

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

C.M.A.No. 519 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 against the order and decree dated 22.03.2005 in M.O.P.No.72 of 2003, passed by the learned Additional Senior Civil Judge, Srikakulam, dismissing the said petition. The aforesaid M.O.P was filed, under Section 13(1)(c) of the Hindu Marriage Act, 1955, seeking dissolution of marriage of the petitioner with the 1st respondent, on the ground of adultery.

2) The petitioner married the 1st respondent in Srikakulam on 11.08.1989 according to Hindu caste customs and rites and the marriage was consummated. As the petitioner was in Indian Armed Services, they lived after their marriage at various places viz., Udhanpur, Assam and Jodhpur till June, 1999. It is the case of the petitioner that, in the month of August, 1999 the elder sister of the 1st respondent died, since then the 1st respondent has been residing in Fareedupeta Village. It is alleged that after the 1st respondent started living in the village, she was living adulterous life with the 2nd respondent. On the ground of adultery, the petitioner sought for dissolution of marriage.

3) The 1st respondent resisted the petition, by filing

counter. In the counter, it is stated that after August, 1999 the petitioner went to Rajasthan leaving the 1st respondent and her children at Fareedupeta for joining duty, the petitioner was addicted to vices and developed suspicion towards the 1st respondent and humiliated her; the petitioner neglected to maintain the 1st respondent and their children. As such, she addressed letters to the Unit Officers, who advised the petitioner to take care of them. It is further stated in the counter that though the village elders approached the petitioner at his work place and requested him to take the 1st respondent and children to his house, he has been postponing the same on one ground or the other. As such, the 1st respondent filed M.C.No.67 of 2003 for maintenance. The 1st respondent specifically denied the allegation with regard to her illegal intimacy with the 2nd respondent. It is further stated in the counter that the 2nd respondent is aged about 60 years, leading philosophical life and the allegations made in the petition are concocted for the purpose of filing the M.O.P.

4) The 2nd respondent also filed separate counter denying the allegation of adultery.

5) The trial Court, on behalf of the petitioner, examined P.Ws 1 to 4 and did not mark any documents. On behalf of the respondents, R.Ws 1 to 3 were examined Exs.B-1 to B-4 were marked. By appreciating the oral and documentary evidence on both sides, the trial Court held that there was no

substantial evidence to prove the allegation of adulterous life of the 1st respondent with the 2nd respondent and as such the petitioner failed to establish his case and on that ground dismissed the petition.

6) In this appeal, it is contended by the learned counsel for the appellant that the petitioner-P.W-1 himself is a direct witness for the adultery of 1st respondent with the 2nd respondent, when he came from the work place to the Fareedupeta village and in spite of such oral evidence, the trial Court disbelieved the same.

7) As the relief sought by the petitioner is dissolution of marriage on the ground of adultery, it is for the petitioner to prove the said allegation by reliable and acceptable evidence. From the evidence on record, it is clear that the parents of the 1st respondent have constructed a house consisting of two portions and they have given two portions to their two daughters, one portion to the 1st respondent and the other portion is given to the other daughter, whose husband is the 2nd respondent herein. It is the allegation of the petitioner that after he left to his work place in the month of August, 1999, 1st respondent started living in adultery with the 2nd respondent. It is stated that he came down to village from duty and when he knocked the door of the 2nd respondent's house, he found both the respondents in the same room at midnight. The said evidence is disbelieved by the Court below. Even assuming that he came to his village in the midnight, there is no reason

to knock the door of the 2nd respondent without entering into the house of the petitioner, where the 1st respondent is living. It is also clear from the evidence of P.W-3, the brother of P.W-1, who has also admitted that no dispute was raised before any elders about the illegal intimacy of the respondents. Even the depositions of P.Ws 2 and 3 are no worth acceptable evidence, to prove the allegation of adultery as alleged by the petitioner. It is also clear from the evidence on record, the 2nd respondent is aged about 60 years and it is specifically pleaded in the counter filed by the 1st respondent that he is a senior citizen, leading philosophical life and the allegations made by the petitioner are concocted.

8) Even from the documentary evidence i.e., a letter addressed to the Commanding Officer under Ex.B-1, filed by the 1st respondent, it is clear that the petitioner was not taking care of the 1st respondent and their children. A copy of the said letter was also marked as Ex.B-4. It appears that only on account of the steps taken by the 1st respondent, this petition is filed by making false allegations. We are of the view that the evidence of P.Ws 1 to 4 is not trustworthy. In that view of the matter, there is no substantial evidence on behalf of the petitioner, to dissolve the marriage on the ground of adultery.

9) For the aforesaid reasons, this appeal is devoid of merits and hence the same is dismissed. 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 12, 2015
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