

Jessy Antony Vs. Sonyson

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Court : Kerala

Decided On : Aug-16-2000

Reported in : I(2001)DMC298

Judge : D. Sreedevi, J.

Acts : [Indian Divorce Act, 1869](#) - Sections 3 and 10

Appeal No. : O.P. No. 25559 of 1999

Appellant : Jessy Antony

Respondent : Sonyson

Advocate for Def. : T.R. Ramachandran Nair,; V.G. Arun and; T.R. Harikumar

Advocate for Pet/Ap. : Sebastian Champappilly, Adv.

Judgement :

D. Sreedevi, J.

1. Petition under Sections 10, 18 and 19 of the Indian Divorce Act for a decree declaring that the marriage between the petitioner and the respondent is null and void or in the alternative pass a decree for dissolution of the marriage. The petitioner is the wife and the respondent is the husband. Their marriage was solemnised on 12.2.1995 at St. Mary's Church, Palai as per the religious rites and

ceremonies prevalent among the members of their community. After marriage they lived together for 11 days.

2. It is alleged in the petition that the petitioner's consent for the marriage was obtained by fraud. At the time of marriage she was employed in Vienna in Austria and the marriage was negotiated by the respondent's father in response to the advertisement given by the petitioner's father. Even before the petitioner's arrival in India, the marriage was negotiated and settled as insisted by the respondent's parents. It was agreed that the petitioner's father would give Rs. 50,000/- and 51 sovereigns of gold ornaments to the respondent. Rs. 50,000/- was given to the respondent's father on 2.2.1995 and gold ornaments were purchased immediately after the betrothal ceremony. In addition to this, the petitioner's father gave a gold chain weighing about 2 sovereigns and a steel almirah worth Rs. 7,500/- to the respondent.

3. Petitioner arrived in India on 15.1.1995. On the same day itself the respondent and his relatives came to the petitioner's house. Petitioner had no opportunity to know about the respondent prior to the marriage. The marriage was finalised without her knowledge. Petitioner was put to much mental strain. She made all efforts to avoid the marriage. But, because of the pressure exerted by her parents she agreed for the marriage. The petitioner states that she had told her parents that she was not agreeable to the marriage. But she was compelled to agree. On the first night, she was shocked to see the abnormal behaviour of the respondent. She found the respondent taking some tablets. She was told that it was his usual dose of medicine. The conduct of the respondent was found abnormal. According to her, his approach for consummation of marriage was very strange. This created aversion in the petitioner against the respondent. He compelled her to have unnatural sexual acts against her will. On the next day also the matters were not at all pleasant. The respondent appeared to be gloomy. He forced to yield for unnatural sexual union. Due to shock, she could not even sleep.

4. After three days, they left for the respondent's residence. During night time she alleges that the respondent exhibited sleep disturbance and somnambulism. Petitioner was very much upset. So she was forced to cut-short her leave and

return to Austria. The respondent was found to be suffering from somnambulism; It was also alleged that the respondent represented to her parents that he is a Post Graduate and that he had a Diploma in Computer Applications and had secured a highly paid job in Saudi Arabia. On enquiry it was revealed that he has no Post-graduation or job at Saudi Arabia. If he had no such qualification, she would not have consented to the marriage. According to the petitioner, it was impossible for her to live with the respondent as his behaviour was intolerable. The respondent was not co-operating with the petitioner for undergoing medical treatment to cure the mental disorder and somnambulism. Therefore, on the ground of cruelty, desertion and fraud in getting her consent for the marriage by misrepresentation of the respondent's qualification and financial status, she prayed for dissolution of marriage.

5. The respondent filed a counter denying all the averments in the petition. The petitioner was examined as PW 1. She had deposed that the marriage was fixed before her arrival from Austria. She had no opportunity to know about the quality of the respondent. That is evident from the invitation card Ext. P2. She arrived in India only 15.1.1995 and the marriage invitation card was got ready on 17.1.1995. The petitioner herself was examined as PW 1. According to her, the behaviour of the respondent was abnormal and he had treated her with cruelty. She states that she was neglected by him without giving proper care, love and affection. She sues for a decree of divorce on the ground of desertion and cruelty. She has proved by her evidence that she was treated with cruelty.

6. There is no specific allegation regarding desertion in the petition. But in para 8 of the petition, petitioner states as follows :

'The petitioner submits that it was impossible for the petitioner to live with the respondent as his behaviour was intolerable. Though it was the petitioner who left the residence of the respondent, in fact and law, it has to be considered that the respondent has deserted the petitioner, the desertion being a constructive one.'

7. Learned Counsel for the petitioner invited my attention to the decision reported in *Lovely Thomas v. Tomy Alexander*, 1999(1) KLT 458=I (2000) DMC 609. In that case this Court held as follows :

'Desertion is defined under Section 3(9) of the Indian Divorce Act which implies abandonment against the wish of the person charging it. Since it was the petitioner who left the matrimonial home and started residing separately, will it amount to desertion on the part of the respondent, is the question to be considered. On an appreciation of the judicial pronouncements on the subject, one can very well come to the conclusion that it is a case of constructive desertion. If one spouse is forced by the conduct of other to leave home, it may be that the spouse responsible for the driving out is guilty of desertion which means constructive desertion. Where the wife is forcibly turned out of her marital home by the husband, the husband is guilty of constructive desertion. The test is not who left the matrimonial home first. If one spouse by his words and conduct compel the other spouse to leave the marital home, the former would be guilty of desertion; though it is the latter who has physically separated from the other and has been made to leave the marital home.'

8. In view of the said decision, I can find that even though the petitioner left the house, it was the respondent who has physically separated from her and made her to live separately, because of his abnormal and cruel behaviour towards the petitioner. Therefore, I can find that there is constructive desertion on the part of the respondent. For about 5 years they have been living separately. She had deposed that she was neglected by her husband. Therefore, on the ground of desertion for more than a period of two years and also on the ground of neglect and cruelty, I find that the petitioner is entitled to get a decree of divorce. There is nothing on record to show that there is collusion between the parties in filing this original petition.

9. In the result, this original petition is allowed and the marriage between the petitioner and the respondent, which was solemnised on 12.2.1995 at St. Mary's Church, Palai, is hereby dissolved by a decree-nisi.