

Anitha Alfred Vs. K. Alfred

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Court : Chennai

Decided On : Aug-10-2012

Judge : He Honourable Mrs. Justice R. Banumathi & R. Subbiah

Appeal No. : Civil Miscellaneous Appeal No.1520 of 2011

Appellant : Anitha Alfred

Respondent : K. Alfred

Advocate for Pet/Ap. : For the Appellant: N.F.J. Ponnudurai, Advocate. For the Respondent: K. Kannan, Advocate.

Judgement :

(Prayer: Civil Miscellaneous Appeal filed under Section 28 of Hindu Marriage Act and Section 19(1) of the Family Courts Act against the Order dated 01.08.2010 made in I.D.O.P.No.3962 of 2009 on the file of I Additional Family Court Judge, Chennai)

R. BANUMATHI, J.

1. This appeal arises out of the order in I.D.O.P.No.3962 of 2009 (01.8.2010) allowing the divorce petition filed by the respondent-husband and dissolving the marriage between the appellant-wife and the respondent-husband solemnized on 10.07.1989.

2. Brief facts are :-

Appellant and the respondent got married on 10.7.1989. The marriage was love marriage and appellant-wife converted into Christianity before the marriage. Out of the wedlock, a daughter by name Darren and son by name Steen Jack were born on 13.07.1992 and 29.11.1996 respectively. Respondent got the job as seamen. Out of the earnings, Respondent is said to have purchased a Flat at New No.34/2 (Old No.109/2), East Vanniyar street, Best Apartments, K.K.Nagar (West), Chennai-78. In April, 2006, the respondent was rendered jobless and he had come back from his employment of seamen. Thereafter, differences arose between the parties and both the appellant and the respondent were living in the house at New No.34/2, (Old No.109/2), East Vanniar Street, Best Apartment, K.K.Nagar (West), Chennai-78. There are allegations and counter allegations by both appellant as well as the respondent. Respondent issued a legal notice to the appellant on 13.11.2006 seeking divorce. Since then there were number of proceedings - complaint lodged by the appellant under Tamil Nadu Prohibition of Women Harassment Act (Crime No.16 of 2007 on the file of T14, Mangadu Police Station, Chennai-101); maintenance proceedings (M.C.No.79 of 2007 on the file of I Additional Family Court, Chennai); and civil suit in respect of the possession of the Flat at New No.34/2 (Old No.109/2), East Vanniyar street, Best Apartments, K.K.Nagar (West), Chennai-78 (O.S.No.1026 of 2007 on the file of III Assistant Judge, City Civil Court, Chennai) and also another proceedings under Domestic Violence Act (C.C.No.6969 of 2007, on the file of XXIII Metropolitan Magistrate Court, Saidapet, Chennai).

3. In these circumstances, appellant filed petition for divorce in F.C.O.P.No.3839 of 2009 on the ground of cruelty under Section 10 (1)(x) of Indian Divorce Act. Respondent also filed I.D.O.P.No.3962 of 2009 under Section 10(1)(x)(ix) read with Section 14 of Indian Divorce Act seeking divorce.

4. Resisting the divorce petition filed by the respondent [I.D.O.P.No.3962 of 2009], appellant filed counter denying the allegations. She has alleged that respondent compelled her to sign in the Deed of divorce, in order to marry some other lady which she refused. Appellant had also referred the criminal case and also

maintenance proceedings and the criminal proceedings pending under Domestic Violence Act in C.C.No.6769 of 2007. Filing a detailed counter, she strongly resisted the petition for divorce filed by the respondent-husband.

5. In the divorce petition [F.C.O.P.No.3839 of 2010) filed by the appellant, on 16.7.2010, appellant made an endorsement withdrawing the petition. In view of the endorsement, the said petition (F.C.O.P.No.3839 of 2010) was dismissed as withdrawn. On the same day (16.7.2010), appellant is said to have made an endorsement in the divorce petition (I.D.O.P.No.3962 of 2009) filed by the respondent that "I submit to decree". Thereafter, the divorce petition in I.D.O.P.No.3962 of 2009 was posted for orders on 01.8.2010. On 01.8.2010, I.D.O.P.No.3962 of 2009 was allowed on the ground that the averments in the petition stands uncontroverted by the appellant.

6. Mr.N.F.J.Ponnudurai, learned counsel for appellant contended that appellant was misled to make such an endorsement in the petition and she never intended to submit to decree nor compromised the matter. It was further submitted that in the absence of any counsel or any legal aid obtained by her, appellant made the said endorsement in I.D.O.P.No.3962 of 2009 and the same cannot be construed as compromise nor does it amount to "uncontroverting the allegations". It was further submitted that if the matter was treated as one of compromise, the order in I.D.O.P.No.3962 of 2009 would have been passed on the same day, but the same was adjourned to 01.8.2010. Drawing our attention to the order dated 01.8.2010, it was submitted that the learned trial judge erred in saying that the allegations in the petition remain uncontroverted.

7. Drawing our attention to the various proceedings, Mr.K.Kannan, learned counsel for respondent submitted that respondent-husband was subjected to harassment by filing number of proceedings viz., criminal proceedings, proceedings under Domestic Violence Act, civil suit and subjected the respondent to harassment and that the appellant does not want to put an end to the proceedings so instituted and she wants to pursue further. It was further submitted that appellant having made an endorsement in I.D.O.P.No.3962 of 2009 that "I submit to decree", it is not open to her to resile from the same. Learned counsel

would further submit that the order in I.D.O.P.No.3962 of 2009 dated 01.8.2010 is by consent as per Section 19(2) of Family Courts Act, 1984 and no appeal shall lie from a decree or order passed by the Family Court with the consent of the parties and the order in I.D.O.P.No.3962 of 2009 dated 01.8.2010 being passed by consent, the appeal is not maintainable.

8. We have carefully considered the submissions and perused the materials on record. We have also heard the counsels appearing for the appellant-wife and the respondent-husband.

9. Appellant-wife filed F.C.O.P.No.3839 of 2009 under Section 10(1)(x) of Indian Divorce Act seeking divorce. On 16.7.2010, in F.C.O.P.No.3839 of 2009, appellant made an endorsement that "she is withdrawing F.C.O.P.No.3839 of 2009 and the same may be dismissed as withdrawn'. In view of the endorsement made by the appellant, on the same day i.e. on 16.7.2010, F.C.O.P.No.3839 of 2009 was dismissed as withdrawn. According to appellant, her decision to withdraw F.C.O.P.No.3839 of 2009 was voluntary and the same was in order to better bringing up her children. On the same day on 16.7.2010, appellant also made an endorsement in I.D.O.P.No.3962 of 2009 that "I submit to decree" and the order in I.D.O.P.No.3962 of 2009 dissolving the marriage between the appellant and respondent was passed on 01.8.2010. According to the appellant, the endorsement "I submit to decree" was not voluntary and that it was forced upon by the respondent as well as by the Court. Appellant contends that she did not have any legal assistance and if she was explained about the legal implications, she would have written in clear terms as "I consent to divorce" and she would not have made an endorsement as 'I submit to decree'.

10. The point now falling for consideration is whether the appellant actually intended to submit to decree and whether the order passed by the Court on 01.8.2010 in I.D.O.P.No.3962 of 2009 could be construed as "decree or order passed by the Family Court with consent of parties".

11. The impugned order in I.D.O.P.No.3962 of 2009 dated 01.8.2010 reads as under:-

"4. From the affidavit as well as documents the petitioner has proved the averments in the petition. The averments in the petition stand uncontroverted by the respondent. Therefore, the petitioner is entitled for divorce on the ground of cruelty and desertion.

5. In the result, this petition is allowed and the marriage solemnized between the petitioner and the respondent on 10.7.1989 at Victorious Cross Church, Ashok Nagar, Chennai is dissolved by granting decree of divorce on the ground of cruelty and desertion. No costs."

12. In the above order, it is stated that the averments in the petition stands uncontroverted by the appellant-wife. Trial Court was not right in saying that the averments in the petition stand uncontroverted. As pointed out earlier, appellant-wife filed the counter referring to various proceedings and also vehemently opposing the allegations made in the petition in I.D.O.P.No.3962 of 2009. When the appellant had filed a detailed counter vehemently denying the allegations in the petition, the learned trial judge was not right in saying that the averments in the petition remain uncontroverted.

13. Contention of appellant is that the endorsement in the petition "I submit to decree" was not voluntary. By keeping in view the conduct of the parties and various proceedings, in our considered view the said contention of the appellant is fortified. Let us now briefly refer to various proceedings instituted by the parties in particular the appellant. After the differences arose between the parties, alleging that the respondent-husband had demanded dowry and that he had also harassed her, appellant lodged a criminal complaint before the Commissioner of Police. Based on which, a case was registered in Crime No.16 of 2007 under Section 498(A) IPC read with Section 4 of Tamil Nadu Prohibition of Women Harassment Act on the file of T-14, Mangadu Police Station and subsequently, charge sheet was filed in C.C.No.115 of 2007 on the file of Judicial Magistrate, Tambaram. Later the same was transferred to the District Munsif-cum-Judicial Magistrate, Sriperumbudur and re-numbered in C.C.No.325 of 2008 and the trial is pending.

14. The appellant is alleged to have gone to the respondent's rented residence at Kerugambakkam, Chennai-101. Alleging that the appellant-wife had committed

theft in the respondent's residence at Kerugambakkam, the respondent-husband lodged a police complaint in T-14 Mangadu Police Station. Since the police did not take any action, the respondent had filed a direction petition in CrI.O.P.No.6936 of 2007 dated 14.03.2007 directing the Police to register the case. Police registered the case against the appellant in Crime No.330 of 2007 for theft and the said First Information Report was closed in three days. Respondent filed further investigation petition before the District Munsif-cum-Judicial Magistrate, Sriperumbudur and the same was dismissed on 05.03.2010. Against which the respondent filed CrI.R.C.No.1231 of 2010 before the Principal Sessions Court, Kancheepuram and the same is also said to be pending.

15. Appellant also filed Maintenance Case before the I Additional Family Court in M.C.No.79 of 2007 and the same was dismissed for default on 26.02.2008. Stating that the respondent is trying to dispossess her from New Door No.34/2 (Old No.109/2), East Vanniar Street, Best Apartment, K.K.Nagar (West), Chennai-78, appellant also filed a civil suit in O.S.No.1026 of 2007 for permanent injunction and by the judgment dated 14.6.2007, the said suit was decreed. Alleging that the respondent is continually violating appellant's right and threatened her, appellant filed petition under Sections 18,19,20 and 21 of Domestic Violence Act before XXIII Metropolitan Magistrate, Saidapet, Chennai. By the order dated 12.01.2009, the said petition was allowed. The XXIII Metropolitan Magistrate, Saidapet, Chennai directed the respondent to allot kitchen and one bed room to the appellant and also directed the respondent to pay maintenance of Rs.500/- each per month to each of the two children i.e. Rs.1000/- per month.

16. When the parties are entangled in various litigations and are posing strict resistance to the litigations filed by them, it is highly improbable that appellant would have made an endorsement in I.D.O.P.No.3962 of 2009 that "I submit to decree". This is all the more so, when the respondent has made a serious allegations against the appellant in the petition in I.D.O.P.No.3962 of 2009. When the respondent had not withdrawn those allegations, it is highly improbable that appellant would have voluntarily submitted to decree in I.D.O.P.No.3962 of 2009.

17. Learned counsel for respondent mainly contended that in view of the endorsement made and the decree passed by the Court, as per Section 19(2) of Family Courts Act, no appeal shall lie and the same is to be construed as the order passed with the consent of the parties and therefore, as per Section 19(2) of the Act, no appeal shall lie from the order passed by the Family Court with the consent of the parties. The appellant only made an endorsement that "I submit to decree". There was no compromise petition filed by either parties reducing the compromise in to writing. There is nothing to show that appellant was asked whether she is voluntarily and willingly compromising the matter. In the absence of any such materials or compromise memo by the parties, the endorsement made by the appellant in I.D.O.P.No.3962 of 2009 that "I submit to decree" cannot be construed as the decree or order passed by the Family Court with the consent of the parties, so as to bar appeal under Section 19(2) of Family Courts Act. In our considered view, the endorsement made in I.D.O.P.No.3962 of 2009 cannot be construed as a decree or order passed with the consent of the parties. In the light of serious allegations against the appellant, she has to be given an opportunity to put forth her case.

18. For the foregoing reasons, the order in I.D.O.P.No.3962 of 2009 on the file of I Additional Principal Judge, Family Court, Chennai is set aside and this appeal is allowed. I.D.O.P.No.3962 of 2009 is ordered to be restored on file. I.D.O.P.No.3962 of 2009 is remitted back to the Family Court, Chennai. The Family Court, Chennai is directed to take up I.D.O.P.No.3962 of 2009 and afford sufficient opportunity to the appellant as well as the respondent and proceed with the matter afresh in accordance with law. Consequently, connected M.P. is closed. No costs.

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