

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

FAMILY COURT APPEAL Nos.261 & 298 of 2009

Between:

Sulochana,

D/o B.Ananta Ramulu

..... Appellant in FCA No.261/09 and respondent in FCA No.298/09

and

M.Ramachari,

S/o Late M.Narsaiah

..... Respondent in FCA No.298/09 and respondent in FCA No.261/09

JUDGMENT PRONOUNCED ON : 09th March, 2017

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

* THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ FAMILY COURT APPEAL Nos.261 & 298 of 2009

% 09.03.2017

Between:

Sulochana,

D/o B.Ananta Ramulu

..... Appellant in FCA No.261/09 and respondent in FCA No.298/09

Vs.

\$ M.Ramachari,

S/o Late M.Narsaiah

..... Respondent in FCA No.298/09 and respondent in FCA No.261/09

! Counsel for the Appellant in FCA No.261/09 and respondent in
FCA No.298/09: Mr. P.Prabhakara Rao

Counsel for Respondent in FCA No.298/09 and respondent in
FCA No.261/09: Mr. Gopalakrishna Kalanidhi

<Gist :

>Head Note:

? Cases referred:

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

FAMILY COURT APPEAL Nos.261 & 298 of 2009

Date:09.3.2017

FCA.No.261 of 2009

Between:

Sulochana,

D/o B.Ananta Ramulu

..... Appellant

And:

M.Ramachari,

S/o Late M.Narsaiah

.....Respondent

Counsel for the appellant: Mr. P.Prabhakara Rao

Counsel for the respondent: Mr. Gopalakrishna Kalanidhi

AND

FCA.No.298 of 2009

Between:

M.Ramachari,

S/o Late M.Narsaiah

..... Appellant

And:

Sulochana,

D/o B.Ananta Ramulu

.....Respondent

Counsel for the appellant: Mr. Gopalakrishna Kalanidhi

Counsel for the respondent: Mr. P.Prabhakara Rao

The Court made the following:

COMMON JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Since both these Family Court Appeals arise out of common order, dated 07.8.2009, in O.P.Nos.124 of 2006 and 16 of 2007 on the file of the learned Judge, Family Court, Hyderabad, between the same parties, they are heard and being disposed of together.

For convenience, the parties are hereinafter referred to as they are arrayed in F.C.A.No.261 of 2009

The appellant is the legally wedded wife of the respondent. Their marriage was solemnised on 04.07.1969 as per Hindu customs and rites. The marriage was consummated. As the couple could not beget issues, they have fostered a female child called Mithila. Due to certain differences between the couple, they started living separately from the year 1990. The respondent permitted the appellant to live on the ground floor portion of his house at Yellareddyguda. The respondent retired as Divisional Engineer of the erstwhile APSEB in the year 1999. The respondent permitted the servant maid-Laxmi to live with him. The appellant alleged that the respondent had developed illicit relationship with the said Laxmi and they started living together as man and wife. In this scenario, the

respondent filed O.P.No.124 of 2006 for dissolution of his marriage with the appellant. The appellant on the other hand filed O.P.No.16 of 2007 for perpetual injunction restraining the respondent and persons claiming through him from interfering with her peaceful possession and enjoyment of the property bearing No.8-3-720/14, admeasuring 260 square yards comprising ground and first floor situated at Yellareddyguda, Ameerpet, Hyderabad. Both these O.Ps were tried together and common evidence was recorded. The respondent has examined himself as P.W-1 and got no documents marked. The appellant has examined herself as R.W-1 and also examined R.Ws.2 to 4 and got Exs.R-1 to R-7 marked. The Court has marked Ex.C-1- joint photograph of the appellant and the respondent.

In O.P.No.124 of 2006, the following point was framed:

“Whether the petitioner is entitled to decree of divorce?”

In O.P.No.16 of 2007, the following points were framed:

- “1. Whether the petitioner/wife is entitled to the decree of perpetual injunction?
2. Whether the respondent/husband is entitled to the decree of perpetual injunction?
3. Whether the deed of compromise dated 28.11.2006 is fabricated and whether it is not binding on the respondent?”

On appreciation of the oral and documentary evidence, the trial Court has decreed both the said O.Ps.

The appellant has filed F.C.A.No.261 of 2009 against the decree granting divorce in O.P.No.124 of 2006. The respondent filed F.C.A.No.298 of 2009 against the decree in O.P.No.16 of 2007 granting permanent injunction in favour of the appellant.

We have heard Mr. P.Prabhakar Rao, learned counsel for the appellant and Mr. Gopalakrishna Kalanidhi, learned counsel for the respondent.

Learned counsel for the appellant submitted that the Family Court has committed a serious error in dissolving the marriage between the parties having rendered a categorical finding that the appellant has made out a case that she has a reasonable ground to live separately from the respondent. He has further submitted that the respondent being guilty of his own misdeed of living separately from the appellant for unjustifiable reason cannot be allowed to take advantage of his own misconduct by being granted decree for divorce without proving the existence of any ground under Section-13 of the Hindu Marriage Act, 1955 (for short 'the Act'). In support of his submissions, he has placed reliance on the judgments of the

Supreme Court in *Neelam Kumar Vs. Dayarani*¹, *Gurbux Singh Vs. Harminder Kaur*² and *Darshan Gupta Vs. Radhika Gupta*³.

Opposing the above submissions, Mr. Gopalakrishna Kalanidhi, learned counsel for the respondent, submitted that the very fact that the couple has been living separately from the year 1990 itself shows that the marriage has irretrievably broken down and that therefore, the Family Court was justified in dissolving the marriage between the parties. He has also referred to and relied upon Ex.R-1-compromise deed and also another compromise deed, dated 23.11.2013, (not marked) to buttress his submission that in pursuance of the understanding reached between the parties, they have been living separately and the Family Court was therefore justified in granting decree of divorce in favour of the respondent.

We have carefully considered the respective submissions of the learned counsel for both parties with reference to the evidence on record.

The submission of the learned counsel for the respondent that in view of Ex.R-1, his client is entitled to decree of divorce

¹ (2010) 13 SCC 298

² (2010) 14 SCC 301

³ (2013) 9 SCC 1

is liable to be rejected. Ex.R-1 is filed by the appellant, obviously, to support her plea raised in O.P.No.16 of 2007 filed by her for perpetual injunction. This document, which was allegedly executed by the respondent in the Police Station, enabled the appellant to stay in the house bearing No. 8-3-720/14 situated at Yellareddyguda, Hyderabad and collect rents from the tenants of the said house. This deed by no means can help the case of the respondent for obtaining the decree of divorce. The Act does not recognize a private arrangement between the parties, by which the legal relationship between the wife and husband can be put an end to, otherwise than by the intervention of the Court, either on any of the grounds mentioned in Section 13 of the Act or by mutual consent under Section 13-B thereof.

Section-13 of the Act contains various grounds on which a party to a marriage can be granted divorce. This Section has various sub-sections and sub-clauses.

A perusal of the petition in O.P.No.121 of 2016 shows that the same was filed under Section-13(1)(i)(ia) and (ib) of the Act. These clauses read as under:

“Section-13-Divorce: (1) Any marriage solemnised whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party:

(i) has, after the solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioners for a continuous period of not less than two years immediately preceding the presentation of the petition.”

In his petition, the respondent has alleged that the appellant developed grudge against him; that voluntarily she left his company abusing him by saying that he is unfit to be her husband; and that the appellant is residing with another person and “living a colourful life”. He has also alleged that since 14.01.1990, they are residing separately; that he permitted the appellant to live on the ground floor portion of his house at Yellareddyguda; that the appellant, who had been receiving rents and also half of his retirement benefits, indulged in filing false complaints to the Police and also engaged rowdy elements to eliminate him and grab the properties; that the appellant used to harass him by making phone calls threatening to kill him and grab his properties; and that due to the timely intervention of the residents of the locality, the respondent was saved from the

clutches of the goondas engaged by the appellant. He has further alleged that the appellant herself deserted the respondent even prior to 14.01.1990; that she was harassing him physically and mentally; and that both parties are residing separately by mutual consent. The respondent has, therefore, prayed for grant of divorce as the marriage has irretrievably broken down.

The gist of the averments of the petition, thus, reveals that though in the beginning of the petition, sub-clauses-(i)(ia) and (ib) have been shown (added in manuscript), the respondent has claimed divorce only on one ground, i.e., cruelty leading to irretrievable breaking down of the marriage.

The appellant has filed a counter-affidavit denying all the allegations. She has *inter alia* stated that the respondent was always suspicious about her character; that he started harassing her some time after the marriage; that the respondent was a sadist, beating her and behaving with her brutally without any cause; that he was an alcoholic and womaniser; and that he was maintaining illegal contact with one Laxmi, who is a maid servant. She has denied the averment that she received half of the retirement benefits of the respondent.

In the affidavit filed in lieu of his chief-examination, the respondent as P.W-1 reiterated the contents of his Petition. He has deposed that whenever he visited Hyderabad, he found the appellant in the company of one Sridhar of S.R.Nagar who used to call her as sister; that by passage of time, he learnt that Sridhar was staying in his house with the appellant during nights; that she was also going out with him to places in car; that the appellant has eloped with the said Sridhar in November 1999 with gold, cash and property documents and returned in January 2000; and that the fostered child having found the illicit relationship between the appellant and Sridhar, left for her parents' house in the year 1999. He has further stated that he did not report the matter to the Police fearing that it may defame them in the society. He has also alleged that the appellant was taking assistance of goondas and anti-social elements; that she has filed a complaint against him which was registered as Crime No.538 of 2003 on the file of the Women Police Station under Sections-498-A and 497 IPC and Sections-4 and 6 of the Dowry Prohibition Act; that the Police arrested and took him to the Police Station; and that under the threat of remand and conviction, the appellant has taken his signatures on blank papers. He has denied that he was maintaining illegal contact with one Laxmi.

In his cross-examination, the respondent has admitted that his family life was not going on right lines and that he did not take any steps to set right the same. He has further deposed that he is not willing to live with the appellant even if the circumstances are favourable; that he is not ready to accept her; and that he did not give any notice to the appellant though she has left his company in the year 1990. He has admitted that after the appellant has left him, he has got acquaintance with Laxmi, who was working as maid servant in their house when he was living with his wife at Yellareddyguda and that, from December, 1999, he and Laxmi were living together. He has expressed ignorance as to whether Laxmi has obtained divorce from her husband. He has denied the suggestion that he was living with Laxmi from 1990 itself and not from 1999. He has also denied the suggestion that he has married Laxmi in Avanthipuram temple in Miryalguda.

The appellant, examined herself as RW-1, has deposed that she does not know any person by name Sridhar from Rajahmundry and that she also does not know that he was living at Sanjeevareddy Nagar, Hyderabad. She has further deposed that she does not know whether Sridhar mediated for purchase of plots at Hayathnagar and Jeedimetla in her name. She has

denied the allegation that she eloped with the said Sridhar for two months and that she left his company after one Srisailam Yadav intervened.

The Family Court has not dealt with the aspect of the alleged relationship of the appellant with Sridhar. It has also not rendered any finding that the appellant was guilty of subjecting the respondent to cruelty. On the contrary, in para-19 of its order, it has rendered a specific finding that the appellant has *prima facie* made out a case that she has a reasonable ground to live separately from the respondent. The respondent has not questioned the said finding. Thus, the ground of cruelty alleged by the respondent is not held proved. The only ground on which the Family Court has granted decree for divorce is that since 1990, the couple have been living separately and that even the appellant has expressed her disinclination to live with the respondent and thereby, the marriage has irretrievably broken down.

In **Neela kumar** (1 supra), the Supreme Court has dealt with more or less the same situation, where decree for divorce was granted by the trial Court on the ground that the marriage between the parties has completely broken down with no hope of revival. However, rejecting the said plea advanced on behalf

of the husband, the Supreme Court observed that there is nothing to indicate that the wife has contributed in any way to the alleged breakdown of the marriage and that if a party to the marriage, by his own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek divorce on the ground of breakdown of the marriage and that, that would simply mean giving someone the benefits of his/her own misdeeds. The Supreme Court referred to and relied upon the judgment in *Vishnu Dutt Sharma vs. Manju Sharma*⁴, wherein it was held that irretrievable breakdown of the marriage is not a ground for divorce as it is not contemplated under Section 13 of the Act and granting divorce on that ground alone would amount to adding a clause therein by a judicial verdict which would amount to legislation by Court.

In *Gurbux Singh* (2 supra), the Supreme Court reiterated the principle that except the grounds enumerated in Section 13 of the Act, a Hindu marriage solemnized under the Act cannot be dissolved on any other grounds.

In *Darshan Gupta* (3 supra), the Supreme Court construed Section 13(1) of the Act and held that the grounds contained in the said provision are based on the “fault” of the party against

⁴ (2009)6 SCC 379

whom dissolution of marriage is sought; that in matrimonial jurisprudence, such provisions are founded on the “matrimonial offence theory” or the “fault theory”; and that under this jurisprudential principle, it is construed that only on the ground of opponent’s fault that a party may approach Court seeking annulment of his/her matrimonial alliance. In para 46 of this judgment, the Supreme Court held as under:

“46. Despite our aforesaid conclusions, it is necessary to examine the instant controversy from another point of view. As noticed hereinabove, it was the vehement contention of the learned counsel for the respondent-wife, based on the pleadings filed by Radhika Gupta, as also, the evidence produced by her, that it was the husband Darshan Gupta alone, who was blameworthy of the medical condition of the respondent. It was submitted, that Darshan Gupta desires to encash on his own fault, by seeking dissolution of marriage for a consequence of which he himself was blameworthy. The instant submission, though not canvassed in that manner, can be based on a legal premise. A perusal of the grounds on which divorce can be sought under [Section 13\(1\)](#) of the Hindu Marriage Act, 1955, would reveal that the same are grounds based on the ‘fault’ of the party against whom dissolution of marriage is sought. In matrimonial jurisprudence, such provisions are founded on the ‘matrimonial offence theory’ or the ‘fault theory’. Under this jurisprudential principle, it is only on the ground of an opponent’s fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance. In other words, if either of the parties is guilty of committing a matrimonial offence, the aggrieved party alone is entitled to divorce. The party seeking divorce under the “matrimonial offence theory” / “fault theory” must be innocent. A party suffering “guilt” or “fault” disentitles himself/herself from consideration. Illustratively, desertion for a specified continuous period is one of the grounds for annulment of marriage. But the aforesaid ground for annulment is available only, if the desertion is on account of the fault of the opposite party, and not fault of the party which has approached the Court. Therefore, if a

husband's act of cruelty, compels a wife to leave her matrimonial home, whereupon, she remains away from the husband for the stipulated duration, it would not be open to a husband to seek dissolution of marriage, on the ground of desertion. The reason being, that it is the husband himself who was at fault, and not the wife. This is exactly what the respondent has contended. Her claim is, that in actuality the appellant is making out a claim for a decree of divorce, on the basis of allegations for which he himself is singularly responsible. On the said allegations, it is Darshan Gupta, who deserves to be castigated. Therefore, he cannot be allowed to raise an accusing finger at the respondent on the basis of the said allegations, or to seek dissolution of marriage thereon.

Emphasis added.”

If we apply the aforementioned legal principles to the facts of the present case, we have no hesitation to hold that in the absence of the respondent proving cruelty against the appellant, the Court below has committed a serious error in granting decree of divorce only on the ground of the parties living separately for a long time and that by such separation, the marriage has irretrievably broken down. In our opinion, though this ground may be supplementary to any other substantive grounds mentioned under Section 13 of the Act, the same cannot be a stand alone ground. Otherwise, as observed by the Supreme Court in **Neela kumar** (1 supra) and **Darshan Gupta** (3 supra), an unscrupulous husband may be benefited by the grant of divorce based on his own deeds and it encourages such unscrupulous husbands to drive away their wives and secure divorce by pleading that the marriage has irretrievably

broken down. Though the respondent has made bald allegations against the appellant of her leading “colourful life” and subjecting him to cruelty, he failed to let in any evidence in support of his allegations. As observed hereinbefore, even the Family Court has not held anything against the appellant. On the contrary, it has given a specific finding that the appellant has made out a reasonable ground to live separately from the respondent. In the light of these facts, we are of the opinion that the Family Court has committed a serious error in dissolving the marriage on the ground of irretrievable breaking down of the marriage between the parties. The respondent, having accepted the fact that he has been living with one Laxmi thereby admitting his misdeed, cannot be allowed to walk away with the advantage of securing dissolution of marriage with the appellant, his legally wedded wife. In view of the same, the decree in O.P.No.124 of 2006 cannot be sustained and the same is, accordingly, set aside.

As regards the decree for injunction granted by the Family Court in favour of the appellant, being the legally wedded wife of the respondent, she is entitled to enjoy the benefit of the house, in which she is permitted to stay under Ex.R-1. Therefore, no exception can be taken to the said decree.

The only relief granted by the Family Court was permanent injunction restraining the respondent from interfering with the appellant's possession of the property which she has taken possession in the year 1990 itself. During the hearing, it is brought to the notice of this Court that this property is subject matter of the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as the respondent appeared to have encumbered the same, in pursuance of which the creditor has initiated the said proceedings. It is, therefore, needless to observe that the decree for injunction granted in favour of the appellant is subject to the outcome of the securitization proceedings that are stated to be pending.

In the aforementioned facts and circumstances of the case, F.C.A.No.261 of 2009 is allowed and the decree for dissolution of marriage granted by the Family Court in favour of the respondent in O.P.No.124 of 2006 is set aside. F.C.A.No.298 of 2009 is dismissed confirming the decree of the Family Court in O.P.No.16 of 2007.

As a sequel to disposal of these Family Court Appeals, interim order, dated 22.10.2009, in F.C.A.M.P.No.526 of 2009 in F.C.A.No.261 of 2009 is set aside and all the miscellaneous

petitions pending in these appeals shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

09th March, 2017

Note: L.R. copies to be marked.

(B/o)
DR/GHN

