

Selvakumar Vs. Pramila

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Court : Chennai

Decided On : Sep-15-1995

Reported in : AIR1996Mad172; 1996(1)CTC597; II(1996)DMC653; (1996)IMLJ57

Judge : Srinivasan, Raju and; A.R. Lakshmanan, JJ.

Acts : [Divorce Act, 1869](#) - Sections 11;

Appeal No. : M.C. No. 20 of 1993

Appellant : Selvakumar

Respondent : Pramila

Advocate for Def. : Mr. B. Kalyana Sundaram, Adv.

Advocate for Pet/Ap. : Mr. R. Subramanian, Adv.

Judgement :

ORDER

Srinivasan, J.

1. The order granting a decree for divorce has to be set aside on a very short ground, i.e., the provisions of Section 11 of the Indian Divorce Act have not been complied with.

2. Though the petitioner has alleged in para 6 of the petition that he does not know the name of the person, with whom the respondent, his wife, is living at Mettupalayam, he has not sought the permission of the court to file the original petition without impleading the adulterer as a co-respondent. The court below has not applied its mind to that aspect of the matter, but proceeded to take the original petition on file and consider the evidence adduced by the petitioner. The wife having remained ex parte, the court below accepted the evidence of the husband and granted a decree for divorce. The matter has come up before us for confirmation.

3. We cannot confirm the decree, as the provision of Section 11 has not been complied with. Under Section 11 of the Indian Divorce Act, the petitioner shall make the alleged adulterer a co-respondent to the petition. The provision is mandatory. The latter part of the section provides that he may be excused from doing so, on any of the grounds mentioned therein to be allowed by the court. Thus, Section 11 contemplates an express permission of the court which is necessary for proceeding with the original petition without impleading the adulterer as a co-respondent. The position of law is well settled.

4. In *Susanta Kumar Mitra v. Himangshu Prasad Mishra* : AIR1964 Cal33 , a Full Bench of the Calcutta High Court has laid down that the only exceptions when the adulterer need not be made a party are the three mentioned in Section 11 and none others and even those exceptions can only be made by the permission of the court and if allowed by the court. Thus, the section requires application of mind by the Court as to whether permission has to be granted under Section 11 of the Act to the petitioner to proceed with O. P. without impleading the adulterer as a co-respondent. The same view has been taken in *Ramish Francis Toppa v. Violet Francis Toppo* : (1989)1CALLT87(HC) , wherein, the Calcutta High Court referred to the earlier judgment of that Court in *Susanta Kumar Mitra's case* (supra) and also a judgment of the Kerala High Court in *Idi Cula-jacob v. Mariyamma* : AIR1976 Ker89 .

5. In as much as the petitioner has failed to apply to the Court for exemption from the mandatory requirement of Section 11 of the Act, the proceeding ought not to

have been continued by the learned District Judge. The Court has also not passed any order exempting the petitioner from complying with the provisions of Section 11 of the Act.

6. Under those circumstances, the decree for divorce is set aside and the matter is remitted back to the court below for fresh disposal in accordance with law.

7. Order accordingly.

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