HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

FAMILY COURT APPEAL Nos.224 of 2011 & 17 of 2012

COMMON JUDGMENT: (Per Justice R. Subhash Reddy)

These appeals, under Section 19 of the Family Courts Act, 1984 are directed against an order and decree dated 14.03.2011, passed in O.P.No.30 of 2009 and I.A.No.48 of 2009 respectively, passed by the Additional Family Court, Hyderabad; as such, they are heard together and disposed of by this common judgment.

2. For the sake of convenience, we refer the parties as arrayed in O.P.No.30 of 2009.

3. Petitioner-husband filed O.P.No.30 of 2009 under Sections 13(1)(ia) and 13(1)(3) read with Section 26 of the Hindu Marriage Act, seeking dissolution of his marriage with the respondent, performed on 11.02.2005 at Visakhapatnam, on the ground of cruelty. In the said O.P., respondent-wife filed I.A.No.48 of 2009. The Family Court, by common order dated 14.03.2011, allowed the O.P., filed by the petitioner-husband on the ground of cruelty and ordered dissolution of marriage. At the same time, I.A.No.48 of 2009 filed by the respondent-wife is also allowed, directing the petitioner-husband to give custody of baby Sreeja to the respondent-wife in one month from the date of the order. F.C.A.No.17 of 2012 is filed by the petitioner-husband aggrieved by the order passed in I.A.No.48 of 2009, whereas the respondent-wife filed F.C.A.No.224 of 2011, aggrieved by the order passed in O.P.No.30 of 2009, ordering dissolution of marriage and grant of decree of divorce.

4. As averred in the affidavit filed in support of O.P.No.30 of 2009, the

case of the petitioner-husband is as under:

Petitioner and respondent were married as per Hindu rites and customs on 11.02.2005 at Shri Padmavathi Kalyana Mandapam, Dhaba Gardens, Visakhapatnam and out of their wedlock, they were blessed with two female children and their marriage is an arranged one. There were no presentations in the marriage except for exchange of customary gifts. The petitioner's family presented 5 tulas of gold, 2 rings to the respondent and the respondent's family presented 2 gold rings to the petitioner during the marriage. After the marriage, the respondent joined the petitioner at his house at Hyderabad and petitioner found that the attitude of the respondent was strange, inauspicious, as much as she was speaking of possible death of the petitioner. Petitioner was staying with joint family along with his brother, sister-in-law and mother; the respondent was aggressive, arrogant and did not hesitate to say anything or threaten anyone on the slightest pretext. She has taken away the gold chain of the petitioner's mother weighing 3 tulas and did not return the same. Further, the respondent was attributing illegal intimacy of the petitioner with his sister-in-law and nieces. When the petitioner was trying to counsel the respondent, she was abusing him in filthy language. Petitioner and the respondent have given their first child, baby Sreeja born on 03.10.2006, in adoption to the brother and sister-in-law of the petitioner on 28.02.2007 by duly following the religious rites in a temple. The adoption and cradle ceremonies were performed in presence of relatives and same were video-graphed. Though petitioner and respondent were blessed with a second female child, but as a result of the negligence on the part of the respondent in maintaining the child, the child died. The respondent was mercilessly beating the children and she was not treating the mother of the petitioner well and she was abusing her all the time. At one point of time, the respondent has even beaten the mother of the petitioner in which the mother of the petitioner suffered injuries. The respondent was in the habit of threatening that she will commit suicide. She has left home without informing the petitioner. Though

the respondent has nothing to do with the brother of the petitioner, she has made false complaint against him, who is working in A.P. Transco and on enquiry it was found to be false. The respondent has absolutely no control over her tongue. She used to sleep on the bed, compelling the petitioner to sleep on the floor. The respondent, once attacked the mother of the petitioner, with a kitchen knife (katti peeta) in which she suffered injuries to her left eye and was not able to walk for ten days.

5. On the aforesaid grounds, alleging cruelty, petitioner sought the relief of dissolution of marriage and for grant of decree of divorce.

6. In the said O.P., the respondent has filed counter-affidavit, wherein, while denying the allegations made by the petitioner, the respondent has stated as under:

The petitioner and his family members, i.e. petitioner's parents and his brother Vaddepalli Rajagopal Naidu were harassing her to get money and household articles from her parents. The first child baby Sreeja was not given in adoption to the brother and sister-in-law of the petitioner as alleged. She never abused the petitioner. Petitioner is aware of the username and password of her e-mail address and having gained access to the e-mail, he has created some filthy statements for the purpose of substantiating his case for grant of decree of divorce. She has never beaten the mother of the petitioner as alleged and in fact the petitioner subjected her to physical and mental cruelty.

7. Pleading so, the respondent prayed for dismissal of the O.P., filed by the petitioner.

8. Further, the respondent filed I.A.No.48 of 2009 in the O.P., to direct the petitioner to give custody of baby Sreeja to her, alleging that petitioner is busy with his day-to-day activities and his old-aged mother is not in a position to take care of the child and the child, being female, requires special attention, as such, she is entitled to the custody of the child. In the said I.A., counter-affidavit is filed by the

petitioner denying the various allegations and further pleading that the second child has died only due to the negligence on the part of the respondent; as such, petitioner prayed to reject the I.A., filed by the respondent, seeking custody of the child.

9. Before the Family Court, the petitioner was examined as P.W.1, his brother was examined as P.W.2 and his neighbours were examined as P.Ws.3 and 4. On behalf of the petitioner, Exs.P.1 to P.5-A were marked. The respondent was examined as R.W.1 and no documentary evidence was marked on her behalf.

10. The Family Court, by considering the oral and documentary evidence on record and accepting the plea of cruelty, alleged by the petitioner, allowed O.P.No.30 of 2009 filed by him and ordered dissolution of the marriage of the petitioner with the respondent.
At the same time, the Family Court also allowed I.A.No.48 of 2009, filed by the respondent-wife and directed the petitioner to give custody of baby Sreeja to the respondent within one month.

11. Heard Sri B.V. Subbaiah, learned senior counsel, appearing for the respondent-wife, Smt. S. Vani, learned counsel appearing for the petitioner-husband and perused the material on record.

12. It is submitted by Sri B.V. Subbaiah, learned senior counsel for the respondent-wife that the marriage between the parties was performed on 11.02.2005, the 1st daughter baby Sreeja was born on 03.10.2006 and the 2nd daughter was born on 09.12.2008 and immediately after the birth of the 2nd child, O.P., was filed by the petitioner on 05.01.2009. It is further submitted that, only at the instance of the petitioner, the 1st child was given in adoption to the brother and sister-in-law of the petitioner and the Family Court, in the absence of any acceptable evidence on record, accepted the case of the petitioner and dissolved the marriage on the ground of cruelty; except normal wear and tear there is no evidence on record to accept the case of the petitioner so as to grant decree of divorce on the ground of cruelty. It is further submitted that, as much as the child,

being female child and of tender age, it is safe to give custody to the respondent and there are no grounds to interfere with the order of the Family Court to the extent of custody of the child granted by it. It is lastly submitted that the respondent is not having any support to maintain herself and she is living all alone; therefore the decree of divorce is fit to be set aside.

13. On the other hand, it is submitted by Smt. Vani that there is cogent evidence on record and the petitioner has proved the cruel conduct of the respondent, as such, the Family Court has rightly granted decree of divorce. The respondent has made wild allegations without any basis against the petitioner and, further, from the evidence of P.Ws.1 to 4, it is clear that the respondent was abusing the petitioner all the time and she has also made false and reckless allegations against the petitioner. The respondent has beaten the mother of the petitioner and caused injuries to her, which is evident from the evidence of P.Ws.1 to 4. The 1st child was given in adoption to the brother and sister-in-law of the petitioner; however, the respondent has not impleaded the adoptive parents as party-respondents, while claiming custody of the child. From the last several years, the welfare of the child is being looked well by the adoptive father and mother, as such, there is no reason for removal of custody of baby Sreeja at this stage for handing her over to the respondent.

14. Petitioner, who is examined as P.W.1, in his evidence affidavit, has stated as under:

He is living in joint family consisting of his parents, elder brother and sister-in-law. Respondent is very suspicious, abusive, very aggressive and arrogant. The respondent attributed illicit intimacy on his part with his nieces and also his sister-in-law (elder brother's wife). As his brother and sister-in-law were issueless, their first child, baby Sreeja, who was born on 03.10.2006, who was five months old, was given in adoption to his brother and sister-in-law on 28.02.2007 by following religious rites and customs in a nearby temple and the

adoption and cradle ceremonies were video-graphed and the said ceremonies were attended by friends and well-wishers. On 12.05.2007 night at about 23.00 hours, respondent picked up quarrel with him and left the house in the midnight along with the child and the same was witnessed by neighbours. On 15.05.2007, the sister of the respondent came to their house along with antisocial elements and threatened him and his brother. The respondent was in the habit of picking up quarrels with the members of the family and she used to abuse his mother by saying that her children are born to Muslims and that they are of British breed. She also made reckless allegations against his brother that he is impotent. The respondent has made false complaint against his brother who was working with A.P. Transco., and in the departmental enquiry, the complaint was found to be false. The respondent has beaten his mother with a kitchen knife (Katti Peeta) as a result of which her left eye got swollen and she suffered injuries on her back and she could not walk for 10 days.

15. P.W.2 is the mother of the petitioner by name Smt.V. Sathyavathi. She too in her evidence has categorically stated that the respondent is very suspicious, abusive, very aggressive, and arrogant and did not hesitate to say anything or threaten anyone on the slightest pretext. After the birth of the 1st child by name Sreeja on 03.10.2006, five months thereafter, she was given in adoption to her elder son and his wife on 28.02.2007 by following religious rites in a nearby temple. The respondent has beaten her with a kitchen knife as a result of which she suffered injuries to her left eye and also on the back. Though the petitioner tried to prevent her, she did not stop and hit the petitioner's head to the wall.

16. P.W.3 is one Smt. D. Krishna Kumari, who is the neighbour of the petitioner. She too substantiated the case of the petitioner and his mother and stated that on 12.05.2007, during night, she saw the petitioner, his brother, friends and neighbours searching for the respondent in the colony and on enquiry she was informed that the

respondent had left the house along with the child by abusing the petitioner. P.W.3 has supported the evidence of P.W.2 stating that when she visited the house of the petitioner, she saw P.W.2, i.e. the mother of the petitioner with injuries on her body and her eye was swollen.

17. Sri M. Bhagawath Raj, another neighbour of the petitioner, was examined as P.W.4. In his evidence affidavit, he has stated that the respondent is the wife of the petitioner and they had serious disputes; on 12.05.2007, at midnight, the petitioner called him over phone and informed that his wife, i.e. the respondent, had left the house with the child and their whereabouts are not known. He is one of the persons who had assisted the petitioner in searching for the respondent and the child on the night when the respondent had left the house with the child. He has also stated in the evidence affidavit that, two days thereafter, the sister of the respondent accompanied by three antisocial elements came to the petitioner's house and threatened him with dire consequences.

18. The respondent was examined as R.W.1. In her deposition, she has stated that the petitioner and his family members and his brother Vaddepalli Rajagopal Naidu used to harass her to get money and household articles. She denied the allegations of the petitioner that she has beaten the mother of the petitioner and abused the petitioner and his family members. In the cross-examination, she has admitted Ex.P.3 photograph, which was taken on 28.02.2007, i.e., the date on which baby Sreeja was given in adoption to Vaddepalli Rajagopal Naidu and his wife. She has also admitted that no steps have been taken to question the adoption of baby Sreeja by Vaddepalli Rajagopal Naidu and his wife on 28.02.2007 and she further admitted that they are not impleaded in the petition by her. She further stated that the brother and sister-in-law of the petitioner have forcibly taken adoption of baby Sreeja and though she has filed complaint with the Police, the same is not registered; as such, copy of the complaint was given to
Sri Umapathi, IPS, the then I.G. of Police. She further stated that

though the brother and sister-in-law of the petitioner had no intention of adopting baby Sreeja, however, they have adopted her to get benefit of 250 acres of land. In clear terms, she has also admitted that she has not mentioned the particulars with regard to adoption in the affidavit filed in support of I.A.No.48 of 2009. She has denied the allegation of beating the mother of the petitioner. She categorically admitted that her second child died on account of negligence on her part. Further, in the cross-examination, in clear terms, she has admitted that she used to say that there is illicit relationship between the petitioner and his sister-in-law. She further stated that the mother and brother of petitioner were trying to get the petitioner married to his sister-in-law to have male child. She also stated that there were two sisters-in-law to the petitioner by name Ananya and Shiva Kalpana and marriage of Ananya was performed on 22.08.2008 and Shiva Kalpana was unmarried. She has admitted that she made phone calls to the petitioner and asked him as to whether he wants her or his sister-in-law. In the cross-examination, when a specific question was put to her, viz., whether the 2nd child died due to her negligence, she answered in the affirmative and stated that in view of the fact that the petitioner was away from her, she could not take proper care of the

2nd child, as a result of which the 2nd child died. Apart from the same, there is documentary evidence, viz., Ex.P.3 – photograph taken during adoption ceremony, Ex.P.4 – bunch of copies of test of SMSs., Exs.P.5 & P.5-A – Printouts of e-mails.

19. From the oral evidence of the petitioner, it is clear that the respondent is arrogant, intemperate and was always abusing him and she even used to beat his mother. It is the specific allegation of the petitioner that the respondent has made baseless allegations of illegal intimacy against him with his sister-in-law. Except making such wild allegations, no other evidence is adduced by the respondent to support such allegation. When the petitioner claims that he treats his sister-in-law, i.e. his brother's wife as his second mother, making baseless and false allegations by attributing illegal intimacy of the

petitioner with his sister-in-law, which is not supported by any other evidence, the same would constitute cruelty on the part of the respondent. Apart from the same, the respondent has also attributed illegal contact of the petitioner with his other sister-in-law by name Shiva Kalpana who is unmarried, which is also admitted by the respondent in her cross-examination. In view of the said allegations made by the respondent and having regard to the specific admissions in the cross-examination, it is suffice to hold that the said allegations made against the petitioner will have an effect on his character and tarnish his image. Further, there is consistent oral evidence on record to the effect that the respondent has beaten the mother of the petitioner as a result of which her left eye got swollen apart from receiving injuries to her back and she could not even walk for ten days. Added to the same, there is oral evidence of P.Ws.3 and 4 who are the neighbours of the petitioner. The respondent, in her cross-examination, admitted that P.W.3 Smt. D. Krishna Kumari is the neighbour of the petitioner and P.W.4 Sri M. Bhagawath Raj used to visit the house of the petitioner. Having regard to the allegations made by P.Ws.1 and 2, i.e. the petitioner and his mother and when the said allegations are examined with reference to the deposition of P.Ws.3 and 4, who have deposed that they visited the house of the petitioner and found that respondent has beaten the mother of the petitioner as a result of which she suffered injuries, there is no reason for not accepting the case of the petitioner that the respondent has beaten his mother. The said conduct of the respondent in beating the mother of the petitioner also amounts to cruelty and the same is a ground for grant of divorce.

20. Though the respondent denied beating her mother-in-law, i.e. the mother of the petitioner, the same will not outweigh the consistent and cogent evidence of P.Ws.1 to 4. There is yet another instance which would reflect the cruel attitude of the respondent. It is the case of the petitioner, that in the night of 12.05.2007, respondent suddenly left the house along with the child without informing anyone and from the depositions of P.Ws.1 to 4, it is clear that P.W.4 is one of the

persons who assisted P.W.1 in searching the respondent who has disappeared from the house along with the child. Such an attitude of the respondent can definitely cause mental agony to the petitioner and amounts to cruelty. Hence, we are of the considered view that the petitioner has proved cruelty on the part of the respondent beyond doubt and the Family Court has rightly ordered dissolution of marriage of the petitioner with the respondent on the ground of cruelty.

21. With reference to granting custody of baby Sreeja to the respondent, it is to be noticed that the respondent has filed I.A.No.48 of 2009 claiming custody of the child. From the evidence on record, it is clear that baby Sreeja is the first child born to the petitioner and the respondent on 03.10.2006 and five months after her birth, she was given in adoption to the brother and sister-in-law of the petitioner, who have no children. It is clear from Ex.P.3 – photograph that adoption ceremony was held on 28.02.2007 in the presence of friends and well-wishers and baby Sreeja was given in adoption to the brother and sister-in-law of the petitioner. Although it is the case of the respondent that she did not give the child in adoption voluntarily, it is to be noted that she has never questioned the adoption at any point of time. It is also not in dispute that after the baby was given in adoption to the brother and sister-in-law of the petitioner, the baby is continuously living with them. Furthermore, though the respondent has participated in the adoption ceremony, wherein baby Sreeja was given in adoption, she has suppressed the said fact in the affidavit filed in support of I.A.No.48 of 2009. We have examined baby Sreeja who is living with her adoptive father and mother, i.e. the brother and sister-in-law of the petitioner and she admitted that she is being taken good care of by the brother and sister-in-law of the petitioner, who are her adoptive parents. Having regard to the continuous stay of baby Sreeja with the adoptive parents since 28.02.2007, i.e. for the last more than eight years and, further, in the absence of questioning the validity of the adoption by the respondent, we are of the view that the order passed in I.A.No.48 of 2009 is fit to be set aside.

22. During the course of hearing, it is contended by Sri B.V. Subbaiah, learned senior counsel appearing for the respondent that respondent is not having any means for her livelihood as she is not having any monetary support and she is residing all alone. On the other hand, it is contended by the learned counsel for the petitioner that respondent is working as teacher in Chaitanya Group of Institutions and is having sufficient income of her own. Except making a bald allegation that respondent is working as teacher in Sri Chaitanya Group of Institutions, no material is placed before this Court to substantiate the same.

23. On the other hand, from the salary certificate produced by the petitioner, it is evident that petitioner is working in CMC Ltd., and drawing gross salary of Rs.59,267/-. Therefore, in absence of any evidence on record to prove that respondent is having any monetary support and taking into account the income of the petitioner, we deem, it is a fit case to award a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) to the respondent-wife as permanent alimony payable by the petitioner-husband

24. For the foregoing reasons, FCA No.224 of 2011 filed by the respondent-wife is dismissed, confirming the decree of divorce granted by the Family Court, dissolving the marriage between the parties. At the same time, we award a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) to the respondent-wife as permanent alimony payable by the petitioner-husband in two instalments. The first instalment shall be paid on or before 1st February, 2016 and the final instalment shall be paid before the end of May, 2016. If the petitioner-husband fails to pay the aforesaid amount within the time stipulated above, respondent-wife is entitled to recover the same with interest at 9% per annum, from the expiry of the aforesaid time.

25. Accordingly, F.C.A.No.17 of 2012 filed by the petitioner-husband is allowed by setting aside the order dated 14.03.2011 passed in I.A.No.48 of 2009, wherein custody of baby

Sreeja is granted to the respondent-wife. There shall be no order as to costs.

As a sequel, miscellaneous petitions if any pending in the appeals stand disposed of.

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R. SUBHASH REDDY, J

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A. **SHANKAR NARAYANA, J**

22nd June, 2015

MRR