

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

FCA No.10 of 2006

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

This appeal is filed by respondent-husband in O.P. No.256 of 2003 impugning the order and decree of the Judge, Family Court, Hyderabad dated 19.04.2005, wherein on the application of his wife under Section 13(1)(ia) of the Hindu Marriage Act, decree of divorce granted dissolving their marital tie dated 24.01.1998 on the grounds of cruelty.

2) The contentions in the grounds of appeal impugning said trial Court's order and decree as well as the oral submissions through counsel for appellant in the course of hearing the appeal in brief are that the order and decree of the trial Court is contrary to law, weight of evidence, probabilities of the case, that the alleged taking of dowry or demands for dowry or any ill-treatment or harassment by him in this regard of his wife are nothing but false and could not be proved that was not considered by the trial Court, that the trial Court should have seen that at the time of marriage, the respondent-wife was studying intermediate and it is he that cause completed her graduation and post graduation, that the trial Court also should have seen that even she was arrogant, head strong non-cooperative in matrimonial obligations, he was putting up with a hope that she would realise her mistakes and change; that he educated both the children in their wedlock and is still investing for the academics of the daughter staying with his wife, that the trial Court have seen that it is his wife that wilfully refused to perform conjugal rights even he was providing all necessities and comforts and she is not entitled to the relief for her

own fault and hence to set aside the decree granting divorce by allowing the appeal restoring the marital tie.

3) The learned counsel for the respondent-wife on record, reported no instructions and asked to decide the matter on merits. Hence taken as heard, the respondent to the appeal, to decide the appeal on merits.

4) Perused the material on record. The parties in the present appeal are being referred to as they are arrayed in the lower Court for the sake of convenience.

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

i. Whether the decree of divorce granted by the trial Court on the application of the respondent-wife is unsustainable and requires interference by this Court while sitting in this appeal to reverse or set aside the same and with what observations?

ii. To what result?

POINT No.i:-

6) There is no dispute on the factum of marriage and in their wedlock they blessed with a daughter and son. The marriage was dated 24.01.1998 and the eldest child was born on 01.02.1989 by name Sruthi Keerti and second issue, son born on 02.07.1990, Pranav. Among several acts of cruelty pleaded and deposed by the wife, for her seeking to dissolve the marital tie, the evidence on record establishes the acts of the husband without any matrimonial trust is regarding the house situated in Mylargadda purchased under Ex.P-4 sale deed dated 07.07.2000. Name of the petitioner is Sri Sailaja and name of the respondent is Prabhakar. While obtaining the Ex.P-4, sale deed and the Ex.P-3 agreement-cum-power of attorney executed by the vendor it was shown her name as Sripriya instead of Sri Sailaja as the vendee. The sale deed obtained from the petitioner-wife later at the instance of the respondent-husband pursuant to the Exs.P-3 and P-4 supra is also by showing her name as Sri Priya. For

this Jugglery which the petitioner attributed against the respondent, there is no worth explanation from him muchless any suggestion to P.W-1 in her cross-examination.

7) P.W-2 who is no other than a neighbour to P.W-1 and R.W-1, where they lived together and blessed with two children in their wedlock from 1988 to 2002, also deposed in corroboration to the evidence of P.W-1 that the respondent-husband is guilty of several of the acts of cruelty towards the petitioner-wife. P.W-2 categorically deposed that R.W-1 was even beating P.W-1 before the children and even to the noticing of her and other neighbours, and he used to neck out her from the house and therefrom P.W-2 even provided shelter to P.W-1 many a time when even she was beaten and necked out by respondent-R.W-1. P.W-2 further deposed that R.W-1 (husband) was even driving out P.W-1 (wife) to leave the home at odd times and mid nights. P.W-2 further deposed in corroboration to the evidence of P.W-1 that, R.W-1 husband whenever he was going on tours instructing the ration shop person not to give provisions to P.W-1 or children and derive a pleasure by not providing food and he was suspecting her character by attributing illicit relation with man folk around. These acts proved from the evidence of P.Ws 1 and 2 are not of ordinary wear and tear, but of grave physical and mental cruelty to the wife by his misconduct.

8) P.W-3, mother of P.W-1 a school teacher and a pensioner also deposed in corroboration to the evidence of P.W-1 of all the harassment and ill-treatment P.W-1 suffered in the hands of respondent-R.W-1. She also deposed that it is she that helped in providing moneys for purchase of the house in the name of P.W-1, but he cause alienated and benefited himself.

9) Coming to the specific instances, even the evidence of P.Ws 1 to 3 prove that on 23.09.2002, P.W-1 was beaten by R.W-1 at about 8.00 A.M and she was sent out and thereby reached the house of her mother with broken bangles and torn saree and blood stains and after few days P.W-2 convinced P.W-1 and sent back to join her

husband and even later on 10.10.2002 the servant-maid came to her and informed the factum of P.W-1 was ill-treating by the R.W-1, then and within no time came out and noticed R.W-1 was chasing the P.W-1 by beating on the road and even she ran to the house of P.W-3, R.W-1 chased including in entering inside by beating her. The trial Court therefrom rightly observed in this regard that there was no worth cross-examination to P.Ws 1 to 3 by the respondent-husband and the acts proved cruelty of the husband towards the wife.

10) In the cross-examination of R.W-1 all these aspects put to him and his replies are nothing but evasive. R.W-1 also admitted about the sale deed by mentioning name of Y.Sri Priya instead of Y.Sri Sailaja and also admitted that he sold away the house property though denied the suggestion of realising Rs.10.00 lakhs while saying only received Rs.5,55,000/-. Coming to the two more witnesses, he cause examined R.W-2 Sayyed Rehman though it is his chief-examination of P.W-1 had been abusing R.W-1 frequently before the children and she was going to her parents by abandoning the children; his cross-examination answers clearly show that even he does not know anything wants to accommodate R.W-1 being a close friend of him to speak lies. There remains the evidence of R.W-3 one Sujatha. Though she deposed that she is a student of P.W-1 and taking advantage, P.W-1 asked her to give a false complaint to Woman Protection Cell, what she deposed is that she used to visit the house of P.W-1 and R.W-1, she could not even deny if not true the factum of her mother herself given a police complaint against her saying, she ran away from the house along with valuables and she also admitted that she does not know anything regarding complaint filed by P.W-1 in Woman Protection Cell against her and R.W-1. She deposed that R.W-1 approached her to come to Court and give evidence from which she is so deposing. The trial Court therefrom observed that R.W-3 is also at fault and responsible for the state of differences between P.W-1 and R.W-1 and R.W-2 is a planted witness to accommodate R.W-1.

11) From said evidence when it categorically establishes that R.W-1

with a sadistic temperament indiscriminately beating and driving out P.W-1, wife, even in the odd nights from which P.W-1 was taking shelter in the house of P.W-2, a neighbour who categorically deposed the same and even P.W-1 chased by R.W-1 and was beaten indiscriminately while she was even running out having chased on the road and beaten including after P.W-1 entered into the house of her mother P.W-3 and such cruel acts are nothing but unbecoming of a dutiful husband and from said evidence, the trial Court when rightly came to the conclusion in dissolving the marital tie holding the respondent-husband is guilty of matrimonial cruelty, for this Court even by re-appreciation of said evidence supra by sitting in appeal, there is nothing to take any different conclusion muchless for any interference with the findings on any respect. Accordingly, the point No.i is answered.

POINT No.ii:-

12) 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

March , 2015

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