K. Kanthimathi Vs. S. Parameswara Iyer

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Court : Kerala

Decided On : Dec-04-1973

Reported in : AIR1974Ker124

Judge : V.P. Gopalan Nambiyar and; George Vadakkel, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 9; Hindu Adoptions and Maintenance Act, 1956 - Sections 18(2)

Appeal No. : A.S. Nos. 496 of 1972 and 313 of 1973

Appellant : K. Kanthimathi

Respondent : S. Parameswara Iyer

Advocate for Def. : Boothalinga Iyer, Adv.

Advocate for Pet/Ap. : V. Vyason Poti and; M.R. Parameswaran, Advs.

Judgement :

George Vadakkel, J.

1. These appeals, one by the husband and the other by the wife, exemplify how domestic peace apd harmony is broken by the inability of a spouse to adjust himself or herself to the new environment created by the marital status. The evidence in the ease discloses the dormant anxiety of the wife to be in her rightful place with her husband, and the eagerness of the husband to be beside his wife. However, for the wife her in-laws come in between her and her husband and according to the husband he can not discard his aged parents. An embarrassing situation is the result, and both have approached the Courts, each one to vindicate his or her respective stand, --husband seeking restitution of conjugal rights and wife claiming maintenance. Both got the reliefs oraved for, and the defeated spouse in each of the proceedings has preferred these appeals. A. S-No. 496 of 1972 is by the wife and A. S. No, 313 of 1973 (A. S. No, 7(5 of 1973 of the Additional Sub-Court Trivandrum, which was withdrawn to this Court) is by the husband, We will be referring the parties throughout, this judgment according to their rank in the main appeal. A- S. No. 496 of 1972.

2. The events, (so far as they are relevant for deciding the dispute) of the short marital life of the parties before us are few and simple. The respondent, a draftsman in the Public Health Engineering Department and a permanent resident of Trivandrum, while stationed at Alleppey, married the appellant, also a resident at Trivandrum on 2-7-1987. The appellant shifted her residence to her marital homo at Trivandrum immediately thereafter, and lived there till 18-8-1968. During this period

the respondent was away from that house, being employed at Alleppey: but even according to the appellant as D. W. 1 respondent made frequent visits (20 times) to the marital home at Trivandrum. Respondent's aged parents his two brothers and till her marriage his sister were also residing in the same house which Is a rented building. On 18-8-1968 it is the appellant's case that she was pushed out of that house by her parents-in-law. According to the respondent she went on her own accord with her parents to her parental house situate in a nearby street, within a furlong. Exhibit D-2 letter dated 10-1-1968 sent by the respondent to his father-in-law, (about seven months prior to the departure of the appellant from the matrimonial home reveals some misunderstanding between them about the latter's behaviour towards the former, but no further details are available. About six months after the appellant left her marital home, on 13-2-1989 Advocate Mr. Vysan Poti, on behalf of the appellant issued a lawyer's notice. Exhibit D-3, alleging that the respondent's 'house people' illtreated the appellant, that her life was in danger in that house, that she was driven away and that, the respondent has in spite of demands refused to take her to Alleppey. The notice required the respondent to make his marital home at Alleppey by taking her there, and threatened him with legal proceedings for maintenance on failure to comply with the demand. The respondent sent Ext D-4 reply dated 22-2-1969 accusing his parents-in-law on eoading his wife against her wishes to leave his house and to stay in her parental house. He pleaded his inability to start a separate establishment at Alleppev, by this time the respondent appears to have been transferred to Kavamkulam. On behalf of the appellant another notice, Ext. D-5 dated 1-3-1969. was issued also by Mr. Poti repeating the demand that the respondent should take the appellant to the place of his employment. The respondent filed his application for restitution of coniusal rights on 3-12-1970. and the appellant filed her suit for maintenance on 1-7-1970. by this time the respondent was residing in his house, he having been transferred to and stationed at Trivandrum in 1969.

3. The respondent applied for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 which reads:

'9. (11 When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may Poly, by petition to the district Court for restitution of conjugal rights and the Court ,on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of coniusal rights ac-cordingly,

(2) Nothing shall be pleaded in answer to a petition for restitution of coniugal rights which shall not be a around for judicial separation or for mdlity of marriage or for divorce.'

The main point to be considered is whether the appellant had any reasonable excuse for withdrawing from the society of the respondent. We need not in this case decide the controversial question (on which there was much argument at the bar whether 'reasonable excuse' contemplated by Sub-section (1) must amount to a 'ground or judicial separation or for nullity of marriage or for divorce' which alone can be pleaded under Sub-section (2), in answer to a petition for restitution of coniusal rights. In our opinion, on the facts of this case it is sufficient to confine the inquiry to lesser and non-controversial limits and to investigate whether there was 'reasonable excuse' in the sense whether there was 'just', or, 'grave and weighty' or grave and convincing' cause, for the appellant to withdraw from her husband's society,

particularly after he began continuous residence in his house at Trivandrum. We will appreciate the facts and circumstances of this case, suided by the ordinary rules of burden of proof of facts, rather than by the nicer rules of burden of proof of establishing reasonable excuse', (there was a very wide discussion at the bar regarding the burden of proving 'reasonable excuse' -- whether that deserting spouse should establish it or whether the other spouse should negative 'reasonable excuse') for in substance the Inquiry indicated above is an inquiry into facts.

4. On going through the evidence of the appellant as D. W- 1. we are ir-resistibly led to feel that she is anxious to reside with her husband, but not so long as the respondent's parents and brothers are also residing with him. The reason for this rider is stated to be her apprehension that she will be illtreated by her in-laws. According to her she was cruelly treated by her parents-in-law while she was residing there till 18-8-1968. They, according to her persistently asked for Rs. 500/- daily till 18-8-1968. and because of her inability to pay the amount illtreated her. And on 18-8-1968 she was. It is her case, pushed out of that house saving, that she would be allowed to reside there only on her bringing Rs. 5,000/-. On that day, it is her version, that she was beaten and sent out She also swears that during the occasions when the respondent wag there, they were not allowed to be together sharing each other's company. The evidence given by the appellant as a whole appears to be wholly artificial. On the appellant's side D. W. 2 was examined in the restitution proceedings. He has no direct, knowledge about the appellant's life in her husband's house; and nothing turns on that evidence. The appellant's evidence as P. W. 1-in the maintenance proceedings does not go any further than her evidence in the restitution proceedings except for the fact in the former case she deposed that one Vaidianathan saw her being pushed out.

(Editor: The vernacular matter printed hereunder has been omitted).

5. The evidence of P. W. 2, (Ramachandra lyer) in the restitution proceedings discloses that the parties before us have fallen into this unhappy situation mainly due to the obstinacy of the appellant's parents that the respondent should take up separate residence.' 'It appears, from his evidence, that this persistence on the part of the appellant's parents brought about estrangement between the two sets of in-laws, and the poor couple were pushed into the present pathetic circumstances. This, in our view is probable, for we see much eagerness and anxiety on the part of the appellant and respondent before us to come together. The appellant as P. W- 1 in the maintenance proceedings said that she loves her husband and Is anxious to live with him and added:

(Editor: The vernacular matter printed hereunder has been omitted). To the same effect is her evidence in tha other proceedings also. From the evidence of Ramachandra lyer it is also clear that on 18-8-1968 appellant's parents went to the respondent's house in pursuance of an arrangement previously come to with the respondent and his parents to take the appellant with the former to their house, and that the respondent had also come from Alleppey for the occasion. The appellant as D. W. 1 pleads ignorance about the presence of the respondent on 18-8-1968 in his house, though she categorically denied his presence on that occasion when she was subsequently examined as P. W- 1 in the maintenance proceedings. The respondent also has sworn in both the proceedings to his case. Nothing was brought out to discredit him. We believe P. W. 2, Ramachandra Iyer and the respondent We hold that there is no truth in the allegation of illtreatment Put forward by the appellant, during

her stay in respondent's house till 18-8-1968, and as such, are of the view that there Is no foundation at all for the appellant's apprehension of illtreatment in future.

6. It was strenuously argued that the appellant is not bound to stay with her husband since his parents and brothers are also residing with him. Tha submission was that a wife is entitled to demand her husband to provide a separata residence where both of them fand they alone) could live together and bring up a family of their own. No doubt that may be an ideal condition, but is one not always feasible and very often impossible, especially when the husband is not financially well off and has to look after his aged parents. Times are yet to come in our country when aged parents could be shoved off to infirmaries, be it that such days are signs of progress as some claim to be or retrogression as some others view it. In proceedings for the restitution of coniueal rights, we are to be guided by the fundamental and basic rule of matrimonial law that it is the right of each spouse to have the society and comfort, consortium, of the other. The husband is entitled to it; eaually so, the wife. So long as the residence of the a2ed Barents of the husband under the same roof with him is not provoca-tive of creating circumstances grave enough to subvert the wife's right to consortium of her husband, we think, we cannot accept the arguments advanced by the learned counsel for the appellant regarding her right to separate residence with her husband away from his parents. The decisions cited at the bar by the learned counsel for the appellant are of little assistance to him, since in our view, the question is to be resolved upon the facts and circumstances of each case. In Ponnambalam v. Saraswathi, AIR 1957 Mad 693 = (1957 Cri LJ 1282 (2)), the principle was stated as follows:

'It is settled law in England, America and India that a wife is entitled to insist that she should not be exposed to the unpleasantness of the relatives of her husband and that suitable provisions should be made for her to live with her husband in privacy. The husband no doubt hag got the right to choose the domicile for the wife and she should follow him when that domicile is one which is not legitimately repugnant to her and injurious to her health, etc. In all these matters as pointed out in Simon's Edition of Halsbury's Laws of England. the casting vote is not with the husband or the wife but it is a matter which has got to be decided amicably between them: at times the husband may have to choose between his parents, mother or his wife. He must come to his own conclusion in his own mind and must not insist upon incompatible parties like his own wife and mother living together and making life a hell for them.'

On the facts It was held that the wife cannot be directed to reside with the husband's step-mother who was characterised by the Court as a virago. One other decision relied on by the learned counsel for the appellant is Jogindra Kaur v-Shireharan Singh, AIR 1965 J & K 95 where the Court came to the conclusion that even though the wife was willing to live with the husband, the husband who sought restitution of coniugal rights had no sincere and bona fide desire for resumption of cohabitation for the reason that he, under one pretext or the other declined the wife's offer and insisted on her eoing and living with his parents. That case has no application to the facts of the case in hand. In Hardeep Singh v. Dalip Kaur, AIR 1970 Puni & Bar 284 relied on by the learned counsel for the respondent the Court decreed restitution of coniuaal rights on an application by the husband who was living with his parents and who wanted the wife also to reside with him there, on the ground that he had 'sound reasons for living with his parents and helping them in the cultivation of their ancestral land in their, old age.

7. Now, turning to the facts of this case, we do not find any reason why the respondent should be denied the consortium of his wife. We have already held that the appellant's allegation against her in-laws are without any basis. Though for some time after his marriage he could not be in Trivandrum, without too much of a delay, he was able to come and stay in Trivandrum. The houses of the parties before us are within a furlong of each other. The respondent's parents are aged, and his father is a pensioner drawing only Rs. 75/- as pension which is equivalent to the rent that is being paid for the building in which they are residing. From the evidence of Rama-chandra Iyer (P. W. 2) it is seen that this building is an upstair building and that the upstair room was being used by the respondent and the appellant as their bed-room while the appellant was staying there. The respondent has sworn that his basic salary is Rs. 205/- and that he was getting Rs. 340/- (it appears that by the time he save evidence as D. W. 1 tn the maintenance proceedings his total salary has risen to Rs. 395/-) of which he was actually receiving only Rs. 226/-after deductions towards provident fund and insurance. His brother employed in Life Insurance Corporation is getting Rs. 400/-. The respondent is the eldest son of his parents. The only female now in the household, as disclosed by the evidence, is the respondent's aged mother. Taking into consideration all these facts and circumstances we are of the view that the respondent, cannot be blamed for haying his parents also with him. In our opinion it has not been established that the atmosphere of the respondent's house is such that it would in any wav tend to ruin the appellant's right to consortium of the respondent. We are therefore constrained to hold that the appellant has withdrawn from the society of the respondent without any reasonable excuse. A- S. No. 496 of 1972 has therefore to be dismissed and we hereby do so. but since, it appears, doubtful whether the appellant is entirely responsible for the present unhappy situation we direct the parties to suffer their costs throughout.

8. This takes us to the appeal arising out of the maintenance proceedings, the evidence in which also we have already discussed so that there may not be any inconsistent finding. The appellant's (we refer to the parties I as arrayed in A. S. No. 496 of 1972) claim for maintenance is founded on Section 18 of the Hindu Adoptions and Maintenance Act, 1956. which is as follows:

'18, (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,---

(a) if he is guilty of desertion, that is to say of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her:

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband:

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion:

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.'

The learned Munsiff has rested his decision on clauses (a), (b) and (e) of subsection (2) of Section 18. According to him the respondent (husband) was guilty of constructive desertion in that the appellant could not have consortium of her husband during her stay in his house due to intervention of his parents. Though as P. W. 1. before the learned Munsiff the appellant deposed in October 1972 that herself and the respondent had never lived as husband and wife, earlier in January 1972 before the learned Subordinate Judge as D. W. 1 her definite case was that they lived as husband and wife only during the first 10 days of their marital life. We have already found that the appellant's evidence is unworthy of credence. We have also held that P. W. 2 before the learned Munsiff in the maintenance proceedings is only a casual witness. On a consideration of the evidence in the case before us as a whole we are not able to come to the conclusion that the respondent-husband had at any time the necessary animus to desert his wife or put an end to his marital obligations towards her though for some time, except during his frequent visits, there was a de facto separation due to exigencies of his employment. This is not sufficient to attract Section 18(2)(a) of the Hindu Adoptions and Maintenance Act, 1956. Equally unsustainable is the view of the learned Munsiff, that Section 18(2)(b) is attracted. He proceeds on the basis that the appellant was illtreated by her in-laws: and inhumanly treated by her husband in that he did not come forward to protect her from such illtreatment- We have already discussed this part of appellant's case and found that her story of illtreatment is baseless. We are also not inclined to uphold the learned Munsiff's finding based on Section 18(2)(g) which he re-lied on in the alternative for Section 18(2)(b). The reasons stated by the learned Munsiff for invoking clause (g) is that the appellant's life in the company of the husband's parents has become intolerable and as such the respondent is not entitled to compel her to reside with him. In the connected appeal we have already held that the respondent is entitled to a decree for restitution of conjugal rights. Therefore it cannot be said that there is any justifying cause for the appellant for living separately.

9. Section 18(2) being not attracted, the appellant, who lives separately from her husband, the respondent, has forfeited her claim to maintenance. We therefore hold that the appellant-wife is not entitled to a decree for maintenance past or future. We may also say that the quantum of maintenance decreed by the lower Court at the rate of Rs. 100/- per mensem is also highly disproportionate to the Income the respondent-husband is receiving-However, since in our view the appellant-wife is not entitled to a decree for maintenance we are not adjudicating as to what should be the reasonable rate of maintenance that could be decreed.

10. We set aside the judgment and decree passed by the learned Munsiff In O. S. No. 504 of 1970. We allow this appeal. However, in the circumstances of this case we direct the parties to suffer their costs throughout.

Gopalan Nambiyar, J.

11. I add a few words of my own to the judgment delivered by Vadakkel, J. on behalf

of the Bench.

12. With the spouses having their parental homes within one furlong of each other, and the husband employed as a Government servant, and therefore having mostly to be away from home during the best part of the day, I should have thought that some adjustment between the parties should be able to order and regulate their affairs so as to reduce such misery and cruelty, if any, as the wife is stated to endure in the husband's household, at least to bearable limits. The attempt to picture the 'in-laws' of the husband as monsters of cruelty appears more imaginary than real, in the circumstances. Efforts during the hearing to persuade the parties to settle up their differences, have failed: each side insisted on its 'Shylock's pound of flesh'; and the result is our adjudsment just pronounced.