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Nalini Vs. Somasundaram

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Court : Chennai

Decided On : Nov-29-1962

Reported in : AIR1964Mad52

Judge : Ganapatia Pillai, J.

Acts : Contract Act, 1872 - Sections 3, 4 and 10; Special Marriage Act, 1938

Appeal No. : Civil Revn. Petn. No. 1277 of 1962

Appellant : Nalini

Respondent : Somasundaram

Advocate for Def. : T. Ramalingam, Adv.

Advocate for Pet/Ap. : S. Subramanian and ;E.S. Govindan, Advs.

Disposition : Revision allowed

Judgement :

Ganapatia Pillai, J.

1. This is a revision to revise the decree of the Chief Judge, Court of Small-Causes, Madras by which he granted a decree for eviction at the instance of the respondent. The premises involved is a house in Santhome High Road which the petitioner claimed she was occupying with her husband and children as her

matrimonial home. The parties were married under the Special Marriage Act in 1938. There were three children by the marriage, in 1953 differences arose between the spouses. When the wife contemplated filing an application for divorce, her counsel got into touch with the husband as regards the terms which he was prepared to allow to the wife for alimony etc. The husband wrote a letter to the wife's counsel, Ex. D-l, setting out the terms which he was willing to allow to his wife as part of the divorce arrangement, immediately thereafter a divorce petition was filed in the City Civil Court. The Divorce petition was not contested by the husband. But evidence was recorded and Ex. D-l, the letter written by the husband to the counsel for the wife, was put in evidence in the divorce proceeding. A divorce decree was granted which, however, did not mention the provision of the house in Santhome High Road for the residence of the lady so long as she remained unmarried as one of the reliefs granted under 'the decree.

There were numerous proceedings subsequent to the divorce decree in the shape of an attempt made by the husband to set aside the terms of the allowance granted to the wife by the divorce decree. O.S. No. 2096 of 1956 was the suit instituted by the husband for his purpose and when he failed in the City Civil Court, he came up to this Court in A. S. No. 60 of 1960 where also he failed. Letters Patent appeal also failed. An attempt to take the matter up to the Supreme Court also failed. During all these proceedings there was no mention anywhere before now that the husband had not allowed the wife to remain In the house in Santhome High Road as part of the terms which he was prepared to grant to her when she proposed to file an application for divorce.

2. The learned Judge in the lower Court has viewed the case as the offer contained in Ex. D-l, not having been accepted by the lady or, at any rate, the acceptance as having not been communicated to the husband no concluded agreement resulted. He therefore thought that the right of the lady to occupy the building was only a bare licence which could be cancelled by the husband at his own will. In my opinion, the learned Judge was wrong in thinking that the offer contained in Ex. D-1 was not accepted by the wife. The offer contained in Ex D-l consisted of a cash allowance of Rs. 600 to the wife for her life so long as she remained unmarried, an allowance of Rs. 650 for the children, the right to reside in

the house in Santhome High Road so long as she remained unmarried and the right to use a particular motor car for the time being. In the relief asked for in the divorce petition there was no prayer with reference to this motor car, but there was a prayer with reference to the provision for residence for the wife. The learned Judge in granting the decree provided for Rs. 600 per mensem as maintenance payable to the wife and Rs. 650 per mensem as maintenance payable to the children. This was not in accordance with the figure claimed in the divorce petition because in the petition the lady claimed Rs. 700 for herself and Rs. 650 for the children. The relief granted by the Judge, who decreed the divorce case with reference to the conveyance (motor car) was not based upon the relief asked for in the divorce petition because there was no request in the divorce petition for the provision of any conveyance.

It is obvious, under these circumstances, that the learned Judge proceeded to give relief in terms of Ex. D-l which was produced by the lady into Court to enable the Judge to see what terms the husband had agreed to give and she had agreed to accept. Mr. Venugopalachari for the respondent contended that though the total sum provided as maintenance for the wife and children by the decree of the learned Judge tallied with the total amount which the husband proposed to give in Ex. D-1, the break up differed in that in the petition the wife claimed Rs. 700 for herself and Rs. 550 for the children. It is clear that even the wife was willing to accept the total sum offered by the husband, although she wanted little more for herself and a little less for the children. The fact that she claimed Rs. 700 for herself and not Rs. 600 as offered by the husband is compensated by the circumstance that she was willing to reduce the claim for her children to Rs. 550, although her husband had offered her Rs. 650 under that head.. Substantially, therefore, the wife was willing to take the terms offered by the husband in respect of the cash maintenance payable to her and to the children.

She was also willing to take the residence offered by the husband, even though in the petition no particular reference was made to the building where the parties were residing. It is clear to me from these circumstances that the conduct of the lady clearly indicated that she accepted the offer and acted upon it and that was why she requested the Judge to act upon Ex. D-l. The fact that the Judge

accepted Ex. D-l and acted upon it is dear from the circumstance that he made provision in the decree for a conveyance for the wife which was not asked for in the petition!. One obvious explanation for the' Judge not making a reference to the residence in the decree granted by him is that she was already in occupation of it, the husband having left the house sometime before, as soon as the parties fell out. There was no need, therefore, to mention the relief granted to the lady, about the residence as it was already secured to her by the promise made by the husband in Ex. D-1. I do not, therefore, agree with the learned Judge in the Small Cause Court, that the offer made by the husband was not accepted by the lady. In fact, both the parties conceded that Ex. D-l was based upon the arrangement come to between them as regards the terms on which the order for divorce should be obtained. The conduct of the husband In keeping quiet for a number of years after the divorce decree was granted without calling upon the wife to vacate the house is another circumstance which confirms my view.

3. Mr. Venugopalachari referred to the decision in Vaughan v. Vaughan, 1953 1 QB 762, for his contention that after a decree for divorce is passed the wife had no right to continue to reside in the matrimonial home. There, when the respondent (husband) left the matrimonial home, he told the wife that she could live there. That was construed to be a promise with reference to the continued state of matrimony between the parties and not a promise which would hold good after the parties had become divorced. The promise made in Ex. D-l here was made in anticipation of a decree for divorce being passed and specifically was intended to cover the provision to be made for the wife after she obtained divorce. That decision would not, therefore, apply here.

Lastly Mr. Venugopalachari attempted to say that by recognising the right Of the wife to reside in the house on the strength of Ex. D-l which would amount to a contractual licence this Court would be adding to the decree granted by the divorce judge. I do not agree, I do not wish to say anything which could give a handle for either party to attempt any amendment of the decree for divorce. But this much is clear to me that the divorce decree itself was based on the assumption that both the parties were willing to accept the terms set out in Ex. D-l. In asserting her right to remain in possession of the house the petitioner is not,

therefore, exercising any rights accorded to her 'by the decree. She is only exercising the right conferred upon her by the husband by the contractual licence contained in Ex. D-I which was fully supported by consideration in view of the fact that the wife accepted it and acted upon it and invited the divorce Court also to act upon it. The decree of the learned Judge is therefore wrong. The revision petition is allowed and the suit filed by the husband is dismissed.

4. No costs either here or in the Court of Small Causes.

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