



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 1253 OF 2019 (FC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 2436 OF 2019(FC)

IN MFA No. 1253 OF 2019

BETWEEN:

K.SARAVANAN (A.E.)
S/O. KAVERI CHETTI,
RETD., EXECUTIVE ENGINEER,
AGED ABOUT 54 YEARS,
CHENDRAYAMPATTI,
VELAMPATTI,
POCHAMPALLI TALUK,
KRISHNAGIRI DIST,
TAMIL NADU-635 204.

...APPELLANT

(BY SRI. S.VIJAYAKUMAR, ADVOCATE)

AND:

BHAGIRATHI N.M.
W/O K.SARAVANAN,
R/AT 173/A, 2ND MAIN ROAD,
R.K.LAYOUT, PADMANABHANAGAR,
BENGLAURU-70.

...RESPONDENT

(BY SRI. B.S. JAYANTH KRISHNA, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19 OF FAMILY COURT ACT AGAINST THE JUDGMENT AND DECREE DATED 03.12.2018, PASSED IN M.C.NO.2525/2014, ON THE FILE OF THE VI ADDL.PRL.JUDGE, FAMILY COURT, BENGALURU, PARTLY ALLOWING THE PETITION FILED BY THE PETITIONER UNDER SECTION 13(1) (i-a) AND (i-b) OF THE HINDU MARRIAGE ACT.



NC: 2024:KHC:46386-DB
MFA No. 1253 of 2019
C/W MFA No. 2436 of 2019

MFA.No.2436 OF 2019 :

BETWEEN:

SMT. BHAGIRATHI N.M.
W/O K.SARAVANAN,
AGED ABOUT 54 YEARS,
R/AT 173/A,
2ND MAIN ROAD, R.K.LAYOUT,
PADMANABHANAGAR,
BENGLAURU-560 070.

...APPELLANT

(BY SRI. B.S.JAYANTH KRISHNA, ADVOCATE)

AND :

SRI K.SARAVANAN
S/O. KAVERI CHETTIAR,
AGED ABOUT 56 YEARS,
R/O. CHANARAYAMPATTI VILLAGE,
VELAM PATTI POST, NAGASAMPATTI
VIA POTHAMPALLI TALUK,
KRISHNAGIRI DISTRICT,
TAMIL NADU-635 002.

...RESPONDENT

(BY SRI S.VIJAYAKUMAR, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT AGAINST THE JUDGMENT AND DECREE DATED 03.12.208, PASSED IN M.C.NO.2525/2014, ON THE FILE OF THE VI ADDL.PRL.JUDGE, FAMILY COURT, BENGALURU, PARTLY ALLOWING THE PETITION FILED BY THE PETITIONER UNDER SECTION 13(1)(i-a) AND (i-b) OF HINDU MARRIAGE ACT.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 19.09.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **UMESH M. ADIGA J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA



CAV COMMON JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

Both these appeals arise out of the judgment and decree dated 3rd December 2018, passed by the learned VI Addl. Principal Judge, Family Court, Bengaluru, (for short, `Family Court'), in M.C.No.2525/2014.

2. Petitioner in M.C.No.2525/2014 has filed the appeal in MFA.No.2436/2019 seeking for enhancement of permanent alimony awarded by the Family Court and the respondent in the said M.C. case has filed appeal in MFA.No.1253/2019 for setting aside the judgment passed by the Family Court.

3. Since both the matters arise out of common judgment and decree, they are taken up together for disposal.

4. For the sake of convenience, we refer to the parties as per their ranks before the Family Court.



5. During the course of arguments, learned counsel for the appellant in MFA.No.2436/2019- Sri B.S.Jayant Krishna submitted that appellant will not press the said appeal MFA.No.2436/2019. In view of the said submission, said appeal has to be dismissed as not pressed and MFA.No.1253/2019 has to be decided on merits.

6. The petitioner in M.C.No.2525/2014 sought divorce on the ground of cruelty as well as desertion under Section 13(1)(i-a) and (i-b) of Hindu Marriage Act, 1955. She sought for divorce on the following grounds :

Firstly, the husband treated her cruelly for the sake of money; secondly he completely neglected her and children after birth of second daughter and never tried to take care of them; thirdly, he was leading adulterous life; and fourthly, he deserted her from February 2002 and completely failed to perform his matrimonial obligations.

7. The respondent in his objections resisted the petition on the following grounds:



He denied the allegations made against him, except admitting his matrimonial relationship with the petitioner, as well as two daughters born from the said wedlock. His further case is that, respondent was residing in Bengaluru earlier for the sake of higher education and thereafter she got an employment at Bengaluru and continued to reside in Bengaluru. Therefore, she has been residing in Bengaluru at her choice and not due to any other reasons as alleged in the petition. He never neglected the respondent or her two daughters and he was always taking care of them.

8. Further, the allegations of respondent that appellant has been leading an adulterous life and having illicit relationship with another woman, is totally false; She appears to have gone to a wrong quarters and found a lady in that quarters and she was alleging that he was leading an adulterous life with the said lady, which was not proved and completely incorrect; The matrimonial relationship could not be continued due to adamant



behaviour of the respondent. She was non-cooperative to lead matrimonial life. Therefore, she is not entitled for decree of divorce on the grounds mentioned in the petition.

9. Both the parties led their evidence before the Family Court. Petitioner-wife examined herself as PW-1 and another witness as PW-2 and got marked Exs.P-1 to P-9 and the respondent-husband examined himself as RW-1 and got marked Exs.R-1 and R-2.

10. The learned trial Judge after hearing both the parties and appreciating the evidence available on record, upheld the contentions of the petitioner and granted the decree of divorce on the ground of cruelty, as well as desertion under Section 13(1)(i-a) and (i-b) of Hindu Marriage Act, 1955.

11. We have heard the arguments of learned counsels for both parties and perused the materials placed on record.



12. The learned counsel for the appellant-husband has strenuously argued on the lines stated in the objections as well as the grounds mentioned in the appeal memo. He has submitted that the grounds made out by the wife were not at all proved by her, still the learned trial Judge on the ground of irretrievability of relationship, granted the relief, which is not tenable in law. Therefore, he prayed for interference of this Court.

13. The learned counsel for the respondent-wife supported the impugned judgment and decree. He submitted that the learned trial Judge properly appreciated the pleadings and evidence on record and came to a right conclusion, which does not call for any interference by this Court.

14. On going through the impugned judgment, it is seen that the learned trial Judge has meticulously, discussed the evidence of both the parties and there is no need to reproduce the said evidence led by both the parties.



15. The marriage of the petitioner and the respondent was solemnised on 22.08.1997 at G.K.Conference Hall, Banashankari 2nd Stage, Bengaluru, as per the Hindu rites and customs. It is not in dispute that at the time of marriage, the respondent was serving as Engineer in Tamilnadu Housing Board i.e., he was a State Government employee of State of Tamilnadu. He has not disputed that immediately after the marriage, the petitioner came to his house at Hosur to lead matrimonial life with him. It is also not in dispute that when respondent became pregnant, she was sent to her parents' house for the purpose of delivery and after delivery, she joined the appellant and was leading marital life.

16. According to the contentions of the petitioner, the respondent himself forced her to stay in her parents' house and thereafter, she started residing in the house belonging to her father, situated in Padmanabhanagar, Bengaluru and respondent was visiting her house initially once in a week and after some time, he was visiting once



in a fortnight and thereafter, he left visiting the house and taking care of children. She has also stated about birth of second daughter and further stated that after the birth of second daughter, the respondent completely neglected and refused to maintain them and even he was not visiting to their place. She also stated about harassment and cruelty meted to her by the respondentt for the sake of money.

17. She has further stated that during the year 2012, respondent came to Bengaluru and took away all his belongings and left her house. Thereafter, she along with her daughters, as well as her mother, went to Hosur and when she knocked at the door of his quarters, she found a lady in the said quarters and after peeping through the doors, she found that the respondent was sleeping in a room. Thereafter, she enquired with the said lady as to who was the person sleeping in the bedroom, for that the said lady told that he was her husband. She identified the appellant as her husband. Thereafter, she came back and



started residing in her house at Bengaluru. This evidence of petitioner is corroborated by the evidence of PW-2 – daughter of the petitioner and respondent. In the detailed cross-examination, nothing was brought to disbelieve or discard the evidence of PWs.1 and 2.

18. It is not the contention of the respondent that the petitioner was married to him due to force by the members of her family or due to some inevitable reason. It is also not his case that, immediately after the marriage, she started disliking or hating him. If everything was fine, then why she should make such allegations against him is not explained by the respondent. It is also worth to note that admittedly the petitioner was residing in her father's house at Bengaluru along with her two children. She was independently residing in the said house. Their marriage had taken place on 22.08.1997. They led a marital life till February 2002 i.e., for four years. Looking to the cross-examination of PWs.1 and 2 as well as evidence of RW-1, it appears, petitioner was fed up by the behaviour of the



respondent and hence she was forced to file a petition for divorce.

19. The learned counsel for the respondent vehemently contends that the house which she visited and saw a lady in the house was not at all the quarters of the respondent. His quarters was different one. Due to mistake of facts, she was alleging that respondent was leading an adulterous life. Except her self-serving statement, there are no materials on record to prove it. It is worth to note that the petitioner not only stated that when she went and knocked at the door of the house, she found a lady in the said house, but she also stated that the respondent was sleeping inside the house in a room and to clarify herself, she asked the said lady as to who the said person was referring to her husband and that lady told that the person who was sleeping inside the house was her husband; After getting confirmation from her, she alleged that respondent was leading an adulterous life. If appellant was not found inside the house, then the



contention of respondent that the said quarter was allotted to someone else could be accepted. But in this case, respondent was found sleeping inside the room and it was witnessed by the petitioner, her mother and daughter. Even PW-2 has corroborated the said fact. If it was not his quarters, then what made him to go and sleep in the quarters of someone else, is not explained by the respondent. Therefore, the said argument advanced by the learned counsel for the respondent is not tenable.

20. The learned trial Judge has properly appreciated the evidence led by both the parties and rightly come to a conclusion that respondent treated the petitioner cruelly and made her life miserable and she could not bear the said harassment anymore.

21. The petitioner, has been residing in Bengaluru. In the cross-examination, she admits that for higher studies, she continued to reside at Bengaluru and she also stated that she could not get any employment in the State of Tamilnadu and she got an employment at Bengaluru



and she continued to reside in Bengaluru with the consent of the respondent. She has not made any allegation that respondent has not been residing permanently at Bengaluru. According to her contentions, respondent earlier used to visit once in a week and thereafter, he started visiting once in a fortnight and from February 2002, he stopped visiting her house and took his belongings kept in her house and did not continue the matrimonial obligations.

22. Respondent in his evidence though denied the said contention, but he could not substantiate the same. He has not placed any material on record to show that after February 2002, he was visiting the house of the petitioner. It appears, when he took his belongings from the house of the petitioner and left her house in February 2012, she surprisingly visited the quarters of the respondent at Hosur and found a lady in his house. It appears, because of the said reasons, their relationship was completely cut-off and respondent did not try to



console the said fact or hold a panchayath and settle the dispute. From these facts and circumstances, it appears that the contentions of the petitioner that her husband deserted her and failed to continue matrimonial obligation from February 2002 is probable and proved by her.

23. During pendency of this appeal, we tried to conciliate both the parties to continue the relationship. The petitioner as well as her daughters categorically stated that the respondent was harassing and treating them very cruelly, so also neglected them completely and even he did not provide necessities to them. In addition to that, they also stated that respondent played black magic on them to spoil their career. During the evidence also, when surprising questions were asked to PW-2, she stated that she was carrying a lemon as advised by her mother for protecting herself and even it was seen by the Presiding Officer of the Court that she was carrying a lemon to protect herself from black magic. The petitioner has lost confidence in the respondent and they have been residing



separately without any connection for the last 10 to 12 years i.e., from February 2002 onwards.

24. Looking to these facts and circumstances, it appears the relationship between both the parties has been completely broken down and there are no chances of their reunion. We also found that they are not in a position to look face to face. Under these circumstances, even if appeal is allowed, it will not serve any purpose. The marriage between both of them has irretrievably broken down. This fact was also observed by the learned trial Judge in the impugned judgment. Considering all these facts and circumstances, we conclude that there are no reasons to interfere with the findings of the learned trial Judge.

25. Accordingly, we proceed to pass the following :

ORDER

The appeal in MFA.No.1253/2019 is
dismissed.



Both parties shall bear their own cost.

The judgment and decree dated 03.12.2018, passed by the learned VI Addl.Principal Judge, Family Court, Bengaluru, in M.C.No.2525/2018, is confirmed.

As submitted by learned counsel for the appellant, MFA No.2436/2019, is dismissed as not pressed.

The Registry is directed to send back the trial Court records along with copy of the judgment to the concerned Family Court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE