

THE HONOURABLE SRI JUSTICE RAJA ELANGO

AND

HONOURABLE SRI JUSTICE P. KESHAHA RAO

C.M.A. M.P. No.1427 OF 2017

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C.M.A. No.1186 OF 2011

JUDGMENT: (Per Hon'ble Sri Justice Raja Elango)

The Civil Miscellaneous Appeal is filed by the appellant –husband under Section 28 of the Hindu Marriage Act, 1955, challenging judgment and decree, dated 11.08.2010, passed in O.P. No.6 of 2005 by the Additional Senior Civil Judge, Kadapa.

The brief facts of the case are that the marriage between the appellant and the respondent was performed on 07.06.1991 at Pythunagaram, Nandyal mandal, Kurnool District. Out of the wedlock, the appellant and the respondent begot one daughter and a son. After the birth of male child, the respondent did not accompany the appellant. The appellant made several efforts to take back his wife and children, but in vain. Therefore, the appellant filed a petition for restitution of conjugal rights before the Sub-Court, Nandyal. But, the respondent bluntly refused to come to her matrimonial house. Thereafter, the respondent filed a private complaint against the appellant for the offences under Section 498-A, 409 and 109 IPC and the same was numbered as CC No.323/ 1997 on the file of Judicial Magistrate of First Class, Nandyal. The said CC was ended in acquittal. The respondent intentionally harassed the appellant mentally and physically and she did not return to her matrimonial house. Therefore, the appellant filed OP No.6 of 2005 for dissolving the marriage on the ground of cruelty and desertion.

The respondent – wife filed counter admitting the marriage between her and the appellant and denying the allegations made by the appellant. She further stated that the appellant and his parents harassed her for additional dowry and the appellant used to pick quarrel for simple reasons and that the appellant addicted to bad habits.

On behalf of the appellant PW.1 was examined and Exs.A1 to A5 were marked.

On behalf of the respondent R.W.1 was examined and no documents were marked.

On perusal of the oral and documentary evidence adduced by both the parties and on perusal of the material available on record, the Court below dismissed the OP on the ground that the appellant failed to prove the grounds of desertion and cruelty on the side of the respondent, vide order, dated 11.08.2010. Hence, this appeal.

Heard and perused the material available on record.

On 04.07.2017, learned counsel for the appellant submitted a letter to the Registrar (Judicial) requesting to refer the matter to the Mega Lok Adalat as the appellant and the respondent entered into compromise to dissolve their marriage at the intervention of elders. Accordingly, the matter was referred to Lok Adalat. But, as seen from the proceedings, this Court declined the request of the learned counsel for the appellant since a decree of divorce cannot be granted by the Lok Adalat in terms of the regulations of the National Legal Services Authority. Thereafter, the matter was adjourned as it was represented that the parties are going to settle the issue by way of entering into a compromise.

Today, when this matter has been taken up, the appellant and the respondent, who appeared before this Court, submitted through their Counsel that due to intervention of elders, they entered into compromise and therefore, the appeal may be allowed by granting divorce. Both the appellant and the respondents filed combined affidavit to that effect and they also filed a joint memo of compromise, which contains the following terms and conditions:

“1. The husband (appellant) agreed to pay Rs.15,00,000/- to the wife (respondent) towards permanent alimony.

2. The wife (respondent) agreed to forego all her rights as wife of the appellant (husband) including monetary benefits etc and agreed to execute any document to that effect.

3. The wife (respondent) agreed to give consent for annulling the marriage held on 07.06.1991 and for granting divorce to the appellant (husband).

4. The respondent (wife) agreed to withdraw the criminal proceedings in C.C. No.166 of 2016 on the file of II Additional JFCM, Kadapa, without any reservation.

5. The respondent (wife) agreed to forfeit her maintenance claim out of M.C. No.19 of 2004 on the file of I Additional Junior First Class Magistrate, Kadapa and any sort of further maintenance.

6. The appellant (husband) agreed to pay Rs.7,50,000/- to their daughter i.e. D. Deepti.

7. The appellant (husband) agreed to pay Rs.7,50,000/- to their son i.e. Niranjan Reddy @Dileep Kumar Reddy.

8. It is agreed by both the appellant (husband) and the respondent 9(wife) to pay and receive the amount agreed to be paid to the daughter and the son will be after closure of criminal proceedings.

9. The respondent (wife) acknowledge the payment of Rs.15,00,000/- which the appellant (husband) agreed to pay towards full and final settlement of all her claims arose out of their wedlock.

10. The appellant (husband) has cleared all arrears of maintenance of Rs.66,000/- arise out of M.C.No.19 of 2004 to till date i.e. upto August 2017 and receipt was issued by the respondent (wife) to that effect.

11. Both the appellant (husband) and the respondent (wife) agree that they would have no future claims whatsoever against each other through their wedlock.

12. Both appellant (husband) and the respondent (wife) agreed to lead their independent life as they like according to their whims and fancies.”

In the above circumstances and in view of the compromise terms and conditions agreed between the parties, this Court is of the view that the miscellaneous application can be ordered and the appeal can be allowed by granting divorce to the appellant and the respondent.

Accordingly, the C.M.A. M.P. No.1427 of 2017 is ordered and the Civil Miscellaneous Appeal is allowed and order, dated 11.08.2010, passed in D.O.P. No.06 of 2005 by the Additional Senior Civil Judge, Kadapa, is set aside, and consequently, D.O.P. No.06 of 2005 is allowed and the marriage between the appellant and the respondent is hereby dissolved by granting divorce. No order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

September 21, 2017.

KTL

P. KESHAVARAO, J

