

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.103063 OF 2025 (FC)

BETWEEN:

DR. SAKSHI @ JYOTI,
W/O. SHADAXARI MENASINKAI,
BEFORE MARRIAGE:
JYOTI D/O MALLIKARJU ALAVANDI
AGE: 44 YEARS, OCC. GOVT. SCHOOL TEACHER,
R/AT: RAJIV GANDHI NAGAR,
DIST. GADAG-582201.

...APPELLANT

(BY SRI. GOURISHANKAR H.MOT, ADVOCATE)

AND:

SHRI SHADAXARI,
S/O. VIJAYKUMAR MENASINKAI,
AGE: 50 YEARS, OCC. ADVOCATE,
R/AT: GADAG,
DIST. GADAG-581404.

...RESPONDENT

(SRI. SHADAXARI – PARTY IN-PERSON)

THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURT ACT, PRAYING TO SET ASIDE THE EX-PARTE JUDGMENT AND DECREE DATED 12.06.2025 PASSED BY THE HON'BLE PRINCIPAL JUDGE FAMILY COURT, AT GADAG IN MC NO.189/2024 AND MAY BE PLEASED TO DISMISS THE DIVORCE PETITION FILED BY THE PETITIONER/RESPONDENT (HUSBAND) BY ALLOWING THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY & ETC.



THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 16.10.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **S G PANDIT J.**, 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 MR. JUSTICE S G PANDIT)

The appellant, wife of the respondent herein, is in appeal under Section 19(1) of the Family Courts Act, 1984 assailing the judgment and decree dated 12.06.2025 passed in M.C.No.189/2024 by the Principal Judge, Family Court, Gadag (for short, 'the Family Court'), dissolving marriage of the appellant and the respondent on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (for short, 'the 1955 Act').

2. Brief facts of the case are that the appellant and the respondent are wife and husband, their marriage having been solemnised on 25.05.2003 at Kadakol Village, Savanur Taluk of Haveri District. It is stated that from the wedlock, they have two children namely, Tejaswini, aged 20 years, and Kushi aged 14 years. The respondent-husband filed a petition in M.C.

No.189/2024 under Sections 13(1)(ia) and 13(1)(ib) of the 1955 Act seeking dissolution of marriage between the appellant and the respondent. In the said petition, it was stated that respondent left the house of the petitioner with kids without informing the petitioner and she filed Crl.Misc. No.170/2022 before the Court of JMFC-I, Gadag under Section 12 of the Domestic Violence Act, 2005, and also a petition under Section 125 of the Code of Criminal Procedure, 1973. The petition averments would indicate that, as on the date of filing of the petition for dissolution of marriage, the appellant and the respondent were residing separately for the past three years and it is also alleged that the wife deserted the petitioner. It was also stated that the petitioner-husband was ready to take back the children.

3. On issuance of notice, the wife appeared before the Court and filed her objections admitting relationship with the petitioner-husband and also of having two female children. In the objection, it was stated that she came to know after the marriage that her husband was a drunkard and was in the habit of making allegations against others. She tolerated the physical and mental ill-treatment of her husband. It was stated that she

had completed her Ph.D., and was appointed as a teacher. It is alleged that the petitioner-husband used to take away all the salary of the respondent-wife. It was also stated that on 14.09.2021, the petitioner-husband ousted the respondent with her two children as she had refused to transfer the property in the name of the petitioner which was jointly purchased by the petitioner and the respondent. It was also stated that the respondent-wife filed Crl.Misc. No.226/2023 seeking maintenance.

4. Petitioner-husband examined himself as P.W.1 and no documents were marked on his behalf. The respondent-wife did not lead any oral evidence or documentary evidence. Thereafter, the impugned judgment came to be passed by the Family Court rejecting the petition filed under Section 13(1)(ia) and allowing the petitioner under Section 13(1)(ib) of the 1955 Act dissolving the marriage of the petitioner and the respondent.

5. Questioning the said judgment and decree of the Family Court, the appellant-wife is before this Court in this appeal.

6. Heard Sri. Gourishankar H. Mot, learned counsel for the appellant, and the respondent-husband (party-in person). Perused the entire appeal papers including the certified copies of the order sheet placed on record along with memo dated 10.10.2025 filed by the learned counsel for the appellant.

7. The learned counsel for the appellant would submit that, apart from not providing an opportunity to the appellant-wife to lead her evidence and to cross-examine the respondent-husband, there is no material whatsoever on record except the self-serving statement of P.W.1 (husband) to prove desertion on the part of the appellant-wife. Learned counsel would submit that the Trial Judge committed an error in dissolving the marriage on the ground of desertion holding that the appellant-wife left the petitioner for more than two years immediately preceding the date filing of the present petition. To grant dissolution of marriage on the ground of desertion, it would be necessary for the Court to record intentional and permanent forsaking/abandonment of one spouse by the other without reasonable cause. He submits that when it is the case of the wife, as per her statement of objections, that she was dragged out of the matrimonial home, without there being any evidence

on record except the self-serving statement of P.W.1 (husband), the Family Court could not have granted dissolution of marriage on the ground of desertion.

8. Learned counsel for the appellant, without prejudice to the above contentions, would submit that the Family Court failed to provide proper opportunity to the appellant-wife to lead her evidence and also to cross-examine P.W.1. Learned counsel would point out from the order sheet that the petitioner-husband filed I.A. No.2 for production of 16 documents and the same was taken on record on 18.02.2025; that on behalf of the appellant-wife, on 28.02.2025, I.A. No.3 was filed to reopen the case from the stage of plaintiff's evidence and I.A. No.4 to permit to file objections to I.A. No.2; on the said date, the matter was adjourned to 10.03.2025; that on 10.03.2025, the husband (party in-person) filed objections to I.As. 3 and 4, and the case was adjourned to 22.03.2025; on 04.04.2025, I.A. Nos.3 and 4 filed by the appellant-wife were allowed. The appellant-wife could not be present on 22.04.2025 and hence, on the said date, the cross-examination of P.W.1 was taken as 'nil' and the case was posted to 25.04.2025. On 25.04.2025, the advocate on behalf of the appellant-wife sought time for leading the evidence of wife,

but the Court rejected the same and proceeded to hear the arguments. Thus, the learned counsel would submit that the appellant-wife had no opportunity to lead her evidence and cross-examine P.W.1, and therefore, would pray for an opportunity to lead her evidence and also to cross-examine P.W.1. Hence, learned counsel for the appellant prays for remanding the matter to the Family Court.

9. On the other hand, respondent-husband (party in-person) has filed written arguments by way of arguments and has contended that in the proceedings before the Family Court, out of 22 occasions, only on six occasion the appellant was present before the Family Court. Further, he submits that sufficient opportunity was given to the appellant-wife to lead her evidence and also to cross-examine P.W.1 but the appellant-wife failed to utilise the said opportunity. It is submitted that having failed to utilise the opportunity, the appellant-wife cannot seek for further opportunity. Respondent (party in-person), would submit that, as stated in her objection statement, the wife left the matrimonial home on 14.09.2021 and as such, the Family Court is justified in dissolving the marriage on the ground of desertion. Party in-person would submit that the case of the

appellant-wife has no basis. Thus, he prays for dismissal of the appeal.

10. Having heard the learned counsel for the appellant and the respondent (party in-person), the only point which falls for consideration is:

Whether the judgment under appeal requires interference at the hands of this Court?

11. The answer to the above point would be in the affirmative for the following reasons:

- (a) The marriage of the appellant and respondent solemnised on 25.05.2003 and two children born from the wedlock is not in dispute. It is also an admitted fact that several litigations are pending between the appellant-wife and the respondent-husband. The respondent-husband filed a petition in M.C. No.189/2024 under Sections 13(1)(ia) and (ib) of the 1955 Act seeking dissolution of marriage on the ground of cruelty and desertion.
- (b) The Trial Court placed reliance on the decision of Hon'ble Supreme Court in the case of **Savitri Pandey v. Prem**

Chandra Pandey¹, to accept the ground of desertion pressed into service by the respondent-husband. The respondent-husband examined himself as P.W.1, and except his self-serving statement, no other oral or documentary evidence were available on record. The Family Court only on the basis of the self-serving statement of P.W.1, in the absence of any other corroborative evidence, could not have granted dissolution of marriage on the ground of desertion. The Family Court observes that the wife left the husband for more than two years preceding the date of filing the petition. The appellant-wife in her objection had categorically stated that the respondent-husband ousted her with her two children on 14.09.2021 and when that being the specific averment of the appellant-wife, the Family Court could not have believed the self-serving statement of P.W.1. The decision of the Hon'ble Supreme Court in **Savitri Pandey's** case (supra), makes it abundantly clear that to accept the ground of desertion, the wife or husband, who pleads desertion, must prove that desertion of the petitioner by other spouse was without consent and without reasonable cause and that desertion must be intentional. It

¹ (2002) 2 SCC 73

is also to be noted that if a spouse abandons the other in a state of anger or disgust without any intention to permanently cease cohabitation, it will not amount to desertion. When the respondent-husband has failed to prove that the appellant-wife has deserted him intentionally, permanently without reasonable cause, the Family Court committed a grave error in dissolving the marriage on the ground of desertion.

- (c) The next question would be, whether the appellant-wife is to be given an opportunity to lead her evidence and also to cross-examine P.W.1.
- (d) The judgment under appeal is in the nature of an *ex parte* judgment. Dissolution of marriage would lead to severe consequences, both on the wife as well as on the children. Therefore, a proper opportunity requires to be afforded to the parties before passing the judgment of dissolution of marriage. On 22.04.2025, when the case was listed for cross-examination of P.W.1, the appellant-wife and her counsel were absent and on the said date, the cross-examination of P.W.1 was taken as 'nil' and the case was

posted for respondent's evidence on 25.04.2025. On 25.04.2025, when the counsel for the appellant-wife sought for time to lead evidence, the Trial Court refused to grant time and proceeded to hear the arguments of the respondent-husband. In the instant case, though there is a little negligence on the part of the appellant-wife in participating in the proceeding before the Family Court, the same cannot be a reason to deny grant of further opportunity to the appellant-wife to lead her evidence and to cross-examine P.W.1. On examination of overall factual situation and on examination of the entire ordersheet of the proceedings in M.C. No.189/2024 before the Family Court, we are of the considered opinion that the appellant-wife needs to be given an opportunity to lead her evidence and also to cross-examine P.W.1.

12. In the light of the above, we pass the following:

ORDER

- i) The appeal is allowed.
- ii) The judgment and decree dated 12.06.2025 passed in M.C. No.189/2024 by the Principal Judge, Family Court, Gadag, is hereby set aside,

and the matter is remanded the Family Court for fresh consideration.

- iii) The Family Court, Gadag, shall provide opportunity to both the appellant and the respondent i.e., the wife and husband to lead evidence and to cross-examine each other.
- iv) Parties shall appear before the Family Court at Gadag on 21.11.2025 at 11.00 a.m. to participate in the further proceedings without awaiting further notice from the Family Court.

**Sd/-
(S G PANDIT)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

KMS
CT-VP