

N. Sankaran Vs. S. Revathi

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Court : Chennai

Decided On : Dec-19-1989

Reported in : II(1990)DMC236

Judge : Nainar Sundaram and ;Bellie, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13B and 13B(2)

Appeal No. : C.M.A. No. 988 of 1989

Appellant : N. Sankaran

Respondent : S. Revathi

Advocate for Def. : L. Mohan, Adv.

Advocate for Pet/Ap. : R. Yashod Vardhan, Adv.

Disposition : Appeal allowed

Judgement :

Nainar Sundaram, J.

1. This civil miscellaneous appeal is directed against the judgment and decree of the Principal Family Court at Madras in M.O.P. No. 586 of 1988. That was a petition presented by the appellant and the respondent jointly under Section 13-B of the [Hindu Marriage Act, 1955](#) (Act 25 of 1955) (hereinafter referred to as the

Act) for dissolution of marriage by a decree of divorce. The Principal Family Court, as contemplated under Sub-section (2) of Section 13-B of the Act, after entertaining the petition, adjourned it to a date six months later and on the adjourned date, on the parties appearing, made efforts to reconcile the differences between the parties. It is stated in the judgment of the Principal Family Court that these efforts did not succeed and the Principal Family Court proceeded to examine the parties. The appellant was examined as P.W. 1 and the respondent was examined as P.W. 2. It has come out in their evidence that their marriage was solemnised on 1-5-1983 at Madras according to Hindu rites and customs. They lived together till 6-3-1987. On 6-3-1987 the respondent went from the house to the office and did not return. The respondent would say that she did not return to the house and she went to her mother's house and she wrote to the appellant stating that she did not want to live with him and that they would meet only in the Court. From 6-3-1987 the appellant and the respondent are living separately. In May, 1988 a joint petition for dissolution of marriage by a decree of divorce was presented. The Principal Family Court found that the ingredient with reference to the parties not being able to live together is not satisfied even though the other ingredients contemplated under Section 13B of the Act do stand satisfied and in this view the Principal Family Court dismissed the petition for dissolution of marriage by a decree of divorce. This has obliged the appellant to come to this Court by way of this civil miscellaneous appeal.

2. On entertaining this civil miscellaneous appeal and in the petition to fix an early date for the hearing of this civil miscellaneous appeal viz., C.M.P. No. 14847 of 1989, we directed notice to be served on the respondent, both through court and privately. The respondent has entered appearance through Mr. L. Mohan. The matter is listed to-day for orders and both the appellant and the respondent are present. Equally so, their respective counsel are present. Since this is a joint petition for dissolution of marriage by a decree of divorce, as contemplated under Section 13-B of the Act, we also made endeavours to find out as to whether the appellant and the respondent would come to a settlement and live together in matrimony. The appellant and the respondent were questioned by us with reference to their inclination to live together. They were categorical in their answers and they informed us that from 6-3-1987 onwards they have not been able to live

together. We are also satisfied that no element of force, fraud or undue influence has come into play in the matter of presenting and prosecuting the joint petition for dissolution of marriage by a decree of divorce.

3. When we examine the judgment of the Principal Family Court, we find that the only factor which was weighed with it is that the parties have not proved the existence of the ingredient relating to their not being able to live together. This reasoning of the Principal Family Court is the subject matter of attack by Mr. R. Yashod Vardhan, learned counsel for the appellant and in our view justly also. It has come out in evidence as a matter of fact that from 6-3-1987 the parties have not lived together. While this being so, we are not able to appreciate the reasoning of the Principal Family Court that there is lack of substantiation of this ingredient! by the parties. The Principal Family Court adversely comments upon the non-disclosure of the reason by the respondent with reference to her unwillingness to live with the appellant. Whatever may be the reasons, psychological or otherwise, it stands established that the parties, viz., the husband and the wife, have not been able to live together and they have been living separately for a period of more than a year and they have mutually agreed that the marriage should be dissolved. This is all Section 13-B of the Act requires and when the said ingredient stand satisfied it is not possible to throw out the joint petition. That they were living together till 6-3-1987 is of no relevance at all in this matter. We are of the view that the Principal Family Court committed an error in dismissing the joint petition for dissolution of marriage by a decree of divorce for the reasons expressed by it. The ingredients of Section 13-B of the Act having been made out and substantiated we are obliged to countenance the prayer for dissolution of marriage by a decree of divorce. Accordingly, this civil miscellaneous appeal is allowed, the judgment and decree of the Principal Family Court in M.O.P. No. 586 of 1988 are set aside and we grant a decree for divorce dissolving the marriage of the appellant and the respondent. There will be no order as to costs.