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D. Thomas Vs. Tara

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Court : Chennai

Decided On : Nov-28-1977

Reported in : AIR1978Mad415

Judge : Ramaprasada Rao, ;Ramanujam and ;Suryamurthy, JJ.

Acts : Divorce Act, 1869 - Sections 10, 11 and 11(1)

Appeal No. : Matrimonial Case No. 2 of 1977

Appellant : D. Thomas

Respondent : Tara

Disposition : Suit dismissed

Judgement :

1. The husband went to court seeking for a divorce under Section 10 of the Indian Divorce Act on the ground that the defendant was unfaithful to him from December 1972 and that she was guilty of adultery. In the pleadings, the plaintiff as husband has set out in the various paragraphs the illegal conduct of the defendant and her illicit connections with the various named persons. In fact, he would allege that he had to leave the residence along with his children to his uncle's house unable to bear the misconduct of the defendant. He so separated himself from her on 13-1-1973. He says that the defendant is living the life of a prostitute and would add that she is living as the mistress of one Murali. In general, the case of the plaintiff-husband is that the defendant was leading an adulterous life with men known and

unkonwn. He did not, however, make the adulterers as parties to this suit. The defendant's case was that she led such a life because of her husband himself and that on many occasions she refused to succumb to the invitation of the plaintiff to commit such indecent acts and that this is the reason for the suit.

2. We are not inclined at this stage to go into the merits of this case because Mr. A. R. Ramachandran who was appointed as amicus curiae took a preliminary objection that this suit under Section 10 of the Act is not maintainable, since the plaintiff has not shown sufficient cause for having excluded the adulterer as a party to the litigation. He brought to our notice Section 11 of the Act and contends that the suit is not maintainable. Learned counsel for the plaintiff, no doubt, is conscious of this position, but his case is that after 13-1-1973- the defendant was leading the life of a prostitute and that therefore there was no occasion for him to have made a particular individual as a co-defendant in the suit. Ordinarily this submission would have find some force. But the pleadings in the instant case disclosed that the petitioner knew who the adulterers were. Section 11(1) of the Act says that if a petition for divorce is presented by a husband on the ground of adultery, the plaintiff is obliged to make the adulterer as a party to it unless he is exempted from so doing on any one of the; grounds enumerated in Section 11. The first ground on which he could seek for such an: excuse is that the defendant wife is leading the life of a prostitute and that the plaintiff knows no person with whom the adultery has been committed. This Sub-section (1) of Section 11, therefore, contemplates that even though there is the allegation that the wife is leading the life of a prostitute, the husband is not aware of the name of the person with whom the adultery has been committed. Sub-section (2) of Section 11 says that the adulterer is not at all known to the petitioner plaintiff and in spite of his efforts he could not discover his name. Thirdly under Sub-section (8) of Section 11 of the Act, if the adulterer is dead, he need not be made a party. The second and the third sub-sections of Section 11 do not come into play in this case. So far as the first sub-section is concerned one limb of it is satisfied because the allegation is that the wire was leading the life of a prostitute. The other limb of the sub-section has not been complied with. It says that he could only seek for an excuse from impleading the adulterer if he does not know the name of any one person with whom, the adultery has been committed. We have already observed that in

the relevant portion of the pleadings, the petitioner has given the names of the persons with whom the defendant is said to have been living in adultery during the first period, namely, before 18-1-1973 and also those who committed such adultery after that period. In fact, he would categorically admit that the defendant was leading the life of a harlot committing adultery with known and unknown persons. Such being the position, the plaintiff cannot plead at this stage, that he does not know the names of any person with whom the adultery has been committed. It, in the circumstances of the case, a presumption arises that the plaintiff did know the names of such persons, then in the absence of an order excusing him from impleading the said persons as parties, he cannot successfully prosecute the original petition for divorce under Section 10 of the Act. In fact, the prescription in Section 11 is a mandate which can not be avoided by a husband seeking divorce on the ground of adultery. As no such person, though known to the plaintiff, is made a party to this suit, we accept the preliminary objection raised by the learned counsel appointed as amicus curiae and dismiss the suit for dissolution as not maintainable in law.

3. We record with appreciation the services rendered by the amicus curiae.

4. Suit dismissed.

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