



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO.8285 OF 2018 (MC)

BETWEEN:

B.H.MALLESHWARA
S/O LATE B HAMPANNA
AGED ABOUT 49 YEARS
R/AT GOWRI HAMPANNA NIVASA
LAKSHMIPATHI LAYOUT
SHANTHI NAGAR, PAVAGADA TOWN
TUMKUR DISTRICT - 561 202

...APPELLANT

(BY SRI GANGADHARAPPA A.V, ADVOCATE)

AND:

SMT. G.T SHAILAJA
W/O B.H MALLESHWARA
AGED ABOUT 42 YEARS
PRESENTLY RESIDING
BEHIND VASAVI MAHAL
PARASHURAMPURA
CHALLAKERE TALUK
CHITRADURGA DISTRICT - 577 538

...RESPONDENT

(BY SRI MUSTAQ AHMED, ADVOCATE [ABSENT])

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28(1) OF THE HINDU MARRIAGE ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 26.07.2018 PASSED IN M.C.NO.113/2016, ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., PAVAGADA, ALLOWING THE PETITION FILED U/SEC.13 (1) (ia) OF HINDU MARRIAGE ACT, 1955.

Digitally
signed by
KAVYAG
Location:
High Court
of Karnataka



THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard the learned Counsel for the appellant. Though the name of the Counsel for the respondent is printed in the cause-list, there is no representation.

2. This appeal has been filed to set aside the judgment and decree dated 26.07.2018 passed by the Court of the Senior Civil Judge and JMFC at Pavagada in M.C.No.113/2016 and to dismiss the aforesaid matrimonial case.

3. The appellant/husband was the respondent in the aforesaid matrimonial case, which was filed by the wife under Section 13(1)(ia) of Hindu Marriage Act, 1955 seeking a decree of divorce. The parties are referred to as per their rankings before the trial Court for the sake of convenience.

4. The petitioner's case is that the marriage took place between the parties on 03.05.1999 at Vasavi Mahal of



Parashuramapur Village, Challakere Taluk, as per Hindu customs and rituals. After the marriage, the parties lived in the respondent's mother's house at Molakalmuru Town for a period of 15 days. Thereafter, the respondent took the petitioner to Bengaluru with an intention to live at Bengaluru. Accordingly, they lived at Boodigere Cross, Bengaluru by taking a rented house. The respondent has educational qualification of B.A., and B.Ed., and he got a teacher post at private high school at Bengaluru and out of the income derived from the job the parties lived happily for a period of six years. During the said period, two sons born from the wedlock, the name of one son is B.M Havighna, who was born in the year 2001 and second son by the name of B.M. Gowrava born in the year 2003.

5. The respondent left the job due to insufficient income and shifted his family to Pavagada Town in the year 2006. For purpose of maintenance of family, the respondent suggested the petitioner to take monetary help from her father and accordingly the petitioner received a sum of Rs.1,00,000/- from her father to tide over the financial difficulty. After receiving the said amount, the petitioner paid the same to the



respondent to utilize the amount towards family expenditures and maintenance.

6. After few months of stay, the respondent got a temporary teacher post in Ramalingeshwara Private High School of Chikkahalli Village.

7. The father of the petitioner being a retired teacher and out of love and affection for the petitioner, he helped the petitioner in year 2008 for purchasing two sites in the area of Lakshmipathi layout in Pavagada Town. Further, in the year 2009 and 2010, the petitioner constructed RCC house upon the two site properties. The father of the petitioner had provided sufficient monetary help for that purpose. The gruha pravesh was done on 04.06.2010. All the documents of the house at Pavagada stand in the name of petitioner till date. Petitioner along with the husband and children were residing in the said house.

8. Their elder son was stated to be studying in the first year PUC in Government P.U. College at Parashurampur and their second son was also studying in 9th standard in Government Adarsh School at Pavagada.



9. It is alleged that since the date of marriage, the respondent had no sufficient source of income to properly maintain his family. He had asked the petitioner to get loan to an extent of Rs.2,00,000/- from the Bank on the security of the petitioner's Pavagada house and site property. Accordingly, she obtained the loan of Rs.2,00,000/- from the Pavagada Kalpatharu Grameena Bank. Thereafter, the loan amount was paid by the petitioner to the respondent to utilize the loan amount to clear his financial problems and difficulties. However, the respondent had neglected, failed and not cared to discharge the loan amount with interest in the said Bank. It was the petitioner, by taking monetary help from her father and brothers, who discharged and cleared the loan amount.

10. Allegation was made that the respondent is, since more than two years, addicted to vices like playing cards, he is wasting his income derived out of his job, without caring about the family welfare and maintenance. Further, he demanded that the petitioner transfer her house and site property of Pavagada in favour of the respondent by executing Gift Deed, which she refused. The respondent started to neglect and ill-treat the petitioner and her minor sons by abusing them and



picking up unnecessary quarrels very often with the petitioner and he also assaulted the petitioner several times.

11. On the demand and threat made by the respondent, the petitioner received a sum of Rs.70,000/- from her father and paid the same to the respondent, which he utilised for his personal vices and expenditures without caring for family welfare. The respondent used to demand the petitioner to bring money from her father, if she refused to do so, he used to threaten to kill her and her minor children. On 02.05.2016, the respondent demanded the petitioner to bring a sum Rs.50,000/- from her father or brothers, but she refused to do so. The respondent then assaulted the petitioner with his hands and legs which caused injury to her. He then drove the petitioner and the children from the Pavagada house of petitioner and shouted that he would kill them, if they entered the house without bringing money from her father.

12. The petitioner had to undergo treatment with the help of her father after coming to Parashurampura and then they went to Davanagere and she was admitted in the Davanagere hospital for taking medical treatment. She took treatment for one week as inpatient in the hospital. Since then,



she along with her children have been living in her father's house without any link with the respondent. The respondent neglected, ill-treated and deserted the petitioner and her children from 02.05.2016 without providing food, clothes and other basic necessities. A panchayath was convened by the petitioner with the help of her father and elders but the respondent refused to lead life with the petitioner and his children. It is stated that due to cruel and intolerable acts of respondent, the petitioner and her children are under apprehension of danger to their life from the respondent.

13. Therefore, the petitioner decided to seek a decree of divorce for which legal notice dated 15/16.09.2016 was issued by the petitioner through her advocate to the respondent calling on the respondent to file a joint petition for divorce before the Court on the ground of mutual consent. However, the respondent sent a reply notice through his counsel denying all facts.

14. Objection to the main petition was filed by the respondent. It was stated that the respondent shifted family from Bengaluru to Pavagada not on the ground of insufficient income but since he was selected for the post of Headmaster in



Ramalingeshwara Rural High School at Chikkahalli Village, Y.N. Hosakote Hobli, Pavagada Taluk. The institution is one of the Government aided institutions in Pavagada Taluk. It is stated that his brothers helped him leading the family life smoothly but it was denied that the respondent sought any help from his father-in-law for a sum of Rs.1,00,000/- to maintain his family. It is denied that in the year 2008, the petitioner had purchased two sites in Pavagada Town with monetary help from her father. It was also denied that she had constructed RCC house on the said two site properties with monetary help of her father. It is stated that it was a respondent who purchased the site properties in the name of the petitioner. He had taken a housing loan from the Bank and he acted as surety to the loan in a planned manner not to take any financial help from third parties but from his savings and earnings, the house was constructed in the site properties. He has also taken help of his brothers for that purpose but no help was taken from the petitioner's father. Blackmailing by the petitioner is alleged.

15. It is admitted that the respondent took housing loan from the Kaveri Grameena Bank by mortgaging the site properties to build house. It is stated that with the help of elder



brother of the respondent, the respondent constructed the house and raise the house loan on it.

16. It is stated that just because the property is in the name of the petitioner, she has taken advantage of the same and claiming rights on it forgetting the efforts of the respondent. Due to internal conflict within the management of the school, it was closed, where after, respondent became unemployed. It is stated that when the petitioner was living with the respondent, the brother of the respondent had given a sum of Rs.1,50,000/- towards expenses for higher education of respondent's sons, which was kept in the almirah without locking the same by the respondent. He later found a short fall of an amount of Rs.35,000/- out of that amount. When the petitioner was questioned, she revealed that she and her sons had taken away the amount. The petitioner also pledged her gold Mangalyasuthram and gold chain with a Muslim fruit vendor by name of Dadapeer of Roppa village. This came to be known only after four months of the incident. A complaint was lodged by the respondent in the local police station who found that foul play was done by the petitioner alone. The police personnel advised her not to do so such act in the future. It is



stated that the gold chain was pledged by the said Dadapeer with Manappuram gold company and for want of payments the said company auctioned the gold. The said Dadapeer owes a sum of Rs.75,000/- to the respondent. It is alleged that the petitioner left the company of the respondent so that her illegal deeds could not be exposed.

17. The petitioner was examined as PW.1 and her father-Thippeswamy was examined as PW.2. The documents got marked on behalf of the petitioner were Exs.P1 to P9, where after she closed her evidence.

18. In order to prove the defence, the respondent examined himself as RW.1 but no documents were produced and marked and no other witnesses were examined.

19. The Court framed the following points for its consideration:

- "1. Whether the petitioner proves that the respondent made cruelty against the petitioner and hence, the petitioner has been living separately and she is unable to live together?*
- 2. Whether the petitioner is entitled for divorce?*
- 3. What order?"*



20. Those points were answered as follows:

"Point No.1 : in the Affirmative.

Point No.2 : in the Affirmative.

Point No.3 : As per the final order for the following"

21. After going through the record and evidence, the Trial Court held that it was undisputed that the properties in Pavagada town were purchased in the name of the petitioner and houses constructed therein. It is also undisputed that since 2016, the petitioner and respondent are living separately and their sons were residing with the petitioner at her parents house at Parashurampur. The allegation of the petitioner is that the respondent was addicted to bad habits, when the petitioner questioned the same, there was misunderstanding between them and the respondent assaulted the petitioner. Hence the petitioner went to her parents' house.

22. It was held that no man can maintain a family with Rs.1,000/- income per month. His testimony was noted that his qualification was B.A., B.Ed., but his evidence reflected that he did not have responsibility towards his children. He does not



even have information about his children even after production of school admission copy and study certificate.

23. The testimony of the petitioner that from the money paid by her father, who is the retired teacher, the sites were purchased in her name and same was corroborated in the examination in chief of PW.2, who was the petitioner's father. The suggestion is that the respondent had paid Rs.2,00,000/- for construction of the house was denied by PW.1 in her cross-examination. It was also denied that the loan amount was repaid by him. It was found that the respondent had not produced any bank statement to show that at the relevant point of time he had drawn that much of the amount and he had discharged the debt. The father of the petitioner/PW.2 had categorically deposed that out of his retirement amount he had purchased the sites in name of the petitioner, who is his only daughter.

24. The provision of Section 14 of the Hindu Succession Act, 1956 was also noted by the trial Court, that if any property is purchased in the name of a female Hindu, it shall become her absolute property. It was held that the respondent claiming that he had contributed amount for purchase of the site and



construction of the site is nothing but harassment to the petitioner.

25. With regard to the aspect of the respondent lodging a police complaint against the petitioner in respect of the alleged misuse of Rs.35,000/- from the sum of Rs.1,50,000/- kept by the respondent in the locker in his house, as well as the allegation that the petitioner had given her mangalya sara to one Dadapeer who pledged it in Manapuram gold by obtaining loan. It was noted that the respondent had not produced any documents. It was held that the husband being a responsible person ought to protect the dignity of wife and children but he himself lodged a complaint by suspecting the conduct of his wife and children which is nothing but cruelty towards spouse and children. It was noted that the respondent had not filed any petition for restitution of conjugal rights. It was also noted that because of the lack of earning by the respondent, the petitioner had not filed application claiming maintenance in the petition.

26. Accordingly, it was found to be proved that the ingredients of Section 13 of the Hindu Marriage Act, 1955 were



established. Accordingly the petition under Section 13(1)(ia) of the Hindu Marriage Act was allowed and the marriage between them held on 03.05.1999 was dissolved.

27. Learned Counsel for the appellant/husband has stated that there was no act of cruelty committed by the respondent against the petitioner. There is no pleading that it was impossible to live with the husband. It is further stated that no such finding of cruelty has been returned by the trial Court. Learned Counsel for the appellant has referred to the allegation of mangalya sara being given to a fruit vendor who in turn pledged it to Manapuram gold to contend that bickering took place within the family because of the said transfer of the mangalya sara to the said Dadapeer. He states that the entire fault is of the wife. In support of his contention, the learned Counsel for the appellant has relied upon a judgment of the Supreme Court in **Savitri Pandey v. Prem Chandra Pandey**¹ to contend that the allegations and the evidence on record demonstrate that the disputes between the parties were only the ordinary wear and tear of married life which did not reflect any cruelty.

¹ AIR 2002 SC 591 / (2002)2 SCC 73



28. We have perused the records. In the chief examination by way of affidavit of the petitioner who appeared as PW.1, the averments made in the petition under Section 13(1)(ia) of Hindu Marriage Act was sought to be proved by reiterating the contents therein. She appeared as a witness in Court and got marked Exs.P1 to P9. The school records of her children were marked as Exs.P1 and P2. The study certificates were marked as Exs.P3 and P4. The records relating to the treatment taken in the hospital were marked as Ex.P5. The legal notice dated 16.09.2016 that PW.1 got issued through her advocate was marked as Ex.P6. The reply notice received from the respondent is marked as Ex.P9. In her cross examination she stated that she and her three brothers are the four children of her father who was working as a teacher. He retired in 2005. Her two elder brothers are running flour mills and her third brother is supplying material to functions and also residing at Parashurampura. Her father has properties at Parashurampura. Her two children were studying at Parashurampura. From the pension that is received from her father, they are making their living. Whenever there was an altercation, she used to go to her parents' house. Her husband was not properly looking after



her from his income. She denied the suggestion that her husband was looking after her well from his income. In her further cross examination on 09.10.2017, PW.1 stated that her brothers were getting sufficient income to maintain their families and they had purchased site and house from their income. She had received Rs.1,00,000/- from her father in July 2006 and Rs.70,000/- she gave to take the house on lease. The rest of the amount was spent towards education of the children. That amount was not given for the personal use of the respondent. She testified as to the rate at which the two sites were purchased in October 2008 with the money being paid by her father. House was constructed after five or six months by spending about Rs.60,000/- for construction. It is stated that Rs.6,00,000/- was paid by her father and brothers. She denied the suggestion that the respondent purchased the site in her name as she is his wife from his money and money given by his brothers. She denied that the respondent and his two brothers gave the money for construction. It was also denied that the respondent raised loan of Rs.2,00,000/- from the Grameena bank for construction of the house. Repayment of the loan with interest by the respondent was also denied. She also denied



that the respondent gave money for construction from consideration received by selling the house at Molakalmooru. It was also denied that the respondent arranged for construction of the house by selling the jewels of his mother.

29. PW.1 was recalled on 09.11.2017 and was further cross-examined. She denied that her father and her brothers had not given any financial assistance. It was also denied that the respondent had saved money when he was working at Bangalore upto 2016 and had constructed the house from his savings. Any physical ailments of the respondent were denied. She denied the suggestion that the respondent worked without salary for four years in Pavagada Taluk. She denied knowledge of the respondent becoming unemployed on account of closure of the school by reason of internal dispute amongst the Managing Committee of the school. She denied that the respondent was carrying on business of fruit selling along with Dadapeer. Giving of the golden mangalya chain to Dadapeer was also denied by her. She never admitted of giving mangalya chain before any panchayat held in her house. It was denied that the respondent had enquired from her about the less amount of Rs.35,000/- from the cash of Rs.1,50,000/-. Any



utilisation of the said amount of Rs.35,000/- by her was denied. It also denied that the respondent did not physically assault her and her children at any time.

30. PW.2 the father of the petitioner also deposed. In his examination in chief, he supported the case of the petitioner. In the cross examination there is nothing that would have the effect of any support to the respondent. As a matter of fact to a suggestion that the respondent is ready to live with the petitioner, and children, PW.2 stated that she is living there. He further stated that the suggestion that false allegations being made by them against the respondent as not correct.

31. Ex.P5 is a reference card issued by Shilpa Diagnostic Private Limited in which the name of the petitioner is mentioned as the patient. The date of admission is 05.05.2016 and the date of discharge is 11.05.2016. The doctor in charge is an Orthopaedic surgeon. In the past history it is stated that there is pain and tenderness over the Lumbo sacral spine. The flexion of the spine area is painful. It is pertinent to mention here that in the examination-in-chief of PW.1, she has proved



that she was assaulted by the respondent and even in the cross examination, she denied the suggestion that the respondent had not physically assaulted her and her children. No question in the cross examination was put to the petitioner in respect of the aforesaid medical card of Shilpa Diagnostic.

32. The respondent also filed his affidavit in evidence where he sought to prove the contents of the objections. He denied having any bad habits and states that he has forgiven the applicant for her unforgivable mistake and upheld the values of social life. It is stated that the petition has been filed with malicious intention of causing mental, physical and emotional pain to a person like him. In his cross examination, he denied the suggestion that since he had bad habits he was removed from service. He also denied the suggestion that the petitioner had advised him to give up bad habits and therefore he had physically assaulted her. He denied the suggestion that he had not given proper education to his children. However he stated in his cross examination that he had no information as to where his children were living then and what they were studying. This is testified when the RW.1 was recalled and sworn on 05.04.2018, that is to say after nearly a period of one



and half years from the date of filing of the matrimonial case aforesaid. With regard to the mangalya sara, he stated in his cross examination that there was no written agreement about that. He denied the suggestion that after having been injured, she got treatment as inpatient in Davanagere hospital. He volunteered that because she was having pain in the legs since the beginning, she went to the hospital for treatment. He denied that he was deposing falsely stating that he had returned Rs.50,000/- to his brother-in-law. He stated that the BPL card (Below Poverty Line Card) was first in his name and then it was changed to the petitioner's name. He denied that the petitioner endured the violence and lived with him till 2006. He also denied that though he had the capacity to learn, he used to stay at home.

33. Therefore the aforesaid testimonies as well as the documents on record reflect that the respondent has been unconcerned towards the welfare of his children and towards his wife. Despite having a degree of graduation in Arts as well as in Education, he chose to remain unemployed for a substantial period of time or to engage in employment only to get bigger sums of money. No efforts were made by him to



earn extra money given his degrees and educational qualifications to earn money by tuition or otherwise. His repeated assault on his wife is proved by PW.1 as well as PW.2. The fact that the property in Pavagada Town was purchased by the petitioner is rendered probable and the contention of the respondent that he had arranged for the finances of the same, is rendered improbable due to the fact that the respondent failed to produce any documents to demonstrate that he had availed of the financial facility from the Grameena Bank. Such conduct and lack of concern for the welfare of the wife and children, we have no doubts in our mind that, what would constitute cruelty as is referred to in paragraph 6 of the judgment in the case of **Savitri Pandey** (supra) cited by the learned Counsel for the appellant. The relevant part is quoted below.

“6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(ia) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as



to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party.
....."

(Emphasis supplied)

34. In view of the above, we find that after the solemnisation of the marriage, the petitioner has been treated with cruelty by the respondent. In this view of the matter, we uphold the judgment and decree of the trial Court and dismiss the appeal.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE