
(1912) 09 MAD CK 0011
In the Madras High Court

Pedapati Durgayya

APPELLANT

Vs

Pedapati Manikyam

RESPONDENT

Date of Decision : 06-09-1912

Acts Referred:

Citation : 16 Ind. Cas. 808

Hon'ble Judges : Sundara Aiyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. This is a suit for restitution of conjugal rights instituted by the appellant. The defendant is his wife. The District Munsif passed a decree in favour of the plaintiff and directed payment by him of maintenance at Rs. 6 a month to the defendant. The Subordinate Judge has, however, dismissed the plaintiff's suit. What he finds-is substantially this: that the plaintiff, against whom an order had been made by the Magistrate in January 1908 awarding Rs. 6 a month to the defendant, tried to have it set aside and, having failed in that attempt, has instituted this suit in order to evade payment of maintenance. He, therefore, holds that the suit is not bona-fide, But, if the plaintiff is entitled to restitution of conjugal rights, it does not appear to us that the suit would be lacking in bona fide because he does not wish to pay separate maintenance to the defendant. This is practically the ground on which the Subordinate Judge has dismissed the suit. He also says incidentally that defendant explained how she was ill-treated by her husband and finds the 1st issue against the plaintiff. He does not anywhere say that he has found that the plaintiff was in the habit of beating the defendant or of treating her cruelly in any other way and the District Munsif acquitted the plaintiff of the charge of ill-treatment, And we find that, as

a matter of fact, in August 1907, when there was a proceeding before the Magistrate, both parties came to an understanding and agreed to live together; and it is distinctly found by the Munsif that the plaintiff, as a matter of fact, was not given a fair opportunity by the defendant to live with her as husband and wife. Supposing there was some sort of ill-treatment in the early stages of the married life of these parties, it would appear that they made up their differences and agreed to live together and nothing has happened since 1907 which might be said to be a good ground for the defendant, refusing to live together except the fact that there was an order of the Magistrate awarding her a maintenance of Rs. 6 a month and that apparently the plaintiff was unwilling to pay. It is rather significant that the defendant, in her evidence, nowhere says that she is unwilling to live with her husband because she apprehends ill-treatment from him or for any other cause. So far as we can judge from evidence, it seems to us that she was not herself unwilling to resume conjugal life. It further appears that, whatever the differences were between the parties, they were due to certain other members of the plaintiffs house. But now that the plaintiff's mother is dead and also the defendant's father, we may well understand that there is now a sincere desire on the part of the plaintiff to live in peace and harmony with his wife. It is true, as pointed out by the Subordinate Judge, that for about seven years they lived apart; but apparently, the reasons for living apart have gradually lost their force in the altered circumstances of both the parties. We do not, therefore, find sufficient grounds for refusing to grant a decree for restitution. Mr. Narayanamurti, who appeared for the appellant, consented on his behalf to pay Rs. 6 a month for two years from date of the decree of this Court. We, therefore, reverse the decree of the Subordinate Judge and restore the decree of District Munsif for the restitution of conjugal rights with the modification that the plaintiff will pay the defendant Rs. 6 a month from the date of the decree of this Court. Each party will pay his own costs in this Court.