

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

AND

HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

F.C.A.No.329 of 2009

JUDGMENT (Per Hon'ble Dr.Justice B.Siva Sankara Rao)

The appellant-1st respondent, among three respondents(the Branch Manager, the Aryapuram Co-operative Urban Bank Limited and the Deputy Registrar of Co-operative Societies, Rajahmundry who were added as per orders, dated 08.06.2008 in I.A.No.319 of 2008), of the O.P.No.177 of 2008(initially numbered as O.S.No.170 of 2008 on the file of the learned Principal Senior Civil Judge, and later transferred to the Family Court), filed by the two petitioners under Section 26, Order 7 Rules 1 and 2 of CPC for maintenance and marriage expenses, aggrieved by the decree dated 05.10.2009, granting maintenance arrears from January, 2007 to February, 2008 at the rate of Rs.5,000/- per month for Rs.65,000/-; future maintenance of Rs.5,000/- per month from the date of petition and of the expenses for the marriage of 2nd petitioner at Rs.1,50,000/- and interest thereon at 24% p.a. from the date of petition till date of decree and later at 6%p.a. with a charge created over the plaint schedule property and with costs of the claim, preferred the present appeal u/sec.19 of the Family Courts Act, 1984.

2. The case of the petitioners before the trial Court was that after the marriage of the 1st petitioner and the 1st respondent according to Hindu rites and customs at Madiki village that was consummated and during their wedlock they were blessed with the 2nd petitioner and another male child by name Veeraswamy lived happily for about 14 years; but for the last 7 years, from he developed illicit intimacy with another woman and thereby harassing and beating the 1st petitioner-wife, that he purchased plaint schedule property with the ancestral nucleus, that he, being addicted to bad vices, used to come to house late nights in intoxication state and subjected her to cruelty, that for the last 4 years, he stopped come to house and provide maintenance, that the 1st petitioner complained the same to the village elders viz, Gaddam Subbarao, Vullumilli Savitri, Vullumilla Kotaiah etc., but futile, that the he is an electrician and earning income of Rs.20,000/- per month from electrical rewinding

shop and he also engages employees, that the petitioners are now residing in the plaint schedule property, that the petitioners have no means, that since the respondent neglected the petitioners, they are entitled to seek maintenance under Section 18 and 20 of Hindu Adoption and Maintenance Act, that the 2nd petitioner since attained the age of marriage, he is under an obligation to cause perform marriage to the 2nd petitioner, that the respondent, taking advantage of the situation and helplessness of the petitioners, have been trying to raise loans with a fraudulent intention to cause wrongful loss to the petitioners, who got 1st charge over the plaint schedule property towards their maintenance and the marriage expenses of the 2nd petitioner, for any loans raised by him are subjected to rights of the petitioners.

3.The 1st respondent counter contest is while denying the allegations of the petitioners further that the 1st petitioner is not his legally wedded wife, that he married one Lakshmi and due to her ill-health, the 1st petitioner was brought by Gundupogula Savitramma as a cook to attend his household work, that the 1st petitioner lived in his house and thereupon, they were blessed with the female(2nd petitioner) and a male child by name Veeraswamy, that in the month of October, 2001, he noticed the 1st petitioner having illicit contact with one Guthula Ramesh who used to work in the rewinding shop of the 1st respondent not to mention with others, that the 1st petitioner used to serve him food mixing sleeping pills and therefrom he lodged complaints before I town P.S. Rajahmundry and S.H.O., Bommuru, that a case was also registered against the 1st petitioner, that the 1st petitioner forcibly took away 2nd petitioner and his son from his custody and threatened him with dire consequences, that he filed a petition in L.A.C.No.8/2002 before the District Legal Services Authority, Rajahmundry seeking custody of children in which a notice was sent to the 1st petitioner, but she failed appear before the authority, that his wife Lakshmi died in the month of February, 2008, that since the 1st petitioner is claiming as his legally wedded wife, he filed a petition seeking a declaration of his status and relationship with the 1st petitioner and for a consequential relief restraining the 1st petitioner from claiming herself as the legally wedded wife. Through additional counter on 12.9.2008 he further submits that the 1st petitioner married one Kothapalli Venkanna son of Tata Rao resident of Pottilanka village and the marriage was solemnized in Tirupati in the year 1983 and

the elders in the village informed the said fact to him and the same is evidenced from the certificate, dated 10.09.2008 issued by Village Revenue Officer, Pottilanka village, Kadiam Mandal. Thus, the 1st petitioner not remained chaste, hence she is not entitled to claim maintenance, that the 1st petitioner is still wife of Kothapalli Venkanna and the marriage is still subsisting, that as regards 2nd petitioner, she is a major aged about 23 years and so is not entitled to claim maintenance and marriage expenses and the claim is liable to be dismissed.

4. The 2nd respondent filed counter which was adopted by the 3rd respondent while denying the material allegations in the petition by further saying these respondents do not aware of that the petitioners filed main O.P. for maintenance and also sought for charge over the mortgage property any of their disputes inter se, that the 1st respondent has deposited his title deeds on 16.11.2000 and availed loan by creating equitable mortgage in favour of this respondent/bank and after availing loan by the 1st respondent he had become defaulter and the account was categorized as N.P.A. and this respondent bank taken up steps for recovery of the mortgage debt due, that the petitioners have no preferential right over the schedule mortgaged property, that there is no collusion with the 1st respondent and bringing the property for sale, that the only remedy for the petitioners is to seek relief through the Deputy Registrar of Co-operative Societies if they got right over the schedule property and the civil Court has no jurisdiction to entertain the present application for seeking relief against them as per the Co-operative Societies Act and the petition is liable to be dismissed.

5. It is from the above pleadings and after recording the evidence of P.Ws.1 to 3 and R.Ws.1 to 12 with reference to Exs.A.1 and B.1 to B.17 and after hearing both sides as the learned Judge, Family Court, allowed the petition claim with costs as stated supra.

6. The contentions in the grounds of appeal as well as oral submissions of counsel that the order of the trial Court is contrary to law, weight of evidence and probabilities of the case, that the trial Court failed to appreciate the oral and documentary evidence on his side and with a erroneous view of law allowed the petition, without considering his aspect of the 1st petitioner is not his wife as she is living with her spouse by name Venkanna as per Ex.B.13 issued by P.W.12, that the

trial Court ought to have seen that the 1st respondent is not entitled for any maintenance under Hindu Adoption and Maintenance Act, as the appellant is having a married wife by name Lakshmi, that the trial Court failed to observe that the relationship between the 1st respondent and the 1st petitioner is only illicit relationship and the children through her are illegitimate children, that the trial Court ought to have seen that the petitioner-wife developed illicit relationship with one G.Ramesh and the same can be evidenced as per Ex.B.1, that the trial Court ought to have seen that the appellant's wife died on 06.01.2009 and the same can be evidenced as per Exs.B.14 and 15, that the 2nd petitioner-daughter of the parties being major, voluntarily left the 1st respondent and in her evidence stated that she would not join the 1st respondent and her brother who is living with him, hence to set aside the order of the trial Court by allowing the appeal.

7. Whereas, it is the contention of the learned counsel for the respondents(petitioners 1 and 2) that for this Court while sitting in appeal against the said reasoned order, the appellant has no legs to stand to impugn much less for the Court to sit against for any interference and thereby sought for dismissal of the appeal.

8. Heard and perused the material on record. The parties herein are referred to as they were arrayed before the trial Court.

9. Now the points that arise for consideration are that:

1. Whether the 1st petitioner–wife of the 1st respondent not entitled to maintenance and if so, the impugned order of the trial Court in this regard is unsustainable in awarding maintenance to her so also to the daughter admittedly born to him along with major son not a party herein and with what observations?

2. To what relief?

Point No.1:

10. The 1st respondent is not disputing the fact that the 2nd petitioner is first issue and Veeraswamy is second issue born to him through the 1st petitioner and they are living together as man and wife but for saying she got a husband by name Kothapalli Venkanna, s/o Tata Rao of Pottilanka village and he got a wife by name Lakshmi and there was no marriage between them much less legal marriage. Undisputedly,

they are living together for a long time of more than 20 years up to the date of filing of the maintenance claim.

11. So far as the claim of marriage expenses to the 2nd petitioner from Paternity not in dispute by him there is no difficulty as he is bound to provide even to a daughter born through him otherwise through illegal marriage if at all, for not his case that the two children or any of them are the progeny of so called Venkanna. His relying to Ex.B.14 death certificate of Pinni Laxmi dated 06.01.2009 no way improves his case for even she was shown as wife in that death certificate for otherwise he has to establish that he married said Laxmi prior to the living together of the 1st petitioner and the 1st respondent. For saying that the 1st petitioner married one Kothapalli Venkanna, s/o Tata Rao of Pottilanka village, in the year 1983 in Tirupati, he did not produce any proof of such marriage. The Ex.A.1 order copy in O.P.No.2 of 2003 wherein Ex.B.16 is the counter, the dismissal of the maintenance claim as indigent person from the said contest no way material to the case, as pursuant to the direction, the Court fees was paid undisputedly in numbering the claim as regular suit O.S.No.170 of 2008 that was, in turn, transferred and renumbered as present O.P.No.177 of 2008. As can be seen from the record as an undisputed fact. She denied in her cross-examination as P.W.1 the suggestion put to her by the 1st respondent that she was brought as a cook in the house of the 1st respondent by one Gundupogula Savitamma among R.Ws.1 to 12 he cause examined including himself as R.W.1. The plaint schedule which is the house property where the petitioners are residing belongs to the 1st respondent is not in dispute so also the house constructed by obtaining loan from the 2nd respondent bank. His claim is that the 1st petitioner got illicit contacts with one Guttala Ramesh who was a worker under him among several workers. Undisputedly, he did not maintain any claim for declaration of no marital status between them or nullity of any marriage, much less if marital relation unable to dispute for dissolution, by taking adultery as a ground nor issued any notice to her complaining said conduct, to give any credence to one of the witnesses among R.Ws. 1 to 12 including of him of alleged any stray incident of loose life that cannot be called even taken for arguments sake that evidence with any credibility, to brand her that she is leading adulterous life. The so called letter said to have been executed by G.Ramesh by referring the 1st petitioner as Padmavathy cannot be given credence as her name is undisputedly Arjamma and

she also categorically stated so that she was never called as Padmavathy and the so called persons Kudipudi Shyamala Rao and Khandavalli Veera Raghavulu before whom the alleged letter said to have been executed. Even he cause examined said Shyamala Rao as R.W.5 for the alleged loose life in addition to what is referred supra of the letter which has not seen light of the day and it is beyond the comprehension to believe that such a letter was executed to give credence even filed for nothing before the Court to say there is no credibility that to be attached to R.W.5 but for to say as held by the trial Court, the introduced witness under disposal of the 1st respondent. In the cross-examination she stated that the marriage of 1st respondent and 1st petitioner was performed at Madiki village as per the Muhurthum fixed under Hindu law at about 7.00P.M. at her parents' place and she denied the suggestion contra of no any marital ceremony. It is not even his case that the 1st petitioner not referred in the electoral rolls and in his civil supplies card as wife, apart from her voter's identity, there is no suggestion in that time, much less those documents which are material he has not filed even of their in living together for the past 22 to 23 years. Even to say that the 1st petitioner married Venkanna in 1983 in Tirupati, there is no marriage certificate he filed; much less any other record like voters list, civil supplies card, voters identity etc., to say so called marital tie continues with no divorce including customary as he could not file even a scrap of paper but for so called panchayat certificate with no probative value and no even records of panchayat summoned to establish any basis for the same. Thus, suffice to say including from their long living together for she was not proved as married earlier to any person, even for arguments sake, he married another woman by name Laxmi covered by Ex.B.14 death certificate for nothing to show that marriage with Laxmi was prior to the marriage of him with the 1st petitioner, which he even not admitted, but for with claim as living together with no marriage. Even taken for arguments sake as shown with any credence to the oral testimony of himself and his witnesses for nothing to show he disclosed his earlier marriage to the 1st petitioner before allowing the 1st petitioner to join him and started leading life as wife and blessed with two children. He thus cannot impute her as his concubine. The long living together as man and wife gives a strong presumption of outcome of valid marriage with no worth material to rebut from what is discussed supra thus and the trial court is thus right in its conclusion, from the factual matrix, to hold that the 1st petitioner and 1st respondent are wife and husband and in their lawful wedlock they were

blessed with the 2nd petitioner(daughter) and son by name Veeraswamy (who admittedly stays with him) and thereby he is bound to pay maintenance to them and marriage expenses to the 2nd petitioner.

12. Now coming to the quantum of maintenance and marriage expenses, it is proved from the evidence on record that he is an electrician and several persons are working under him as per his say even to estimate his earnings and the trial Court therefrom arrived to the conclusion to award Rs.1,50,000/- towards the marriage expenses of the 2nd petitioner-daughter. It is in the course of hearing arguments submitted across the Bench that the daughter's marriage was performed few months back by mother-1st petitioner and not met by 1st respondent-father. Thus, that amount no way requires interference to reduce but for if at all from the interest awarded of 24% is exorbitant and usurious to reduce to 12%p.a. by upholding the post-decree interest at 6%.

13. Now coming to the quantum of maintenance awarded of Rs.5,000/- to the 1st petitioner as he is an electrician and the evidence shows his son is with him and he already ordered to be met the marriage expenses of the daughter and his aged mother also according to him dependant on him in the interest of justice to subserve it requires to reduce the quantum from Rs.5,000/- to Rs.4,000/-p.m. both for the arrears as well the future maintenance of the period fixed by the trial Court. So far as the property charge is concerned, it is also the submission by both the parties in the course of hearing the appeal across the Bench that, the charged property which is covered by prior mortgage in favour of the O.P. respondents 2 and 3-the Cooperative Bank was brought to sale for recovery of the amount due from the 1st respondent which loan borrowed for house construction therein and after adjustment of the loan, sale proceeds were lying in deposit appears deposited in Fixed Deposits. Thus order for keeping the amount in fixed deposit as a charge thereon the maintenance amounts that can be recovered including the marriage expenses supra under Section 39 of the Transfer of Property Act as the charge to be created is when subject to the prior mortgage under law pursuant to which when property is sold, the liability for maintenance claim runs with on the sale proceeds remain in deposit and no longer still on the sold property against the property in the hands of purchaser.

Accordingly, point No.1 is answered.

Point No.2:

14. In the result, the appeal is partly allowed upholding Rs.1,50,000/- towards the marriage expenses of the 2nd petitioner-daughter awarded by the trial Court, but reducing the rate of interest from 24% to 12%p.a. from the date of petition till the date of decree and thereafter at 6% p.a.till realization. Further, the monthly maintenance awarded by the trial Court of Rs.5,000/- is reduced to Rs.4,000/- p.m. for the arrears as well as the future maintenance. The balance sale proceeds of the plaint schedule property that are kept in Fixed Deposits after adjustment towards the Co-operative Bank secured mortgage loan serve as a charge for the maintenance amounts including the marriage expenses supra for recovery under Section 39 of the Transfer of Property Act, as the charge created is when subject to the prior mortgage under law pursuant to which when property is sold, the liability for maintenance claim runs with only on the sale proceeds remain in deposit and not on the property in the hands of purchaser. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE R.SUBHASH REDDY

Dr. JUSTICE B. SIVA SANKARA RAO

Date:22-04-2015

Vvr