

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 29TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S G PANDIT

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO.101284 OF 2016

C/W

MISCELLANEOUS FIRST APPEAL NO.101122 OF 2016

IN MFA NO. 101284/2016

BETWEEN:

A.S. DARSHAN S/O. SHIVANAND
AGE: 37 YEARS, OCC: BUSINESS,
R/O. ALUR, DIST: HASSAN-589655.

...APPELLANT

(BY SRI. JAGADISHGOUDA PATIL, ADVOCATE)

AND:

SMT. AMRUTHA W/O. A.S. DARSHAN
AGE: 31 YEARS, OCC: HOUSEHOLD,
R/O. C/O. MALLIKARJUN F. MALDAD,
BEHIND SHANTI TALKIES,
MASARI ROAD, GADAG-584211.

...RESPONDENT

(BY SRI. M.M. PATIL, ADVOCATE)

THIS MFA FILED U/S.19(1) OF THE FAMILY COURTS ACT
1984, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE
DATED:20.02.2016, PASSED IN MATRIMONIAL CASE

NO.90/2015 ON THE FILE OF THE PRINCIPAL JUDGE FAMILY COURT, GADAG, ALLOWING THE PETITION FILED BY THE RESPONDENT FOR RESTITUTION OF CONJUGAL RIGHTS BE DISMISSED AND THIS APPEAL BE ALLOWED WITH COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

IN MFA NO.101122/2016

BETWEEN:

A.S. DARSHAN BIN. A.N. SHIVANAND
AGE: 37 YEARS, OCC: BUSINESS
R/O: ALUR-589 655,
DIST: HASSAN.

...APPELLANT

(BY SRI. JAGADISHGOUDA PATIL, ADVOCATE)

AND:

SMT. AMRUTHA MALADAD @
SMT. AMRUTHA W/O. A.S. DARSHAN
AGE: 32 YEARS, OCC: HOUSEHOLD
R/O: C/O. MALLIKARJUN F. MALDAD
BEHIND SHANTI TALKIES,
MASARI ROAD, GADAG-584 211.

...RESPONDENT

(BY SRI. M.M. PATIL, ADVOCATE)

THIS MFA FILED U/S.19(1) OF THE FAMILY COURTS ACT, 1984, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 20.02.2016 PASSED IN MC NO.109/2015 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, GADAG, AND THE PETITION FILED BY THE APPELLANT FOR DISSOLUTION OF THE MARRIAGE AND FOR GRANT OF DIVORCE BE ALLOWED, AND THIS APPEAL BE ALLOWED WITH COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN HEARD AND RESERVED ON 14.10.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

MFA No.101284/2016 is filed under Sec.19(1) of the Family Courts Act, 1984, praying for setting aside the judgment and decree dated 20.02.2016 passed in MC No.90/2015 on the file of Principal Judge, Family Court, Gadag in a petition for restitution of conjugal rights and to dismiss the said petition by allowing this appeal with costs throughout.

2. MFA No.101122/2016 is filed under Sec.19(1) of the Family Courts Act, 1984, praying for setting aside the judgment and decree dated 22.02.2016 passed in MC No.109/2015 by the Principal Judge, Family Court, Gadag in a petition for dissolution of marriage and to grant decree of divorce by allowing this appeal with costs throughout.

3. Both these appeals arise out of common judgment passed in MC No.90/2015 and MC No.109/2015

on the file of the Principal Judge, Family Court, Gadag.
Hence, heard arguments commonly in both cases.

4. Parties would be referred to as husband and wife respectively for sake of convenience and clarity.

5. Wife has filed MC No.90/2015 under Sec.9 of the Hindu Marriage Act, 1955 (for short 'the Act'), praying for restitution of conjugal rights.

6. Husband has filed MC No.109/2015, praying for a decree of divorce under Sec.13(1)(i) & (ia) of the Act.

7. The case of wife in both petitions in nutshell is that her marriage with husband took place on 23.04.2008 as per Hindu customs at Shubodaya Kalyana Mantap, Hassan in presence of elders. After the marriage, wife started residing with her husband at his place and due to wedlock; she has given birth to twin daughters on 07.03.2010 in her parental house and named them as Nemith and Nimish. Afterwards her husband never visited her house and she has completed her period of postpartum care (banantana) and came back to the house of her husband during August 2010. Only because wife has given

birth to twin daughters, she was disrespected in the house of her husband by her husband and his mother-in-law and they were always telling that he would get divorce. Only with an intention to get the decree of divorce, i.e., to prove that she is not having good mental health by force, husband has taken her to Bengaluru; husband was always telling that she was not looking after the children well and assaulting them and abusing them. He was always suspecting the fidelity of the wife and checking her mobile phone and assaulting her, abusing her for small and petty reasons. He was not eating meals prepared by her. Hence, she informed these facts to her elders and they have advised the husband several times. But, he did not heed for their advice. Ultimately, husband quarreled with wife and sent her and their two daughters-Nemith and Nimish during March-2015 to her parental house and immediately, afterwards he sent divorce notice on 25.04.2015 through his advocate to the wife. On 01.05.2015, elders called them and advised them and in that meeting, the husband agreed to take his wife and children back to his house and hence

the wife has not given any reply to his notice and waited for him. However, he has not come back; on the other hand, filed M.C.No.72/2015 before the Family Court, Hassan. However, wife intends and is willing to live with her husband and hence she has filed this petition for restitution of conjugal rights.

8. Husband had filed M.C.No.72/2015 before Principal Judge, Family Court, Hassan under Sec.13(1)(i), (ii) & (v) of the Act, praying for dissolution of his marriage with his wife. After filing this petition, it was transferred to Family Court, Gadag, as per Order passed in CP No.1074/2015 and was then re-numbered as MC No.109/2015. Thus, the petition of husband was earlier to the petition of wife.

9. In this petition, and also in the objections to petition under Sec. 9 of the Act, the husband has taken contention that after the marriage and the birth of two daughters Nemith and Nimish, the wife was not cordially living with him and was always suspecting him, quarreling with him for petty reasons and was verifying his mobile

calls, messages, assaulting and abusing the children without any reason, not looking after them properly, not preparing the food properly and was wasting her time. He further contended that the wife had lost her mental balance. In this regard, he got her treated by Dr. Jagdeesh, Abhaya Hospital, Wilson Gordon, Bengaluru on 26.05.2012 and on 07.11.2014 she was again taken for counseling. But, the wife did not take the medicines given by the doctor properly and was very negligent by saying that she is not having any mental health issues and was always threatening the husband that she would commit suicide. She was not interested to lead her marital life with her husband and she forcibly accepted for the marriage as she was forced by her parents and she would live with her lover in her village and is also having illicit relationship with her lover. Hence, the husband prayed for allowing the petition for divorce and dismissal of petition for restitution of conjugal rights.

10. On behalf of wife, wife was examined as P.W.1, got marked her marriage invitation card as Ex.P.1 and closed her side before trial Court. On behalf of respondent-

husband, husband was examined as R.W.1 and closed his side before trial Court.

11. After recording evidence of both sides and hearing arguments of both sides, learned trial Judge came to the conclusion that the wife has proved that respondent-husband has withdrawn his society with her without any reasonable cause and thus, she is entitled for restitution of conjugal rights and husband-respondent has not established the grounds urged in the petition for divorce and thereby dismissed his petition.

12. Learned counsel for appellant Sri Jagadishgouda Patil, in both appeals submits that the husband and wife are not residing together since long time and wife has filed the petition for restitution of conjugal rights and it was not her intention. She has not looked after the children well and has been cauterizing them and also living with her paramour. Wife has treated husband and his mother with cruelty and wife is trying to hide the truth and put blame on him and this amounts to inflicting mental cruelty upon the appellant. However, learned trial Judge has not considered these

aspects properly and decreed the petition filed by her for restitution of conjugal rights and dismissed his petition for divorce. Hence, prayed for allowing both the appeals.

13. Learned counsel for respondent Sri M.M.Patil, in both appeals submits that no material has been produced to show that wife treated the husband and children with cruelty, except the self serving testimony of the appellant. No iota of evidence is produced to prove the same. He himself has driven the wife and children to her parental house. Considering these aspects, learned trial Judge rightly decreed the petition filed by wife for restitution of conjugal rights and dismissed the petition filed by husband for divorce. Hence, he prayed for dismissal of both the appeals.

14. Having heard the learned counsel for the parties and upon perusal of the appeal papers along with original records of the trial Court, the following points arise for our consideration in this appeal:

- i) Whether the appellant in both appeals prove that the learned trial Judge erred in appreciating the factual aspects properly*

and decreed the petition filed by respondent for restitution of conjugal rights and dismissed the petition filed by the appellant for divorce?

ii) Whether interference with the said judgment is required?

iii) What order?

15. Our answer to point Nos.1 and 2 are in 'negative' for the following reasons:-

Point Nos.1 and 2:- These points are considered together as they require common discussion.

16. Though the petition is filed under Sec.13(1)(i), (ii) & (v) of the Act, the averments in the petition apparently reveal that it is filed only under Sec.13(1)(i) & (ia) of the Act.

17. A husband or wife may obtain decree of divorce under Sec.13(1)(i) of the Act, if he/she establishes that the other spouse had voluntary sexual intercourse with any person other than his/her spouse.

18. In this regard, there is an allegation in the petition for divorce that wife is living in adultery with her lover. The name of her lover is not mentioned in the petition and in his affidavit evidence.

19. Except saying these words, husband has not proved that his wife had voluntary sexual intercourse with any person other than him. Hence, he failed to establish said fact.

20. On perusal of petition averments, husband has made allegation of cruelty against wife. A husband or wife may obtain decree of divorce under Sec.13(1)(ia) of the Act, if he/she establishes that the other party has inflicted cruelty upon him.

21. Cruelty might be mental or physical. Thus, it appears that he has taken the plea of mental cruelty stating that wife was always threatening him that she would commit suicide and always going to her parental house without his knowledge and consent. But no material is produced to substantiate these facts except the self-serving testimony of the husband. He has not examined any

witness. As far as allegations such as not preparing food, etc., cannot be called as cruelty inflicted upon the husband by wife.

22. In this regard, the husband has only stated in his affidavit evidence that he had taken his wife to Dr.Jagadeesh at Abhaya Hospital, Wilson Garden, Bengaluru for counseling on 26.05.2012 and 07.11.2014 and doctor has advised her and provided some tablets. However, the wife had not taken said advice and tablets.

23. Except making this allegation in his petition and also in his affidavit evidence, the husband has not produced prescription chits, medical bills or any other documents to prove what the advice was given by the doctor. The wife has only admitted in her cross-examination that she was taken to a doctor for counseling but volunteered that she was taken only to brand her as insane.

24. Merely because the wife was taken to Dr.Jagdish at Abhaya Hospital, Bengaluru for some treatment, it cannot be said that she has been suffering from incurable disease of mental disorder, which inflicted cruelty upon the

husband that too in the absence of examining the doctor. Hence, husband miserably failed to establish this fact.

25. It is to be noted here that even before this Court, both parties were referred to DIMHANS for counseling. The report given by doctor of DIMHANS to this Court establishes that husband is making allegation against wife only to get the decree of divorce and wife is making statements to support the decree of restitution of conjugal rights. Hence, said report is not helpful to the husband to prove mental cruelty, as alleged by him. Hence, considering these facts, learned trial Judge rightly held that husband miserably failed to establish the grounds for divorce.

26. The remaining point to be considered is whether the restitution of conjugal rights ordered by the learned trial Judge is erroneous and it requires interference or not.

27. From the cross-examination of husband, it is clear that he himself sent his wife and children to her parental house during March-2015 and immediately afterwards, he has given divorce notice during April-2015 and immediately filed the petition for divorce without any

reason and his petition for divorce cannot be granted for the reasons stated above. Where the husband without lawful ground withdrawn from the society of the wife or neglected to perform the obligations imposed by law or by the contract of marriage, then the wife may approach the Court for restitution of conjugal rights.

28. In the instant case, as discussed above, the husband himself withdrawn the society of wife by sending his wife and children to her parental house and when she has filed a petition for maintenance, only to avoid giving maintenance to her, he has issued notice and filed the petition for divorce.

29. The wife has established the above facts for the reasons stated above.

30. Under these circumstances, we find that the wife has clearly and categorically established that without any reasonable cause and excuse, the husband has left the company of his wife and children and thus she is entitled for restitution of conjugal rights. Considering these facts, rightly, the learned trial Judge decreed the petition for

restitution of conjugal rights and thus, interference on the above said common judgment is not required. Accordingly, point Nos.1 and 2 are answered in negative.

31. Point No.3:- In view of finding on point Nos.1 and 2, we proceed to pass the following:-

ORDER

Appeals filed under Sec. 19(1) of the Family Courts Act, 1984 in MFA No.101284/2016 and MFA No.101122/2016 are dismissed by confirming the judgment and decree passed in MC No.90/2015 and 109/2015 on the file of Principal Judge, Family Court, Gadag.

32. Under facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
(S G PANDIT)
JUDGE

Sd/-
(GEETHA K.B.)
JUDGE

Vmb, CT-CMU