

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

C.M.A.No.1968 of 2004

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The accompanying C.M.A. is preferred against the order dated 08.04.2004 passed by the II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar in O.P.No.241 of 2000.

The petitioner in the O.P. sought for dissolving the marriage between himself and the respondent. The respondent examined herself as RW.1 before the trial Court, while the petitioner/husband was examined as PW.1. A similar O.P. was earlier filed by the same petitioner/husband i.e., O.P.No.26 of 1995 and that dismissal has attained finality. Three years thereafter, the present O.P. was once again filed for a similar relief. Hence, the trial Court dismissed the O.P. For the past more than one decade, the CMA is pending, but, however, service on the respondent could not be affected so far for want of correct address. On the last occasion, we have indicated that service should be effected, failing which the matter would be decided on merits.

None appeared on behalf of the appellant and there was also no representation when the matter is called.

The petitioner was married twice earlier, but however, he lost both those wives. Hence, the petitioner married the respondent for the 3rd time during May, 1989. The principal plank of attack in the O.P. was that the respondent was acting with cruelty and deserted him without there being any justification.

On the contra, the respondent has pleaded that though there was huge age gap between the petitioner and the respondent to the O.P., but, however, the respondent agreed to marry the petitioner because of the advice tendered by the elderly persons. According to the respondent, she looked after the petitioner and his children born through the earlier marriages, affectionately and carefully. The petitioner also treated the

respondent with respect and affection till one of his sons by name Ashok got married during the year 1992. One year thereafter, the said son Ashok Kumar was also blessed with a son and ever since then it is the petitioner in the O.P., who is demonstrating hostility towards the respondent/wife and it is the petitioner who necked her out of the house on 02.09.1994. It is the petitioner in the O.P., who is guilty of cruel behaviour towards the respondent/wife.

During the course of the trial, the petitioner apart from examining himself as PW.1 has examined 2 other witnesses as PWs.2 and 3. PW.2 is none other than a servant working in the house, while PW.3 was a neighbour. The Court below has assigned reasons why PW.2 was an interested witness and as to how the testimony of PW.3 cannot be relied upon. PW.2 was still working as a servant, hence, he was under the control of the petitioner in the O.P., he was not found to be impartial in his deposition. Therefore, the Court below has no difficulty to find him as an interested witness. This finding in the absence of any strong material to the contra, which is lacking, cannot be upset. In so far as PW.3 is concerned, during the course of his deposition, he has gone to the extent of deposing that the respondent/wife was ill-treating the petitioner/husband and when in uncontrolled emotion, she was throwing the utensils at people. PW.3 went to the extent of stating that in such bouts of uncontrolled emotions, the respondent/wife threw utensils at him on three different occasions and he was also injured. PW.3 being a neighbour if at all there was any such ugly incident indulged in by the respondent/wife of hurting him by throwing domestic vessels on him, he would have either stopped going to the house of PW.1 or at least he would have made efforts to convene a meeting of the caste elders for properly counselling the respondent/wife and since nothing of that sort had happened, the Court below found that the testimony of PW.3 as not reliable. We are of the opinion that the trial Court has assigned correct reasons for not taking into account and consideration the deposition of PWs.2 and 3.

The Court has also noticed that the petitioner herein in fact filed

earlier O.S.No.475 of 2000 on the file of Principal Junior Civil Judge, Ranga Reddy District seeking injunction to restrain the respondent from entering the house itself. That suit was subsequently dismissed and the ad interim injunction initially granted was also vacated. Thus taking into account the conduct of the petitioner in filing a civil suit seeking injunction and then O.P. after O.P. for dissolution of the marriage and also his general conduct, the O.P was dismissed. We have not find any mitigating factor much less merit for us to entertain this appeal and also keep it pending even though no steps for serving the respondent have been taken all this long.

Therefore, this civil miscellaneous appeal stands dismissed.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

25.01.2016
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