

ORIGINAL MATRIMONIAL.

Before Mr. Justice Mockett.

MRS. T. R. MANJULA BAI, PETITIONER,

1939,
September 27.

v.

K. JANOJI RAO, RESPONDENT.*

Divorce—Dissolution of marriage—Wife's petition for, on grounds of adultery and cruelty—Adultery not proved—Proof of cruelty—Court refusing dissolution of marriage but ordering judicial separation—Subsequent petition for dissolution of marriage—Proof of subsequent adultery—Reliance on finding of cruelty in first petition—Propriety of—Indian Divorce Act (IV of 1869), sec. 7.

On a wife's petition for dissolution of marriage on the grounds of her husband's adultery and cruelty it was found that he had committed acts of cruelty. Judicial separation was ordered and dissolution of marriage was refused on the ground that adultery had not been proved. Some time later she filed another petition for dissolution of marriage on the grounds of her husband's adultery and cruelty. She proved acts of adultery committed subsequent to the decree for judicial separation and, as regards cruelty, she relied upon the finding on her first petition.

Held that she was entitled to do so and obtain decree *nisi* for dissolution of marriage.

Bland v. Bland(1) followed.

Collins v. Collins(2) distinguished.

T. Muniswami Reddi for petitioner.

Respondent was not represented.

JUDGMENT.

MOCKETT J.—This is a wife's petition for dissolution of marriage on the grounds of adultery and cruelty. She filed Original Matrimonial Suit No. 17 of 1937

MOCKETT J.

* Original Matrimonial Suit No. 1 of 1939.

(1) (1866) L.R. 1 P. & D. 237.

(2) (1928) I.L.R. 56 Cal. 166.

MANJULA BAI
 v.
 JANONI RAO.
 MOCKETT J.

claiming the same relief on the grounds of cruelty and adultery. The learned Judge, GENTLE J., on 6th September 1938 refused a decree for dissolution of marriage on the ground that adultery had not been proved. But he allowed the petitioner to amend her petition by adding a prayer for an order for judicial separation on the ground of cruelty which had been proved. The petitioner before me relies so far as cruelty is concerned on the decree and judgment of GENTLE J., and so far as adultery is concerned has brought evidence to show that since November of last year the respondent, her husband, has been living with another woman at Trichinopoly. No evidence of cruelty was called before me. Is this procedure correct? I think the petitioner was entitled to adopt this course. Under section 7 of the Indian Divorce Act, the Courts in India act and give relief on principles and rules which in the opinion of the said Courts are as near as may be conformable to the principles and rules on which the English Courts act. No decision in India exactly on the question before me has been cited but I have no doubt whatever that the procedure laid down in *Bland v. Bland*(1), a case exactly in point, should be followed here. In that case there had been (as in this case) a decree for judicial separation on the ground of cruelty in a previous petition, and in the petition before the Court the following procedure was followed :

“ Proof was given of the marriage, and of adultery committed by the respondent subsequent to the decree for judicial separation. The original decree for judicial separation on the ground of cruelty was before the Court, and evidence was given of the respondent’s identity with the respondent in the suit for judicial separation.”

(1) (1866) L.R. 1 P. & D. 237.

That procedure has been followed before me and I find that there is proof, for the purposes of this petition, of cruelty. So far as the adultery is concerned, there is the evidence of the wife, confirmed by the evidence of the husband's landlord, one Sambasivam Pillai, that the husband and the other woman have been living together as husband and wife and are still living together in the same house. The case reported as *Collins v. Collins*(1) has no bearing upon this case, except that the procedure in *Bland v. Bland*(2) is noted by RANKIN C.J. I would however respectfully agree with the decision in *Collins v. Collins*(1) which is to the effect that a petitioner, in the absence of a fresh matrimonial offence, is not entitled to a decree for dissolution of marriage upon precisely the same grounds as those on which she obtained a judicial separation previously. As the learned CHIEF JUSTICE points out, the Courts could not possibly countenance a petitioner who had material for claiming dissolution, refraining from claiming it in his petition and obtaining only a decree for judicial separation, and then later on, when he thought it convenient, coming to the Court to repeat the same evidence all over again and asking for a decree for dissolution. In this case there is, besides the decree for judicial separation, entirely fresh evidence of adultery. The provisions of the Act have therefore been complied with. That being so the petitioner will have a decree *nisi* with costs.

MANJULA BAI
v.
JANOJI RAO.
MOCKETT J.

G.R.

(1) (1928) I.L.R. 56 Cal. 166.

(2) (1866) L.R. 1 P. & D. 237, 238.