

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

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C.M.A.No.3422 OF 2004
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JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This appeal, under Section 28 of the Hindu Marriage Act, 1955, is filed aggrieved by the order and decree, dated 21.07.2004, passed in M.O.P.No.8 of 2001 by the learned Senior Civil Judge, Sompeta, by which, the petition filed by the appellant – husband seeking dissolution of marriage performed between himself and the respondent, was dismissed.

It is the case of the appellant that his marriage with the respondent took place on 07.03.1992 at Palasa. Subsequently, respondent has joined his company and they lived happily at Kasibugga for a short period. Out of their wedlock, a daughter was born to them. Thereafter, at the request of respondent, appellant came out from the joint family and has set up a separate house at Kasibugga to lead conjugal life with the respondent. In spite of the same, respondent started quarrelling with him repeatedly. It is specifically alleged that five years earlier to the filing of the O.P., respondent quarrelled with him and has left his company, and in spite of his best efforts, she did not join.

It is also alleged that the respondent is staying at Itchapuram and she has agreed to dissolve the marriage as per customary divorce and to that effect, agreement, dated 23.05.2000, was executed. Hence, he has filed the present O.P. seeking dissolution of marriage and to grant decree of divorce.

Counter affidavit is filed on behalf of the respondent denying the various allegations made by the appellant. It is the case of the respondent that there is no such customary divorce in their caste and Ex.A5 is a fabricated document. It is her further case that the appellant with a view to marry one Rajyalaxmi has filed the present petition by making false allegations.

Before the trial Court, on behalf of the appellant, PWs.1 to 3 were examined and Exs.A1 to A5 were marked. On behalf of the respondent, RWs.1 to 6 were examined and Exs.B1 to B12 were marked.

The trial Court, on appreciation of the oral and documentary evidence on record, by recording a finding that the appellant has not made out the case for divorce on the ground of desertion, dismissed the O.P.. Aggrieved by the same, the present appeal is filed by the husband.

It is submitted by the learned counsel for appellant

that there was customary divorce between the parties and the same was reduced into writing on 23.05.2000, which was marked as Ex.A5, and further, in view of the settlement arrived at between the parties in Crl.R.C.No.730 of 2011 filed before this Court, the appellant is entitled to the decree of divorce.

On the other hand, learned counsel for the respondent, while admitting that there was a compromise in Crl.R.C.No.730 of 2011, submits that assurance was given by the appellant for payment of further amount and in that view of the matter, appellant is not entitled to the decree of divorce.

Having heard the learned counsel for parties, we have perused the material on record.

During the course of hearing, it is brought to our notice that the respondent has filed a Maintenance Case in M.C.No.6 of 2001 on the file of learned Judicial Magistrate of First Class, Itchapuram, and the same was allowed in part. As against the same, appellant preferred Crl.R.P.No.31 of 2010 before the learned Additional District Judge, Srikakulam, and the same was allowed. Aggrieved by the same, respondent filed Crl.R.C.No.730 of 2011 before this Court and the same was disposed of in terms of the compromise arrived at between the parties,

which include the subject matter of present O.P. also.

From the evidence on record, it is clear that five years earlier to filing of O.P. itself, respondent left the company of the appellant and is staying at Itchapuram, place of residence of her parents. Further, from a perusal of the affidavit filed by the respondent in CrI.R.C.No.730 of 2011, wherein she has also referred to M.O.P.No.8 of 2011 and pendency of this appeal, it is clear that the appellant has already transferred the site at Kasibugga in the name of the respondent and he has also paid Rs.35,000/- by way of Demand Draft, dated 09.08.2012, towards full and final settlement to the respondent and her daughter. Further, the respondent has not disputed the signature on Ex.A5, but she has merely stated that the same was obtained on white paper and Ex.A5 was a fabricated one.

As it is admitted by the respondent that pursuant to the settlement, site was transferred and Rs.35,000/- was paid by the appellant and though it is true that there is no separate compromise petition filed in the present appeal, as the parties have settled the matter long back by way of full and final settlement and compromise terms are arrived at between them in CrI.R.C.No.730 of 2011, we are of the view that the appellant is entitled to the decree of divorce

on the ground of desertion.

For the aforesaid reasons, the appeal is allowed and the impugned order, dated 21.07.2004, is set aside. Consequently, M.O.P.No.8 of 2001 on the file of learned Senior Civil Judge, Sompeta, stands allowed. Marriage between the appellant and the respondent stands dissolved, and accordingly, we order for decree of divorce.

Miscellaneous Petitions, if any, pending shall stand closed. No costs.

R.SUBHASH

REDDY, J

Dr. B. SIVA SANKARA

RAO, J

February 19, 2015

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