

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Civil Miscellaneous Appeal No.1052 of 2006

Date: 13.10.2016

Between:

Smt.Gadi Ramana

... Appellant

and

Gadi Samba Murthy and another

... Respondents

Counsel for the Appellant: Mr.Ch.Dhanamjaya

Counsel for respondent No.1: Mr.K.Jyothi Prasad

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Miscellaneous Appeal (CMA) is filed against Order, dated 30-10-2006, in OP.No.113 of 2000 on the file of the Senior Civil Judge, Kovvur, whereby he has granted a decree for divorce on the ground of adultery.

Mr.Ch.Dhanamjaya, learned Counsel for the appellant, on whose request the case was adjourned for instructions, submitted that he is unable to talk to his client.

Mr.Jyothi Prasad, learned Counsel for respondent No.1, submitted that both the parties have been living separately from the time of institution of the OP by his client in the year 2000 and that they continued to live separately.

In the absence of specific instructions for arguing the case on merits, the learned Counsel for the appellant submitted that the continuous living of the parties separately for more than two decades itself may be treated as the ground for grant of divorce instead of confirming the decree granted by the lower Court on the ground of adultery.

The learned Counsel for respondent No.1 has fairly not opposed the above request.

In *Samar Ghosh Vs. Jaya Ghosh*¹, the Supreme Court held that once the parties are separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage is broken down and that the Court, no doubt, would seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. It has further held that the consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. The Supreme Court referred to and relied upon its earlier judgment in **Kohli Vs. Neelu Kohli**², wherein it is held as under:

“We have been principally impressed by the consideration that once the marriage has broken down beyond, repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By

¹ 2007 (3) ALT 62 (SC)

² (2006) 4 SCC 558

refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, acceding to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising there from.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this

case, it becomes obvious that the approach adopted by the High court in deciding this matter is far from satisfactory.”

Since the appellant and respondent No.1 have been living separately for nearly two decades, following the dicta laid down by the Supreme Court in the afore-mentioned judgments, we are inclined to substitute the ground on which the lower Court has granted the decree for divorce. Accordingly, the OP is decreed on the ground of continuous separation of the parties rather than on the ground of adultery.

The order under appeal is, accordingly, modified to the above extent. The CMA is disposed of.

As a sequel to disposal of the CMA, interim order, dated 01-12-2006, is vacated and CMAMP.No.2170 of 2006 is disposed of.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 13th October, 2016
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