

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

CIVIL MISCELLANEOUS APPEAL No.4602 of 2003

JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

This appeal, under Section 28 of the Hindu Marriage Act, 1955 (for brevity "the Act") is filed by the appellant-husband aggrieved by the order and decree dated 13.10.2003 in O.P.No.44 of 2000 passed by the Senior Civil Judge, Chirala, Prakasam District, dismissing the petition filed by him under Section 13 (ib) of the Act, seeking to grant a decree of divorce.

2. The appellant and respondent herein are petitioner and respondent, respectively, in O.P.No.44 of 2000. For the sake of convenience, the parties are referred to as they are arrayed in the O.P. before the Court below.

3 . The petitioner has filed the aforesaid O.P., alleging that the respondent is his legally wedded wife and their marriage was performed 8 years back as per Hindu Rights and customs at Chinaganjam village. The marriage was consummated and the respondent joined his company at Chinaganjam village, where they lived happily for about 5 ½ years and, out of the wedlock, they were blessed with two daughters viz., (1) Nagasushma, and (2) Nagamoulya. It is alleged that the respondent is an adamant woman and used to quarrel with him

everyday without any reasonable cause and she was not cooperating with the family affairs. It is further alleged that the respondent left his company without his knowledge and consent and such a conduct on the part of the respondent amounts to desertion. It is also alleged that as the respondent was suffering from bleeding and has become weak, though he approached the respondent to bring her back, she declined to join his company. In view of her adamant attitude, he suffered mental agony and hence he was constrained to file the above O.P., seeking to grant a decree of divorce on the ground of desertion.

4. The respondent-wife has filed counter affidavit denying the averments in the petition. It is stated that the petitioner himself was behaving adamantly with her and after the birth of two female children, on the ground that there is no male child, the petitioner started disliking her and developed illegal intimacy with one Madhavi and neglected her. It is stated that in the year 1998, as the said Madhavi died under suspicious circumstances, a case was registered and the petitioner was arrested by the police and during her life time also, the petitioner used to bring the said Madhavi to the house and harass the respondent and in spite of the same, she bore all the torture of the petitioner to keep the family in peace. It is further stated that after the death of Madhavi, the petitioner used to harass her demanding to bring money from her parents as he has incurred huge expenditure in

connection with the criminal case registered on account of suspicious death of Madhavi. It is further alleged that in December, 1998, she suffered Gynic problem and took treatment in Nalluri Nursing Home and Indira Nursing Home, Ongole; and in the month of June, 1999 she went to the petitioner and took treatment from Dr. G. Subba Rao at Chirala for sometime. It is further stated that she also participated in the house warming ceremony of the petitioner on 28.11.1999 and thereafter stayed with the petitioner for sometime, and in view of the torture by the petitioner mentally and physically, the father of the petitioner brought her to Ongole and left her at her parents house and that she never refused to join the company of the petitioner and hence sought for dismissal of the petition filed by the petitioner for grant of divorce.

5. Before the Court below, on behalf of the petitioner-husband, the petitioner himself was examined as P.W.1, besides examining his nephew and friend as P.Ws.2 and 3, respectively. On behalf of the respondent-wife, the respondent herself was examined as R.W.1, besides examining her father and senior paternal uncle as R.Ws.2 and 3, respectively. No documentary evidence was adduced by both the parties. The Court below, after elaborately appreciating the oral evidence on record, has dismissed the petition through the impugned order dated 13.10.2003, on the ground that the petitioner-husband has failed to prove the desertion, as alleged, and held that

merely because they were living separately, the petitioner is not entitled for grant of a decree of divorce. Hence, the present appeal.

6. It is contended by Smt. A. Malathi, learned counsel for the petitioner-husband that the respondent-wife was adamant in her behaviour and was quarrelling with the petitioner everyday. It is further contended that the respondent has deserted the petitioner without any reasonable cause, as such; the petitioner is entitled for a decree of divorce.

7. On the other hand, it is contended by Sri S.V. Muni Reddy, learned counsel for the respondent-wife that after the marriage, both the parties lived together happily for about 5 ½ years and they were blessed with two female children also and only due to the conduct of the petitioner, the respondent was compelled to stay with her parents and several efforts made from her parents side to convince the petitioner to take her back to the matrimonial home were failed and, as such, it is not open for the petitioner to plead that the respondent has deserted him, so as to seek dissolution of marriage.

8. Having heard learned counsel for the parties, we have perused the impugned order and the material on record.

9. It is the specific case of the petitioner that the respondent has deserted him without any reasonable cause and hence sought for dissolution of marriage on the

said ground. According to the case of the respondent-wife, she suffered from gynec problem and hence she took treatment at her parents house at Ongole, whereas it is the allegation of the petitioner that the respondent has deserted him by leaving his company without any reasonable cause. Further, it is the allegation of the respondent that after the birth of two female children, the petitioner started disliking her on the ground that she did not give birth to a male child and developed illegal intimacy with one Madhavi and after her death on suspicious circumstances, a crime was registered and in connection with the said crime, the petitioner was arrested by the police and ultimately the said case was closed. It is specifically averred by the respondent in the counter that the petitioner was insisting to bring money from her parents.

10. It is to be seen that the evidence of P.W.1 itself disentitles him for grant of a decree of divorce on the ground of desertion. It is not in dispute that there was a Gruha Pravesam function of the petitioner celebrated on 28.11.1999 at Chinaganjam village. In his cross-examination, the petitioner in clear terms has admitted that the respondent has attended the Gruha Pravesam function. Even the respondent also, as R.W.1, has deposed that after Gruha Pravesam function, she stayed with the petitioner for a couple of days and thereafter as the petitioner started torturing her, the father of the

petitioner himself dropped her at her parents house. From the above admission of P.W.1, coupled with the evidence of R.W.1, it is clear that the respondent stayed with the petitioner in the month of November, 1999, whereas the present O.P. seeking dissolution of marriage on the ground of desertion was filed in the year 2000 i.e., much before the expiry of two years period as contemplated under Section 13 (ib) of the Act. From the evidence on record, it is also to be seen that P.W.1 himself has admitted that one Srinivasa Rao and his wife Vijayalakshmi, who are related to the respondent, have come to the petitioner and requested him to take back the respondent to matrimonial home. From the said evidence, it is clear that efforts were being made on behalf of the respondent to send her to join the company of the petitioner, but the petitioner was not willing to take her back to lead matrimonial life. Even according to the case of the petitioner, the respondent was suffering from gynec problem. Instead of bringing the respondent to his house and provide proper treatment to her, the petitioner has filed the present petition for grant of divorce on the ground of desertion with all false allegations. In view of the admissions made by P.W.1 and the evidence on record, it is clear that all the time, the respondent was trying to join the company of the petitioner by participating in Gruha Pravesam function and stayed with him for a couple of days, but the petitioner is not willing to take her back to

lead matrimonial life.

11. In that view of the matter, the very petition filed by the petitioner for dissolution of marriage on the ground of desertion in the year 2000 is not maintainable and he is not entitled for grant of a decree of divorce on the ground of desertion. Further, apart from the evidence of P.W.2, who is the nephew of the petitioner, there is no other evidence in support of his case. Therefore, basing on the cross-examination of P.W.1 and the evidence of P.Ws.2 and 3, coupled with the evidence of R.W.1, it is evident that the petitioner, due to the illegal intimacy with Madhavi, has neglected the respondent and did not allow her to join his company.

12. In view of the evidence on record, we are satisfied that there is no desertion by the respondent-wife so as to dissolve the marriage between the parties on the said ground. Therefore, we do not find any merit in this appeal so as to interfere with the impugned order passed by the Court below.

13. For the aforesaid reasons, this appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

REDDY

JUSTICE R. SUBHASH

Dr. JUSTICE B.SIVA SANKARA

RAO

19.03.2015.

Msr

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

CIVIL MISCELLANEOUS APPEAL No.4602 of 2003

19.03.2015
Msr