

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No. 1098 of 2005

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JUDGMENT: (Per Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal is filed, under Section 28 of Hindu Marriage Act, 1955, by the petitioner in O.P.No.9 of 2005 on the file of the learned Senior Civil Judge, Kadiri against order and decree dated 31.08.2005. He filed the said O.P. for dissolution of marriage with the respondent which was solemnised on 26.09.1993. By the aforesaid order and decree, the trial Court, while dismissing the O.P, awarded a sum of Rs.600/- per month towards maintenance to the respondent. Aggrieved by the same, the present appeal is filed.

2) The case of the appellant herein is that his marriage with the respondent was solemnised on 26.09.1993 at Kasiviswanathaswami Temple at Dharmavaram according to Hindu rites and caste custom and immediately the respondent joined him and both of them lived together. It is stated that the marriage was consummated, but no children were born out of their wedlock and they lived together in the house of the appellant till the end of December, 1994 at Thippaiahgaripalli. It is alleged that the father of the respondent who is working in Sericulture office was transferred in the month of January, 1995 to Kadiri from Dharmavaram; at that time, the respondent visited the house of her father and she did not return to the appellant in spite of his repeated requests. It is alleged that, on the other hand, the respondent has been insisting the appellant to set up family at Kadiri and refused to join him. It is alleged that repeated requests made by the appellant apart from panchayat convened to join him were also not fruitful. Alleging desertion on the part of the

respondent from the year 1996, the appellant filed the O.P seeking dissolution of marriage by way of grant of decree of divorce.

3) The respondent filed counter, before the Court below, denying the allegations made by the appellant herein, stating that after the marriage, she joined the company of the appellant and was discharging her duties sincerely. She further stated that during their wedlock, she gave birth to four male children and one female child, but all of them died due to the carelessness and irresponsibility in maintaining them. The respondent alleged that the appellant had been demanding to bring further amount of Rs.50,000/- from her father towards dowry and father of the respondent also approached the appellant along with elders to convince him, but he was reluctant to take back the respondent to lead conjugal life.

4) The trial Court, on behalf of the appellant, examined P.Ws 1 to 3 and no documents were marked. The respondent examined herself as R.W 1 and marked Exs.B-1 to B-5. The trial Court, while appreciating the oral and documentary evidence on record, recorded a finding that as much as the respondent got pregnant in the year 2003 as such, did not believe the version of the appellant that the respondent deserted the appellant from the year 1995 onwards. Further, by dismissing the O.P, the trial Court awarded Rs.600/- per month towards maintenance to the respondent. As against the same, the respondent therein filed the present appeal.

5) In this appeal, it is contended by the learned counsel for the appellant that from January, 1995 the respondent left the company of the appellant and she did not turn up and deserted him. It is further submitted that, in any event, the maintenance granted in the petition filed under Section 13 of the Hindu Marriage Act, 1955 is not correct and the same is liable to be set aside.

6) Though the respondent is served, there is no appearance on her behalf. Having heard the learned counsel for the appellant, we have perused the material on record.

7) Though the specific case of the appellant herein is that the respondent deserted him from the year 1995 itself, it is to be noted that the respondent proved that she was pregnant by 20.06.2003. To that extent, she filed documentary evidence Ex.B-4, vaccination card issued by the National Prevention of Diseases Vaccination Mission, Government of India. Further, the respondent filed Ex.B-5, the book issued by R.D.T hospital, Bathalapalli which shows that the respondent was pregnant as on 07.04.2003 and she was given treatment in the said hospital. Though there is oral evidence on behalf of the appellant to support his argument that the respondent deserted and left his company in the month of January, 1995 and was staying with her father at Kadiri, the respondent has filed Exs.B-4 and B-5 which falsifies the claim of the appellant. It is clearly proved that the respondent was pregnant in the year 2003 while they were together for some-time in the year 2003. The O.P is filed in the year 2004, which clearly demonstrates that there is no desertion for a continuous period of two years. In any event, out of the wedlock of the parties, five children were born, but unfortunately died. The said fact is also falsifies the claim of the appellant that they did not live together from the year 1996. The appellant has not disclosed the said facts and has come forward with unclean hands, seeking dissolution of marriage, to cover up his own laches. Therefore, we see no reason to interfere with the order and decree of the trial Court in so far as rejecting the claim of the appellant herein for dissolution of marriage.

8) However, the trial Court committed an error in granting maintenance at Rs.600/- per month while dismissing the O.P, filed under Section 13 of the Hindu Marriage Act. When the O.P, for dissolution of the marriage, filed under Section 13 of the Hindu Marriage Act is rejected, it is not open to the trial Court to grant maintenance to the respondent.

9) In view of the aforesaid reasons, the appeal is partly allowed, confirming the order of the trial Court in dismissing the O.P. for dissolution the marriage of the appellant with the respondent and setting aside the order of the trial Court to the extent of granting

maintenance at Rs.600/- per month to the respondent. No order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

March 19, 2015

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