

Gomathi Vs. Kumaraguruparan

Gomathi Vs. Kumaraguruparan

SooperKanoon Citation : sooperkanoon.com/784374

Court : Chennai

Decided On : Sep-09-1986

Reported in : AIR1987Mad259

Judge : Sengottuvelan, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10 and 13(1-A)

Appeal No. : C.R.P. No. 4121 of 1985

Appellant : Gomathi

Respondent : Kumaraguruparan

Advocate for Def. : R. Mani, Adv.

Advocate for Pet/Ap. : P. Ananthakrishna Nair, Adv.

Judgement :

ORDER

1. This civil revision is preferred by the wife, against the orders of the subordinate Judge, Tirunelveli, passed in I.A. 87 of 1985 in H.M.O.P. 37 of 1980.
2. The brief facts of the case are as follows- The respondent herein, husband, filed H.M.O.P. 110 of 1977 for judicial separation against the wife, revision petitioner herein, and that application was allowed by the Court below on 24-3-1979. Against the said order, C.M.A. 37 of 1979 on the file of the District Court, Tirunelveli, was

preferred by the wife, which was dismissed on 23-10 1979 and a further second appeal in C.M.S.A. 27 of 1980 before this Court also ended in dismissal on 14-11-1984.

3. In the meanwhile, the respondent husband filed H.M.O.P. 37 of 1980 before the trial Court on 4-3-1980 for divorce on the ground that there was no resumption of cohabitation as between the parties to marriage for more than one year after the date of passing of the decree for judicial separation.

4. The petitioner herein, wife, filed I.A. 87 of 1985 for dismissal of that application on the ground that the application for divorce should be filed one year or upwards after the final termination of the proceedings for judicial separation, i.e., one year after 14-11-1984 and the petition in H.M.O.P. 37 of 1980 filed on 24-3-1980 is premature and that therefore that petition for divorce has to be dismissed. The trial Court rejected the said contention and dismissed that interlocutory -application holding that the petition in H.M.O.P. 37 of 1980 was filed one year after the date of decree for judicial separation by the trial Court, namely, 24-3-1979, and that therefore it is maintainable and also on the ground that the affidavit filed in support of I.A. 87 of 1985 was sworn to by the father of the revision petitioner and not by her. Against the said dismissal of the application, this revision has been preferred.

5. The learned counsel for the revision petitioner Mr. Ananthakrishna Nair would submit that the stipulation of one year or upwards should be reckoned from the final termination of the proceedings for judicial preparation and not from the date of decree for judicial separation by the first Court. On the other hand, Mr. T. R. Mani, learned counsel for the respondent, contends that in the event of the trial Court granting a decree for judicial separation, the period of one year or upwards prescribed under the Act will have to be reckoned from the date of decree for judicial separation and only in the event of the trial Court dismissing the application, and the appellate Court setting aside the order of dismissal and granting a decree for judicial separation, the period has to be reckoned from the date of the order of the appellate Court granting a decree for judicial separation. In support of his argument, Mr. T. R. Mani drew my attention to a passage in Hindu Marriage Act by Mulla, 15th Edn. at page 814, wherein it is stated thus-

'The period mentioned in the clause would commence from the date of passing of the decree by the Court of first instance and the same would be the date of commencement of the period , when there is an appeal and the decree is confirmed. Where, however the Court of first instance has dismissed the petition and in appeal, a decree for judicial separation has been passed, the period would commence from the date of decree by the appellate Court. The appellate Court has in such a case no power to ante-date its decree.'

The above passage is based upon the judgment in S. V. Kirpalani v. V. H. Kirpalani, AIR 1960 Bom 447 and Chander Prakash v. Sudesh Kumari, : AIR1971 Delhi208 . I am inclined to follow the view taken in the above decisions that the period of one year or upwards has to be reckoned from the date of granting of a decree for judicial separation by the first Court and not from the date of termination of the proceedings by the High Court, in C.M.S.A. 27 of 1980, which only confirmed the decree for judicial separation by the trial Court.

6. There is no irregularity or impropriety in the order of the Court below warranting interference by this Court sitting in revisional jurisdiction. Accordingly the civil revision-, petition is dismissed. However, there will be no order as to costs.

7. Revision dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com