

Vincent EdwIn Vs. Sheela Devasugantham

Vincent EdwIn Vs. Sheela Devasugantham

SooperKanoon Citation : sooperkanoon.com/819275

Court : Chennai

Decided On : Sep-08-1995

Reported in : II(1997)DMC121

Judge : S.S. Subramani, J.

Acts : [Indian Divorce Act, 1869](#) - Sections 22

Appeal No. : O.M.S. No. 20 of 1993

Appellant : Vincent Edwin

Respondent : Sheela Devasugantham

Advocate for Def. : None

Advocate for Pet/Ap. : T.V. Krishnakumar, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Subramani, J.

1. This is an application under Section 22 of the Indian Divorce Act, for the passing of a decree of judicial separation.

2. It is averred in the petition that the parties were married on 7.7.1989 at Madras and the marriage was conducted at Emmanuel Methodist Church Madras- 7. It is further alleged that ever since the date of marriage, the respondent, except for a few months, started showing indifferent attitude towards the petitioner as well as to her in-laws even though the petitioner and his parents never showed any ill-feelings and they thought that the respondent would adjust with them in due course, but it was not so. It is said that even though on the date of the petition, it was more than four years since the date of marriage, she lived not even for a year with the petitioner. It is further said that the respondent had left to her parents' house in the month of April 1990 for confinement and a female child was born on 12.7.1990 and the respondent came with the child to the petitioner's house in the month of November 1990 and even after that the respondent used to visit her parent's house with the child very frequently. When the petitioner had to leave for Ooty on transfer, the respondent had left to her parents' house on her own accord and came and joined the petitioner only when he came down to Madras and gave a false excuse. It is said that the respondent did not share any amount towards the upkeep of the family except parting with a paltry sum unwillingly for a few months, and later discontinued. It is further said that the petitioner has been showing affection and utmost respect and expected that she would behave with affection towards the petitioner and his parents, but the respondent never changed her behaviour, and the cause for her behaviour is to separate the petitioner from his parents and take him to her parents' house or elsewhere, and the respondent tried her best to fulfil her motive, but she failed. She is working in Canara Bank as Telephone Operator-cum-Clerk. It is said that the respondent was staying only in her parents' place and very rarely visited the petitioner's parents when the petitioner left for U.A.E. on 1.6.1991, even though the petitioner requested the respondent to stay with his parents through letters. It is also said that when the petitioner returned to Madras from U.A.E., the respondent never cared to meet him when she was informed well in advance. Subsequently, due to the intervention of the respondent's maternal uncle and aunt, the respondent came and joined the petitioner in the month of July, 1992. Even after that, the respondent behaved in the same way, and on 31.8.1992, she left the matrimonial home with the child to her parents' house. Subsequently the petitioner came to know that she was

suffering from typhoid fever. But, even after recovery, she did not come and join him even though she attended the office and also went to her relatives house, functions and friend's house on Moped, a two-wheeler. Since the respondent failed in her attempts to separate the petitioner from his parents, the respondent started ill-treating the petitioner as well as his parents. According to the petitioner the respondent's father is also a cause for the unpleasantness and the respondent was taking her father's ill-advice. The petitioner has averred that the respondent has completely forgotten the matrimonial obligations in spite of the petitioner's good advice. Therefore, the petitioner issued an Advocate notice on 18.4.1993 asking the respondent to come and join him within ten days from the date of receipt of the notice. But the respondent neither cared to send a reply, nor joined the petitioner, wilfully. The petitioner, therefore, prays for a decree of judicial separation.

3. Notice of the petition was attempted to be served on the respondent, but there is an endorsement by the bailiff that she refused to accept it and the service was declared to be sufficient.

4. To substantiate the case of the petitioner he has examined himself as P.W.I.

5. In his evidence, he said that individually the relationship was good, but after some time she was indifferent towards him, his parents and she was not co-operating. It is also his evidence that she was not sharing her salary. He has deposed that she did not pay any heed to good advices and that she possessed all evil qualities like arrogance, haughtiness, adamancy and proud. He also says that he informed her parents about her attitude. But they also failed to advise her suitably. According to him, if they had advised her, she would have lived with him. He has deposed that on 1.6.1991, he went to U.A.E. and at that time she was living with him, but later she brought her parents and took away all the baggages and all the things and went to her parents' house stating that she will be coming back. The petitioner was in U.A.E. for about ten months, and during that period the respondent was staying with her parents. In his evidence, he has further stated that through letters he advised the respondent to go and live with his parents as they would also like to have the love of the child. It is said that in February 1992 he

returned from U.A.E. According to him, he had informed the respondent over phone about his return to Madras but she never cared to meet him. The petitioner has stated that till the filing of the petition, she has not joined the petitioner for these reasons, the petitioner prays for the passing off a decree of judicial separation.

6. In have to consider whether on the basis of the pleading and the evidence of P.W.I a decree for judicial separation can be passed.

7. Section 22 of the Indian Divorce Act reads thus :

'No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation on the ground of adultery or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro, under the existing law and such other legal effect as hereinafter mentioned.'

8. On a reading of the said provision, I am of the view that the Application is not maintainable at present. The Application is filed only on the ground of desertion. Even in the petition, it is stated that in the month of July 1992, the respondent came to the petitioner's house and till 31.8.1992, they were living together. It was on that day, the respondent left the matrimonial home to her parents' house. The application was filed on 30.6.1993. Admittedly, on the basis of the averments in the petition, two years have not elapsed from the date of alleged desertion.

9. In : AIR1975 Mad322 , Mrs. Valerie Theresa Persich v. Mervyn Aloysious Persich, this question came for consideration and in paragraph 6 of the judgment, the learned Judge said that the desertion must have been for a period of two years or upwards. A reading of the Section is very clear. That means, on the date of the petition, the respondent must have left the company of the petitioner, at least two years before the presentation of the petition. The petition is, therefore, premature.

10. It is better that I extract the very passage contained in paragraph 6 of the said decision.

'From this, it is obvious that desertion must have been for a period of two years or upwards. The petition in this case has been filed on 29th January 1971. i.e. even before the period of two years had elapsed and hence the petition is premature and the contention of the respondent is well-founded. *Dey v. Dey*, 1957 1 All ER 848 (at p. 849), is a clear authority for this proposition. The wording of Section 22 quoted above is also emphatic. Hence this ground of desertion need not be dealt with in greater detail. If the petition is based only on the ground of desertion it will fail for the reason stated above. But there is yet another ground viz. cruelty and therefore the question will be whether the petitioner has made out her case on that ground...'

11. Even on merits, according to me, the petitioner has to fail.

12. In his evidence as P.W.I, he says that ever since he came back from U. A.E. the respondent has never met him, and till the date of filing of the petition, they were living separately. The said statement by the petitioner is an utter falsehood as can be seen from the very allegations in the petition itself. That apart, a reading of his evidence and also the averments in the petition will make it clear that the ingredients of desertion had not been made out.

13. When the learned Counsel for the petitioner was asked to explain as to how the petition was maintainable since two years have not elapsed after the alleged desertion, learned Counsel submitted that the wordings in his petition must be read as desertion coupled with cruelty. According to him, by living separately, the respondent has denied the petitioner her company and has caused loss of company of the child, and also the failure on the part of the respondent to discharge her marital obligations. This, according to the learned Counsel for the petitioner, is mental cruelty, and if that is proved, the Court need not wait for two years for granting a decree of judicial separation.

14. I am unable to agree with the said contention. Firstly, on the ground that the application is filed only on the ground of desertion. Secondly, cruelty itself is a separate ground for getting a decree of judicial separation. These two cannot be mingled for the purpose of getting a decree or to avoid two years provided in the section. In every case of desertion, there is cruelty but that is considered only as a

part of desertion and not as a separate ground of cruelty. As I have stated earlier the evidence of P.W.I is unsatisfactory to say that the respondent was cruel in discharging her matrimonial obligations. Disbelieving the evidence of P.W.I and also holding that the petition is against the provisions of Section 22 of the Indian Divorce Act, I dismiss the same. No costs.

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