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Devasahayam Vs. Devamony and anr.

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Court : Chennai

Decided On : Oct-16-1922

Reported in : AIR1923Mad211; (1922)43MLJ763

Appellant : Devasahayam

Respondent : Devamony and anr.

Judgement :

Krishnan, J.

1. This is an appeal from the decree of the District Judge, Madura, in a suit brought by the plaintiff for dissolution of his marriage with his wife, the first defendant on the ground of her adultery with the second defendant as the co-respondent. Both the first and second defendants deny the alleged adultery, the first defendant also pleading that she was beaten and driven out of her house by her husband on more than one occasion.

2. The District Judge who tried the case after hearing the evidence came to the conclusion that the plaintiff had failed to prove the adultery alleged and dismissed the suit. Further he passed an order granting permanent maintenance to the first defendant at the rate of Rs. 10 a month.

3. The learned Counsel for the appellant has placed the evidence in his client's favour before us and we have carefully considered that evidence. It consists of the

oral-evidence of five witnesses and after hearing that evidence we agree with the District Judge that it is unreliable for the reasons stated by the District Judge. We agree therefore with the District Judge in holding that the adultery is not proved; the claim for dissolution of marriage must be rejected.

4. As regards the granting of alimony at the rate of Rs. 10 a month, the contention of the counsel for the appellant is sound that it was an order that could not have been passed in this case. Permanent alimony can be granted under the Indian Divorce Act only under Section 37. The circumstances justifying such a grant have not arisen here, the suit for dissolution of marriage having been dismissed. It is however argued for the respondent (the wife) that under Section 15 of the Act it was open to the lower Court to grant maintenance on finding that the wife had been treated cruelly and had been driven out of the house. We do not think that section justifies this. It says, 'In a suit instituted for dissolution of marriage' in certain cases, 'the court may give to the respondent on her application the same relief to which she would have been entitled in case she had presented a petition seeking such relief'. It is perfectly clear that this refers to a petition which could have been filed under the Indian Divorce Act. Thus she might, in answer to her husband's suit, claim if there are circumstances which justify such a relief, a decree for judicial separation or for dissolution of marriage. In case such a decree is passed at her instance, the court would be in a position to act under Section 37. It is not contended that a bare application for maintenance can be put in by the wife against the husband under the Indian Divorce Act. If she wants maintenance without either judicial separation or divorce, she can have the remedy only by filing a suit or an application under the Criminal Procedure Code. The order therefore granting maintenance to the wife is ultra vires. It must therefore be set aside. In the result we vary the decree of the lower Court by striking out the order for maintenance and otherwise dismiss the appeal with costs.

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