



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO.9142 OF 2017

(MC-DIV)

BETWEEN:

D. P. MANJU
S/O PUTTASWAMY GOWDA,
AGED ABOUT 44 YEARS,
RESIDING AT DINKA VILLAGE,
CHINAKURALI HOBLI,
PANDAVAPURA TALUK,
MANDYA DISTRICT
PIN CODE : 577 528.

...APPELLANT

(BY SRI.RAJU.C.N., ADVOCATE)

AND:

JYOTHI.S,
W/O D.P.MANJU,
AGED ABOUT 36 YEARS,
RESIDING AT LACHANAHALLI VILLAGE,
BOOKANAKERE,
HOBLI, K.R.PET TALUK,
MANDYA DISTRICT
PIN CODE : 571 401.

...RESPONDENT

(BY SRI.K.R.LINGARAJU., ADVOCATE)

Digitally
Signed by
REKHA R
Location :
High
Court of
Karnataka



THIS MFA IS FILED UNDER SECTION 28(1) OF HINDU MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE DATED 16.02.2017 PASSED IN M.C.NO.24/2009 ON THE FILE OF THE C/c PRL. SENIOR CIVIL JUDGE & JMFC, PANDAVAPURA.

THIS APPEAL IS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal is by the husband - appellant challenging the Judgment and Decree dated 16.02.2017 in M.C.No.24/2009 passed by the Prl. Senior Civil Judge and JMFC, Pandavapura ('Trial Court' for short), whereby the petition filed by the husband under Section 13-1(A) & (B) of the Hindu Marriage Act, 1955 was dismissed with costs.

2. The parties are referred to as per their rankings before the Trial Court.

3. The brief factual matrix leading to filing this appeal are as under:



As per petitioner - husband:

The petitioner and respondent are husband and wife. Their marriage was solemnized on 30.05.2001 at Anchemuddanahalli Village, K.R.Pet Taluk as per Hindu rites and customs. After the marriage, the respondent joined the petitioner in her matrimonial home at Dinka Village. From the wed-lock, they are blessed with two children, one daughter by name Ananya and one son by name Abhishek. Both the petitioner and respondent lived happily for initial period of two years. The petitioner is the only son to his parents. The family of the petitioner consists, petitioner, respondent, his two children and his parents. The father of the petitioner is aged 85 years. The respondent has neglected to take care of petitioner's parents and treated the parents with cruelty and left the matrimonial home 3 to 4 years prior to filing of the petition.

The petitioner tried to reunite with the respondent by convening several panchayats with the aid of elders,



however the respondent is reluctant to accede to the advise given by the elders. Though the petitioner divided the property by way of partition deed with his parents and called the respondent to come and join him to lead the marital life, the respondent staunchly rejected the request of the petitioner and not returned to the matrimonial home. This made the petitioner to suffer even for his food, cloth and health. Having left with no other alternative, the petitioner filed a petition for dissolution of marriage before the Trial Court on the ground of cruelty as well as desertion.

4. Upon service of notice, the respondent - wife appeared through her counsel and filed her statement of objections to the petition.

As per respondent - wife:

The respondent has denied entire allegations made in the petition as false. She has taken a specific contention that it was the petitioner who has driven her out of the matrimonial home along with her children. The petitioner



and his parents demanded dowry and ill-treated her and a complaint came to be lodged in that regard and sought to dismiss the petition.

5. The Trial Court upon completion of pleadings framed totally three points for consideration.

6. Earlier the Trial Court by its Judgment dated 18.03.2013 allowed the petition filed by husband dissolving the marriage solemnized between the petitioner and the respondent. Aggrieved by the said Judgment and decree of dissolution of marriage, the respondent wife challenged the same in MFA No.2402/2014 before this Court. The Co-ordinate bench of this Court by its order dated 01.07.2015 allowed the application and set-aside the Judgment and decree of divorce and remanded the matter to the Trial Court for fresh adjudication with liberty to both the parties to make an application seeking opportunity to lead further evidence/ cross examine the witnesses whose examination in chief evidence is already on record and the application, same shall be allowed and



the case shall be disposed of in accordance with law, after giving audience to both parties. The parties were directed to appear before the Trial Court on 20.07.2015.

7. Subsequent to remand, the Trial Court after holding the trial answered both the points for consideration raised in the petition for the decree of divorce, in the Negative and proceeded to dismiss the petition by the impugned Judgment and decree stated supra.

8. The petitioner before the Trial Court examined as PW.1 and two alleged panchayathdars namely Doddaramegowda and Jayaramu were examined as PWs.2 and 3, however no documents were produced and marked.

9. The petitioner - PW.1 in the examination in chief reiterated the averments made in the petition. In the cross-examination, he has admitted that there is a dowry harassment case filed by his wife - respondent against him. He has denied the suggestion that he has got created the partition deed in collusion with his parents to deprive



his children of their legitimate rights. He further admits that the respondent has filed a partition suit in respect of shares of their children and the suit comes to be decreed granting share to the children in O.S.No.35/2009 (Old No.160/2005) declaring that the plaintiff Nos.2 and 3 (that is the children) are entitled for 2/6th share in all the suit schedule properties by metes and bounds.

10. So far as panchayathdars are concerned, as per the evidence of PW.1, he has deposed that in the year 2003-05 he has convened two panchayats. He further stated that prior to the panchayaths, he has issued notice to the respondent. In the cross-examination he has admitted that both the children are studying in seventh and tenth standard respectively and are residing along with the respondent and they are residing in one house belonging to the petitioner. However, in the cross-examination, to the question the PW.1 has admitted that he has no documents to prove the immoral conduct of the respondent - wife.



11. So far as PWs.2 and 3 are concerned, they have deposed regarding the panchayaths in their examination in chief and stated that the respondent is reluctant to join the petitioner despite several advise. In the cross-examination PW.2 has admitted that he is not aware of the reason for the petitioner and respondent living apart. Further he has pleaded his ignorance with respect to the dispute between the parties. In the cross-examination, PW.2 has admitted that the respondent has not stated that she does not want her husband and she is not ready to lead marital life with the husband.

12. The PW.2 Jayaramu in his cross-examination has pleaded his ignorance regarding the dispute between the parties and admitted that nothing in the panchyath reduced in writing.

13. The respondent - wife was examined as RW1. In the examination in chief she has reiterated the averments stated in the statement of objections to the petition. In the cross-examination, she has denied the



suggestion that she used to visit her parental home frequently/ repeatedly and not returning back to her matrimonial home for months. Further she has denied the suggestion that she has not respected the advise given by the elders in the panchayath. Further, she has denied the suggestion that she has not agreed to lead marital life with the petitioner if he resides separately. This apart nothing worthwhile elicited in the further cross-examination of RW1.

14. The Trial Court upon considering the material placed before it, dismissed the petition holding that the petitioner-husband has not proved the ground of cruelty holding that every matrimonial conduct which may cause annoyance to other, may not amount to cruelty and mere trivial irritations, quarrels between spouse's which happen in day-to-day married life, not amount to cruelty. The Trial Court further observed that with regard to fidelity of the wife, there is absolutely no evidence by the husband-petitioner. Thus, the Trial Court has observed that the false allegations against the wife strongly support the case



of the respondent. Having held so, the Trial Court proceeded to dismiss the petition that the husband failed to substantiate and prove the contentions taken in the petition. It is this Judgment and Decree passed by the Trial Court is called in question in this appeal by the husband-appellant.

15. Sri.Raju.C.N., learned counsel for the appellant reiterating the averments made in the petition submits that the wife residing apart for more than two years and this amounts to desertion. The marriage was solemnized in 2001 and within two years, the petitioner and respondent separated and there is no co-habitation since then, it's almost 15-16 years as of now, the parties are living apart, as such the marriage has been irrevocably broken down between the parties and as such submits that there is no possibility of reuniting the marital tie between them. Except the ground of desertion, learned counsel has not submitted on any other grounds. His repeated argument is desertion and living apart for considerable years stated supra.



16. In contrast, Sri.K.R.Lingaraju., learned counsel for the respondent submits his arguments supporting the Judgment and Decree passed by the Trial Court and sought to dismiss the appeal as the petitioner-husband failed to prove the grounds on which the petition was filed seeking dissolution of marriage, now restricting only on the ground of desertion placing reliance on explanation provided to Section 13(1)(ib) of the Hindu Marriage Act.

17. It is trite, that mere living separately for considerable years never amounts to desertion in the absence of animus to that effect, attributable on the partly spouse leaving apart. The petitioner-husband approached the Court seeking divorce on the grounds of cruelty as well as desertion. In the cross-examination, he has admitted that he has no proof with respect to immoral life by the wife. Absolutely, there is no documentary evidence placed on record to substantiate the claim of the petitioner-husband., despite the matter has been once remanded to the Trial Court, except the self-serving statement and the oral evidence of PWs.2 and 3, which has been destroyed in



the cross-examination. Nothing has been placed by the petitioner-husband to prove the contentions urged for seeking divorce on the grounds of cruelty as well as desertion. Only argument advanced before us now in this appeal by the learned counsel for the petitioner-husband is they are living apart since more than two years.

18. As rightly contended by learned counsel for the respondent, desertion as contained in explanation to Section 13(1)(ib) means, 'the desertion of petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.' A perusal of pleadings as well as oral evidence led by the petitioner-husband along with other two witnesses falls short to the explanation offered to Section 13(1)(ib) of the Act. So far as cruelty ground is concerned, there is no argument advanced by learned counsel for the appellant, which implies that the husband has waived the ground. Be



that as it may, the appellant has failed to prove the ingredients of cruelty before the Trial Court with cogent substantiate evidence.

19. As could be seen from the Judgment and the evidence, in view of admissions by the petitioner-husband regarding the conduct of respondent-wife which in our opinion perhaps the reason for the wife living apart from the petitioner along with her children.

20. The institution of marriage is a sacramental tie which cannot be set at naught on mere asking by one of the spouse without proving the ingredients contained in the provisions under Section 13 of the Hindu Marriage Act, 1955 under which the petition is moved for divorce. In the absence of any substantial material, we find no infirmities in the Judgment and decree passed by the Trial Court which may warrant interference. The Trial Court having considered the entire material placed before it, dismissed the petition on the failure of the petitioner-husband to prove the ingredients on both the grounds of cruelty as



well as desertion for dissolution of marriage with valid reasons.

21. For the above reasons, the appeal sans merits and resultantly is ***dismissed***.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN
List No.: 1 Sl No.: 9