

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

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C.M.A.No.369 OF 2006
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JUDGMENT: (Per Hon'ble Sri Justice R. Subhash Reddy)

This appeal, under Section 28 of the Hindu Marriage Act, 1955, is filed aggrieved by the order and decree, dated 17.02.2006, passed in O.P.No.89 of 2004 by the learned Senior Civil Judge, Nalgonda, by which, the petition filed by the respondent – husband, under section 11 of the Act, seeking to declare the marriage performed between himself and the appellant as null and void, was allowed.

It is the case of the respondent that his marriage with the appellant was performed on 27.05.2001 at Kothapet Village, Kethepally Mandal, as per Hindu Customs and it is an arranged marriage. After marriage, appellant joined the company of the respondent and lived for ten days at Mandalapuram Village, and thereafter, she left his company and started living with her parents. Out of their wedlock, no children were born to them. Though he tried many times to take back the appellant, she was not inclined to join him and in the month of December, 2003, he came to know that on 27.03.1998, appellant married one Vadde Krishna Reddy of Kalmera Village, Kattangur Mandal, and the same was not disclosed to him at the time of marriage. It is alleged that there was no valid

divorce between the appellant and the said Vadde Krishna Reddy. It is further alleged that Vadde Krishna Reddy is alive and as the appellant was having living spouse at the time of marriage with him, the marriage performed between himself and the appellant is illegal and void.

Counter affidavit is filed on behalf of the appellant denying the various allegations made by the respondent. It is the case of the appellant that she has not suppressed any material facts and the present petition is filed with a *mala fide* intention. It is her further case that after marriage, they shifted to Nalgonda as the respondent was working at Vijaya Durga Hotel, Nalgonda. It is her further case that she has taken customary divorce from Vadde Krishna Reddy and only thereafter, she married the respondent, and there is no existing relation of husband and wife between her and Vadde Krishna Reddy. Reference is also made in the counter to the complaint filed by her against the respondent for dowry harassment, which was numbered as C.C.No.35 of 2004 on the file of learned Judicial Magistrate of First Class, Nakrekal, and which was ended in acquittal.

Before the trial Court, on behalf of the respondent – husband, PWs.1 to 3 were examined and Ex.A1 was marked. On behalf of the appellant – wife, RWs.1 to 4 were examined and Exs.B1 and B2 were marked.

The trial Court, having considered the oral and documentary evidence on record, has recorded a finding that the marriage between the appellant and Vadde Krishna Reddy was existing as on the date of marriage of the appellant with the respondent, and hence, allowed the petition filed by the respondent. Aggrieved by the same, the present appeal is filed by the wife.

In this appeal, it is submitted by the learned counsel for appellant that the appellant and Vadde Krishna Reddy have entered into a divorce agreement under Ex.B1 and as such, the marriage of appellant with Vadde Krishna Reddy was dissolved by way of customary divorce. It is further submitted that the marriage of appellant with the respondent was performed only with the consent of respondent after disclosing the facts and there was no suppression of earlier marriage.

On the other hand, it is submitted by the learned counsel for respondent that there is no evidence on record to prove that there exists a custom of obtaining customary divorce in the community of the appellant and in Ex.B1, it is clearly recited that the appellant and Vadde Krishna Reddy would obtain divorce through competent Court.

In this case, mainly it is the allegation of the respondent that at the time of his marriage with the

appellant, the marriage of the appellant with one Vadde Krishna Reddy was in force but the same was suppressed. The appellant has not denied her marriage with Vadde Krishna Reddy, but she pleaded that she obtained customary divorce from him, however, there is no direct evidence to show that such customary divorce was obtained. So far as the documentary evidence in Ex.B1 is concerned, it is the document between Vadde Krishna Reddy and the appellant scribed by one Ismail and it is clearly stated therein that they would obtain decree of divorce through competent Court. In view of such recitals, the document by itself cannot be accepted to prove that there was customary divorce. From the oral and documentary evidence on record, no case is made out to show that the practice of customary divorce is in existence in the community of the appellant, so as to accept the same. In **Loya Padmaja alias Venkateswarama v. Loya Veera Venkata Govindarajulu**^[1], this Court has held that if any customary divorce is claimed, it is to be proved that such custom exists in the community. In the absence of any evidence to that effect in the present case and in view of the aforesaid judgment of this Court, we are of the view that no case is made out by the appellant to interfere with the decree of divorce granted by the trial Court.

Accordingly, the appeal is dismissed. However, it is

made clear that if the appellant intends to claim any alimony from the respondent, liberty is given to her to file a separate application for such relief. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. No costs.

R. SUBHASH

REDDY, J

Dr. B. SIVA SANKARA

RAO, J

March 04, 2015
MD

[\[1\]](#) AIR 2000 AP 284