

David Daniel Vs. Mrs. Chinnamma Daniel

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Court : Kerala

Decided On : Mar-24-1972

Reported in : 1973CriLJ91

Judge : K. Sadasivan, J.

Appellant : David Daniel

Respondent : Mrs. Chinnamma Daniel

Judgement :

ORDER

K. Sadasivan, J.

1. This revision is by the husband against an order under Section 488 Cr.P.C. awarding monthly maintenance of Rs. 50/- to the respondent-wife. The parties are Christians and they were married in August 1948. Their marital life was unhappy from the very beginning, as according to the petitioner his father-in-law was wantonly interfering in his family affairs and was trying to keep him under his thumb. This attitude of the father-in-law was resented by the petitioner and within about two weeks of the marriage the wife was taken away by her father to his house without the petitioner's consent. Some months thereafter, she returned but in 1951 she again left her husband's house, and started residing with her father. She has never returned thereafter. No children were born to the couple. In 1952 she obtained a decree against the petitioner in O.S. 88 of 1952 of the Mavelikara

Munsiff's Court for recovery of her Stridhanam and in execution of it the immovable property given as Stridhanam. was restored to her. That was followed by O.S. 54 of 1955 filed by the petitioner for restitution of conjugal rights which after a hot contest, was decreed in his favour. The decree gave one month's time for the wife to join her husband, failing which the husband was allowed to obtain possession of the wife through court. She did not join the husband as directed in the decree. So. execution was taken, but the execution petition was finally dismissed stating that there was no provision in the Code of Civil Procedure for enforcing such a decree. In the interval, the wife had also instituted a suit in forma pauperis against the petitioner for maintenance, but the suit was not admitted, as it was found that she had no cause of action to claim separate maintenance. About 15 years thereafter the present petition under Section 488 was filed before the Magistrate claiming a monthly maintenance of Rs. 100/-. The petitioner is a postman getting a pay of Rs. 70 and an allowance of Rs. 71. He resisted the claim on various grounds, but the claim was finally upheld by the Magistrate, and the present order was passed allowing a monthly maintenance of Rs. 50/-.

2. The order is unsustainable. Learned Magistrate has proceeded as if the mere fact that the marriage is subsisting would entitle the wife to get separate maintenance. Separate maintenance can be claimed by the wife only on proof of circumstances justifying her living away from the husband. All her grounds of a separate living were considered in the suit for restitution of conjugal rights, and found against. About the physical cruelty attributed to the husband the learned Judge who decided the suit for restitution of conjugal rights would observe:

What she says in the box is that her husband-plaintiff once beat her when she interfered while he was. beating her mother. This is a new case developed by her in the box. There is no such allegation in the plaint. But even while she says so she admits that her husband would not have beat her had. she not interfered at that time and she further admits that plaintiff her husband had never before or after that beat her-According to her this is the only reason why she says that her husband is a cruel man. A reading of the testimony of the 1st defendant will convince anybody that she has no compunction to speak falsehood.... A wife who lives away from the husband without any just cause or excuse is not entitled to any

maintenance from him. The mere fact that the marriage is subsisting is no ground for claiming maintenance when the wife is unwilling to function as wife or perform any of the duties which law or custom of the community would cast on her. The husband in the present instance, was ever willing and ready to take her and maintain her. She was adamant all the while and ultimately, the husband had to seek the help of the court in securing the society of his wife. The suit was contested by her from all possible angles, but without success. The decree obtained unfortunately became unexecutable, as there is no provision, in the C.P.C. for the enforcement of such a decree. Thus, the husband is in a very sad plight. Fifteen years have elapsed after the passing of the decree for restitution of conjugal rights. No steps were taken by the respondent to get maintenance from the petitioner on the ground that the marriage is legally subsisting. The motive now for filing such a petition as is evident from her own statement is to take revenge against the petitioner for his keeping a concubine. When the wife is unwilling to join him in spite of an order to that effect from the court the petitioner had no other go but to seek the help of another woman for the satisfaction of his needs. He cannot be blamed for that. That circumstance cannot be availed of by the wife for claiming separate maintenance.

'Decrees for restitution of conjugal rights against wives are nowadays no longer enforced by Courts of justice though decree may be passed. But if the wife refuses to go and live with the husband a decree for restitution of conjugal rights is good answer to an application for maintenance under Section 488.' *Ma Hta v. Aye Maung* AIR 1931 Rang 111 (1).

The law as it stands, gives no power to the Court to enforce a decree for restitution of conjugal rights. But a wife with the least moral conscience in her should obey the decree, and join her husband. The respondent evidently is not of such a type. She wants to fight the husband even after her defeat in the Court. Such a wife. I think cannot claim with any grace or justification, separate maintenance from the husband.

A decision in a suit against the wife for restitution of conjugal rights is equivalent to a decision by a competent Civil Court that the wife had no sufficient reason for

refusing to live with her husband.

The wife had obtained an order for maintenance under Section 488. Subsequently the husband obtained a decree for restitution of conjugal rights against the wife....

Held that the subsequent decree for restitution of conjugal rights is a binding decision to the effect that the wife had no sufficient ground to refuse to live with the husband and that therefore the previous order for maintenance must be cancelled. Tarak Nath v. Sneharani AIR 1949 Cal 87 : 49 Cri LJ 757. There the order of maintenance passed was cancelled the moment a decree for restitution of conjugal rights was passed by the Court. Such a wife, I think, cannot the Civil Court. So also in the present case the decree for restitution of conjugal rights must prevail and it is a good answer to the wife's claim for separate maintenance. The order of the learned Magistrate, therefore, cannot be sustained. Such orders will give the incentive to a refractory and rebellious wife to flout Court's orders and claim maintenance from the husband who derives no benefit from her. The order of the learned Magistrate is hence set aside, and this revision is allowed. If the respondent still thinks that as the marriage subsists, she is entitled in law to get maintenance she may fight out her claim in a Civil Court.

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