

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.10 of 2005

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JUDGMENT: (Per Dr.Justice B.Siva Sankara Rao)

This is an appeal filed by the petitioner to set aside the order and decree dated 10.11.2004 in O.P. No.9 of 2003 on the file of Senior Civil Judge, Penukonda, Anantapur District. The petitioner in said O.P. is husband and the respondent is his wife. The O.P. was filed under Section 13(1a) and (1b) of the Hindu Marriage Act, 1955

2) The parties hereinafter called as they are arrayed in the trial Court for the sake of convenience.

3) The undisputed facts are that marriage between the petitioner and the respondent took place in the year 1992 as per their caste customs prevailing in their community at Sivalayam of Bagepalli, Kolar District, Karnataka and during their wedlock they blessed with one male child, by name Mahesh, and one female child, by name Kamakshi, and that the female child died on 29.06.1999.

4) The case of the petitioner is that the respondent developed aversion against the petitioner from the date of marriage, not behaving properly, that she used to go to her parents' home without informing to him by not providing food properly to the parents of the petitioner, that the respondent left the society of the petitioner about six years back without any reasonable excuse and deserted the petitioner, that the respondent is a woman of bad temperament and had been picking up quarrels with neighbours, when she lived with the petitioner, that their daughter died due to negligence of the respondent, that the respondent lodged false complaint against the

petitioner to harass him, that there is no hope of uniting each other and praying to dissolve the marriage between the petitioner and the respondent.

5) The respondent, while denying the material allegations, stated that the families of the petitioner and the respondent were close relatives prior to the marriage and alleged that the petitioner is an educated and well versed litigant that he is having male egoism and bad temperament, that the petitioner imposing all types of restrictions on the respondent, that their daughter Kamakshi died due to ill-health and not due to her negligence, that the petitioner did not provide sufficient money to provide treatment to their daughter, Kamakshi and for negligence of the petitioner only their daughter died. The respondent further stated that she is always ready and willing to join the company of the petitioner and to lead amicable marital life and prayed to dismiss the petition.

6) During the course of trial, the petitioner was examined as P.W-1 and also examined one A.Nagaraja Reddy as P.W-2 and also marked Ex.P-1 office copy of legal notice issued by the petitioner, Ex.P-2, postal acknowledgement, Ex.P-3 to P-5 are certified copies of depositions in C.C. No.365 of 2001, Ex.P-6 is certified copy of the Judgment in C.C. No.365 of 2001, Ex.P-7 is the certified copy of the compromise petition filed by the petitioner and the respondent and Ex.P-8 certified copy of the memo filed by the counsel for the respondent in M.C. No.10 of 2001. Whereas, the respondent herself was examined as R.W-1 and also examined one Vaddi Gurrappa, father of the petitioner, as R.W-2 and no documents were marked on her behalf. After perusal of material on record and after hearing both sides, the learned Senior Civil Judge dismissed the petition.

7) Against the said dismissal order the petitioner filed the present appeal contending that the order and decree of the lower Court is contrary to law, weight of evidence and probabilities of the case, that the lower Court ought to have seen that the evidence adduced on behalf of the petitioner coupled with the documentary evidence

clearly shows that the conditions envisaged under the said sections are satisfied and ought to have allowed the petition, that the lower Court ought to have seen that filing of the criminal cases against the petitioner for an offence under Section 494 and 498-A I.P.C amounts to cruelty, that the lower Court ought to have seen that the recitals in Ex.P-7 clearly show that the respondent has agreed to give divorce and staying away from the appellant amounts to desertion, that the trial Court erred in holding that Ex.P-7 is not binding on the parties, that the lower Court ought to have seen that the terms of compromise are binding on the respondent, that the lower Court erred in law in holding that the allegations levelled against the appellant in C.C. No.365 of 2001 are not correct for the reason that the same ended in acquittal in which the prosecution witness turned hostile, that the conclusion of the lower Court that in view of the compromise in M.C. even the criminal case is compromised is not correct and the same is based on no evidence, that the reasons of the lower Court for holding that the appellant is not entitled for dissolution of the marriage existing between the parties is not correct and the same is based on no evidence, that the lower Court failed to see that the conduct of the respondent living away from the appellant especially having agreed to give divorce amounts to desertion and prayed to allow the appeal by setting aside the order and decree of the trial Court.

8) The respondent having been refused to receive notice of Court though registered post failed and attend, even service is suffice, hence taken as heard to decide on merits.

9) Perused the material on record and heard the learned counsel on both sides.

10) Now, the points that arise for consideration are.-

- i. Whether the petitioner proved the guilty of cruelty and desertion against the respondent and if so the impugned order and decree of the trial Court is unsustainable and requires interference by this Court while sitting in appeal and if so with what observations?

ii. To what result?

POINT No.i:-

11) The petition for divorce sought under Section 13(1a) and (1b) of the Hindu Marriage Act, 1955 on the grounds of cruelty and desertion. The petitioner is attributing cruelty and desertion against the respondent mainly alleging that the respondent used to quarrel with the neighbours and used to left to her parents' home without intimating to him and there was a criminal case filed that was ended in acquittal which is a false case and even there was desertion of him by respondent the same was no doubt denied by the respondent. To prove the said allegations against the respondent, the petitioner filed Ex.P-3 the certified copy of the deposition of Lakshminarayanamma, the mother of the respondent, Ex.P-4 the certified copy of the deposition of the respondent and Ex.P-5 is the deposition of one Venkataramana in C.C. No.365 of 2001 on the file of Judicial Magistrate of the First Class, Hindupur. It is no doubt true that the respondent filed above criminal case for the offences punishable under Sections 494 and 498-A of I.P.C and the same was ended in acquittal. It is to decide how far it constitutes cruelty or desertion. As per the evidence of petitioner as P.W-1, he stated that respondent having agreed to file a petition for divorce in the compromise entered between them in M.C. No.10 of 2001, she did not come forward. To prove the same, one A.Nagaraja Reddy was examined as P.W-2 who was examined as a witness on behalf of the respondent herein in M.C. No.10 of 2001 on the file of learned Judicial Magistrate of the First Class, Hindupur, stated that both the parties entered into compromise in M.C. No.10 of 2001 and the same was recorded and as per the terms of the compromise both the parties agreed to get divorce by filing petition before Lok Adalat, Penukonda. The same was disputed by the respondent by suggesting that the term regarding filing of a petition for divorce was included without the knowledge of the respondent herein.

12) To disprove the allegations made by the petitioner regarding the

cruelty and desertion, the respondent herself was examined as R.W-1 and reiterated her contentions in her chief-affidavit. The other witness examined by the respondent is no other than the father of the petitioner, who stated that after the marriage the petitioner and respondent lived happily for a period of four or five years, that they got one female child and died due to ill-health, thereafter the respondent gave birth to one male child, that the respondent never left the house of the petitioner and she lived with the petitioner amicably, that the respondent never quarrelled with the petitioner for any reason. He further stated that the respondent is residing with her parents' home as the petitioner married another woman for the reason that the respondent is an illiterate and poor woman, that the respondent had no fault to live separately from the petitioner.

13) Admittedly, Ex.P-7 the certified copy of the compromise petition filed before the Lok Adalat in M.C. No.10 of 2001 on the file of Judicial Magistrate of the First Class, Hindupur that was filed on 10.10.2002, whereas the present O.P was filed in the year 2003. This itself shows before expiry of two years the petitioner presented a petition seeking decree of divorce. Therefore, it could not be proved that the respondent deserted the petitioner for a statutory period of two years before filing of the petition, even taken for arguments sake, there was any condition in withdrawal of maintenance case to get divorce and not for living together and that is the animus. Her not consecuting for divorce later from his very plea itself suffice to say, there is no animus to put end to marital tie, but for to continue and thus, there is no desertion. Further allegation in his seeking divorce on ground cruelty concerned, the petitioner could not make out any specific allegation against the respondent as to what acts that constitutes cruelty muchless examined anybody to prove that any cruelty meted out by the petitioner due to the acts of the respondent. The ending of the criminal case for the offence under Section 494 I.P.C of adulterous life of him with another lady by void marriage and harassment in regard to get rid of her perse cannot be regarded as cruelty on the part of wife against the husband, in the absence of showing the

criminal case report given by her is false or she deposed falsity with ill will to harass. Further, he cannot take advantage of his fault by deserted the wife and living with another woman that also prima facie made out from charge sheet filed by police even case ended in acquittal after trial. Thus, there are no grounds to dissolve the marital tie on cruelty or desertion as concluded by the trial Court.

14) Therefore, we do not find any merit in this appeal to interfere with the order passed by the learned Senior Civil Judge dismissing the petition to dissolve the marriage between the petitioner and the respondent even by reappreciation of the evidence afresh as discussed supra. Accordingly, the point No.1 is answered.

POINT No.ii):-

15) In the result, the appeal is dismissed. There shall be 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

9th April, 2015

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