not certainly concerned with ideals in family life. The Court has only to understand the spouses concerned and consider their particular grievance. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance. Judged by standards of modern civilization in the background of the cultural heritage and traditions of our society, a young educated woman is not expected to endure the harassment in domestic life whether mental or physical, intentional or unintentional. Her sentiments have to be respected, her ambitions and aspirations taken into account, in making adjustmentsand her basic needs provided, though grievances arising from temperamental disharmony is irrelevant. If she resents unfair or unreasonable

demand for dowry and decides to keep away from the husband on account of the persistent and dubious approach to compel her parents to yield, the wife cannot be found fault with. This is, what has been brought to light in this case. Though an Engineering Graduate, the respondent is not steady and has no permanent employment. His enterprises did not succeed. He was involved in debts. He belongs to a business family. The appellant's parents are more affluent. There would have been naturally the hope for the respondent that he would get financial assistance if he puts forward a demand for dowry. The truth of the statements made by the appellant regarding such demand and the consequences on her refusal to oblige, cannot be doubted.

9. In Sobha Rani v. Madhukar Reddi, (1988) 1 SCC 105 : (AIR 1988 SC 121) the Supreme Court has said that the demand for dowry prohibited by law is bad enough and that amounts to cruelty entitling the wife to get a decree for dissolution of marriage, in the facts and circumstances of that case. The learned Subordinate Judge attributed little importance to this aspect of the case. The harassment with a view to coercing the wife or persons related to her to meet any unlawful demand would constitute cruelty in given circumstances. The learned Judge however treated the conduct as a petty act of discordance without attempting to understand the spouses, their social background and the, nature of the cruel treatment and the impact of such treatment in the mind of the appellant. She has unfolded the course of conduct of the husband over the years, the nature of the physical torture and the mental agony she has suffered. The version is consistent and convincing. Without compelling reasons an educated young woman, the mother of three children would not leave the husband and shoulder the burden of earning and educating the children and suffering the humiliation of continuing as dependant in the family of birth. The respondent has no case that the appellant has any oblique motive and according to him she is innocent. Therefore, when the appellant has come forward and solemnlyaffirmed what she had alleged, her testimony is credible and has to be accepted as truthful. We are satisfied that the cumulative effect of all the circumstances in the evidence of the parties leads to the conclusion that the appellant had been treated with cruelty by her husband entitling her to a decree for divorce. The learned Subordinate Judge erred in not granting the relief and in passing an order for judicial separation.

10. In the light of what has been stated above, we allow the appeal, set aside the order of the lower court and grant the appellant a decree for dissolution of marriage. We direct the parties to bear their respective costs.

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