

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No. 373 of 2006

JUDGMENT:

Assailing the order and decree dated 06.03.2006 in O.P.No. 7 of 2004 on the file of the Senior Civil Judge at Huzurabad, Karimnagar district, wherein an application filed by the petitioner/ husband under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, was dismissed, the present appeal came to be filed under Section 28 of the Hindu Marriage Act.

2. For the sake of convenience, the parties are hereinafter referred to, as arrayed in the O.P.

3. The marriage between the petitioner and respondent took place on 21.05.1996, at the house of the parents of the respondent at Rajapalle village of Huzurabad Mandal. It is stated that no dowry was given and no articles were presented at the time of marriage. It is stated that the respondent was adamant from the day she joined the company of the petitioner in the month of June, 1996. However, both of them lived happily for a period of six months, and thereafter, the respondent left the company of the petitioner. The petitioner is said to be an agriculturist living in a small village and not accustomed to any luxuries in life. On the

other hand, the respondent was desirous of living a luxurious life and always used to lower the petitioner in one way or the other and comment that he is not able to mobilize luxurious items like dressing table, dining equipment, fridge, T.V. etc. It is stated that the petitioner is a poor person, and hence, could not accommodate the respondent in urban areas, so as to have a sophisticated living.

4. The averments in the petition further show that during her stay with the petitioner, which was for a period of six months, the respondent became pregnant, but, even then, there was no change in her attitude and she used to abuse the petitioner and his mother on one pretext or the other. She used to repeatedly comment that she could not get a suitable bridegroom for herself, and that the petitioner is not at all equal to her expectations. It is further stated in the petition that the mother of the petitioner was also subjected to lot of humiliation in the hands of the respondent, which she suffered with an intention not to disturb the marital relation between the petitioner and respondent.

5. It is stated that in the month of January, 1997, the respondent left to her parents' house for delivery and gave birth to a male child on 21.06.1997. However, when the petitioner went to see the new born child, he was not permitted to take a look at him. The respondent herself named the child without even calling the petitioner and his mother. It is stated that since January, 1997, the respondent started staying in Rajapalle village and never turned up at the petitioner's residence.

6. The averments in the petition disclose that the respondent hatched a plan to extract property from the petitioner, and with that desire, she made visits to the village of the petitioner and stayed in the house of the relatives since 1997, for the sake of property. She went to the extent of threatening to kill herself or to kill the petitioner or child and started forcing the petitioner and his mother to give money and properties. The averments in the petition show that by exerting pressure, the respondent got executed two sale deeds in the name of her son, though the petitioner had no intention to execute gift deeds in favour of anybody else. Later, the petitioner and his mother referred the matter to the elders, and on 16.04.2000, the respondent admitted her guilt and illegality in obtaining the gift deeds. It is stated that as the petitioner is in possession of the land property at Survey No. 310 of Vennampalli village, the respondent filed a suit against the petitioner and his mother for permanent injunction in O.S.No. 172 of 2002 on the file of the Junior Civil Judge, Huzurabad, which is contested by the petitioner.

7. Having regard to the above, the contention of the petitioner is that the acts of the respondent would amount not only to cruelty but also desertion, thereby warranting grant of divorce.

8. The respondent filed a counter, contending that the allegation made in the petition, that no amounts were paid at the time of marriage, is false, as the parents of the respondent gave Rs.1,50,000/- towards dowry and also presented six tolas of gold,

to the petitioner, besides household articles worth about Rs.16,000/-. It is further contended that after the respondent became pregnant, the petitioner and his mother sent her to her parents' house for medical treatment by refusing to provide medical aid and did not visit her even after delivery. The respondent contends that the mother of the petitioner always used to abuse her by saying that she has not brought huge dowry. It is stated that the petitioner did not come to the hospital to see the respondent and the new born child. Three months after delivery, a panchayat was said to have been convened at Huzurabad, in which one of the elders advised the respondent to join the company of the petitioner. But, even after that, the petitioner did not take care of the respondent and her child, and also suspected the parenthood of the child.

9. The respondent further states that the petitioner did not send her to her parents house for festivals, and when the father of the respondent requested the petitioner, he was beaten by the petitioner at his house, on which a complaint came to be lodged before Saidpur police. Subsequently, the petitioner himself came to the parents' house of the respondent and requested to send the respondent along with him. On an assurance given by the petitioner that he would take care of her properly, the respondent again joined the company of the petitioner and lived with him for one year. During the said period, she became pregnant.

10. It is alleged by the respondent that the petitioner and his mother used to say that the petitioner wants to marry one Sarojana, and on this ground, the respondent was sent to Huzurabad forcibly, while she was pregnant. It is further stated that when the petitioner contracted second marriage with the said Sarojana, the respondent filed a complaint with Saidapur Police against the petitioner and his mother. Accordingly, a panchayat was held, wherein the elders advised the petitioner to execute gift deeds in favour of his son. Though gift deeds were executed by the petitioner and his mother, they are not allowing the respondent and her child to enjoy the gifted property, which led to filing of O.S.No. 172 of 2002 on the file of the Junior Civil Judge, Huzurabad for injunction. The contention of the respondent is that on one hand, the petitioner contracted second marriage and on the other hand, he is trying to say that he made efforts to take back the respondent to his house. The respondent contends that the petitioner is taking steps for cancellation of the gift deeds executed in favour of his son, and therefore, seeks dismissal of the appeal.

11. During the course of enquiry, the petitioner got himself examined as PW1 and one S.Bhagawan Reddy, Resident of Vannempalli village as PW2. The respondent got herself examined as RW1 and one H.Shyamsunder Reddy, the maternal uncle of the respondent, as RW2. She also got marked Ex.B1 the certificate issued by the Manager, Vysya Bank, Huzurabad dated 09.07.2004.

12. Basing on the evidence on record, the learned trial Judge dismissed the request of the petitioner/ husband seeking divorce. Challenging the findings given therein, the present appeal came to be filed by the petitioner/ husband.

13. The point for consideration is whether the respondent subjected the petitioner to cruelty and deserted the petitioner for a period of not less than two years immediately preceding the presentation of the petition.

14. In order to appreciate the same, it would be useful to refer to the evidence of the witnesses. PW1, in her chief affidavit, reiterated what he has stated in the petition, the contents of which are referred to earlier.

15. PW2 repeated in verbatim, the averments in the chief affidavit given by PW1, in all aspects. He deposed that after marriage, the respondent lived with the petitioner for about six months, and on the ground that he was not able to mobilize luxurious items, the respondent used to harass the petitioner using unparliamentary language. He further deposed that the respondent went to her parents' house in the month of January, 1997, and stayed in the house of her nearest relative at Vennampally village. It is stated that by exerting pressure, the respondent got the gift deeds executed by the petitioner in the name of her son. Later, when the petitioner referred the matter to the elders in the year 2000, the respondent admitted her guilt and the illegality of the gift deeds in the panchayat, but, however,

did not accept to stay with the petitioner. In the cross-examination, PW2 admitted that the petitioner had two issues, a son and a daughter through the respondent.

16. Similarly, the respondent, who examined herself as RW1, also deposed in the chief the averments made in the counter filed, which gets corroboration in all respects from RW2.

18. A perusal of the evidence on record, more particularly, the evidence of the petitioner/husband would show that as the respondent deserted him from January, 1997 and from March, 2000 to till date, he is suspecting the parenthood of the second child. It is to be noted here that the fact of birth of the second child came to be mentioned in the affidavit of PW2. As such, denial of parenthood of the second child by the petitioner, prima facie, amounts to cruelty on the part of the petitioner/husband, even assuming that the respondent was living separately for sometime prior to the presentation of the petition. The evidence on record given by both parties separately gets support from the panchayats held.

18. The main allegation of the petitioner is that the respondent/ wife went for delivery of the child in the year 1997, and did not return, and though the petitioner went to see the new born child, he was not allowed to have a look at the child. But, the evidence on record show that after the delivery of the respondent, a panchayat was held, and in pursuance of the panchayat proceedings, the respondent lived with the petitioner

for one year, and during that period, she gave birth to a female child. Therefore, the argument of the learned counsel for the petitioner that the respondent stayed away from the petitioner after the birth of the first child, appears to be incorrect.

19. It is also to be noted that the petitioner, in his affidavit, projected as if he is a fair man and the respondent was harassing him to lead a luxurious life. The evidence on record show that the parents of the respondent are also villagers, having financial background similar to that of the petitioner. It is not the case of the petitioner that his family is richer than that of the petitioner, so as to neglect the petitioner.

20. As per the evidence of RW1-the respondent herein, her parents had three acres of land even by the date of her marriage, and that the income from the said agricultural land is about ten to fifteen thousand per annum. It is also stated that subsequent to the marriage of the respondent, her sister also got married and an amount of Rs.3 lakhs was given as dowry by her parents for the said marriage. Therefore, it cannot be said that the respondent has neglected the petitioner on the ground that she wanted to lead a luxurious life. Definitely, she would have known the status of her husband before the marriage and would not have demanded the petitioner to purchase luxurious items, as alleged in the petition.

21. The evidence of the respondent also discloses that subsequent to their marriage, the petitioner enforced a second marriage, which led to a panchayat, in which there was a

settlement, wherein the petitioner was directed to transfer four acres of land in the name of his son. It is not the case of the petitioner that the respondent had made it a condition to join the petitioner. But, having executed the two gift deeds on 01.03.2000 in favour of his son, the petitioner/ husband filed a petition seeking cancellation of the same, vide O.S.No. 172 of 2002, which is said to be pending before the Court of the Junior Civil Judge, Huzurabad. Therefore, the action of the petitioner in executing the gift deeds in favour of his son and thereafter, filing a petition for cancellation of the gift deeds, speaks volumes of his conduct towards the respondent. If at all there was any harassment, it was on the part of the petitioner/ husband.

22. Therefore, in the absence of any evidence on record to show that the respondent developed dislike towards the petitioner and as there is abundant evidence to show that the respondent was neglected and also subjected to lot of litigation, we feel that the request of the petitioner for granting divorce, cannot be accepted. The approach of the petitioner towards the respondent in disowning the second child appears to be very unreasonable, as it is not the case of the petitioner that the respondent is living with some other person or has intimacy with any other person.

23. In view of the above, C.M.A is dismissed, by confirming the findings in the order and decree dated 06.03.2006 in O.P.No. 7 of 2004 on the file of the Senior Civil Judge at Huzurabad, Karimnagar

district. As a sequel thereto, Miscellaneous Petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

12.07.2018
DMG

