THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

FAMILY COURT APPEAL No.114 of 2005

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The present Family Court Appeal is filed by the appellant/plaintiff aggrieved by the Judgment and Decree in O.S.No.177 of 2001, dated 22-4-2004 on the file of the Judge, Family Court, Hyderabad, filed under Section 19 of the Family Courts Act, read with Section 96 of Civil Procedure Code, against the first defendant who is wife of the plaintiff and defendants 2 and 3 are father and mother of the first defendant, seeking a relief for restitution of conjugal rights against the first defendant and restraining her from contracting second marriage while the first marriage with the plaintiff is subsisting.

2. For the sake of convenience, the parties are hereinafter referred to as "the plaintiff and the defendants" as they are arrayed in the Original Suit filed before the trial Court. The case of the plaintiff is that he was working as an Accountant in a private firm in Jeddah in the Kingdom of Saudi Arabia on two years contract basis at the time of his marriage. His sister and the first defendant are colleagues in an educational institution in Hyderabad and brother-in-laws of first defendant are also working in Jeddah and in the said context, the sister of the plaintiff suggested for marriage between the plaintiff and first defendant and thus, the marriage has been agreed by both sides and the same was scheduled to be held on 24-5-2001 at Nafees Plaza Function Hall, A.C. Guards,

Hyderabad. All arrangements were made for the wedding, but for want of leave denied by the employer of the plaintiff, he could not fly down to Hyderabad from Jeddah to attend his own marriage. The marriage ceremony has taken place on 24-05-2001 in the absence of the plaintiff by adopting the method of expressing the consent between each other over telephone. The marriage over telephone was held in the presence of Imam of Mecca Masjid, Charminar and a Meher of Rs.51,000/- was fixed. The plaintiff visited India only in the month of December, 2001 and by then, the defendant No.1 left for United State of America (USA) in July, 2001. Since, the first defendant did not turn up and the plaintiff had no opportunity to join the first defendant, the Valima reception scheduled to be held on 25-12-2001 was also cancelled by the defendants on 20-12-2001. The plaintiff contacted the first defendant through E-mails and over telephone, asking her to join him, but all his efforts were of no avail. Thus, the plaintiff filed the suit for restitution of conjugal rights and for other reliefs.

3. The first defendant filed her written statement, denying the marriage said to have been taken place among the plaintiff and first defendant on 24-5-2001 and the so called marriage over telephone is nullity in the eye of law as the marriage has not been confirmed by the presence of two witnesses on both sides. Further, the witnesses said to have been present along with the plaintiff in Jeddah at the time of telephonic marriage, filed their affidavits attested by the Consulate General of India at Jeddah on 21-02-2002, denying their role as witnesses to the said marriage.

4. That apart, the differences between the plaintiff and the first defendant rose to such a level that even without seeing, knowing each other and without having the marriage consummated, they filed criminal complaints, private complaints against each other.

5. On the basis of the above pleadings, the trial Court has settled the following issues:-

i) Whether there is any marriage between plaintiff and first defendant?

ii) If so whether the plaintiff is entitled to restitution of conjugal rights?

iii) Whether defendant Nos.2 and 3 are necessary parties ?

iv) Whether the plaintiff is entitled to injunction relief restraining the defendants from performing the marriage of defendant No.1 to anybody ?

v) To what relief ?

6. The trial Court examined Pws.1 to 3 on behalf of the plaintiff and got marked Exs.A1 to A16. The General Power of Attorney of the first defendant was examined as Dw.1 and got marked Exs.B1 to B16 on behalf of the defendants.

7. The trial Court on consideration of the oral and documentary evidence available on record has dismissed the suit by Judgment and decree dated 22-4-2004. Aggrieved by the same, the plaintiff filed the present appeal.

8. The point that arises for consider is whether the plaintiff is entitled for the relief of conjugal rights, preceding the marriage.

9. Heard the plaintiff in person.

10. Unless the marriage is declared as valid, it cannot be said that the plaintiff is entitled to lead conjugal life with the first defendant. The basic requirement of marriage alleged to have been taken place between the plaintiff and the first defendant was not established, even though, it is held over telephone, which is recognized under Sunni Law of Islam. The Imam, who was examined as Pw.3 has specifically admitted in his cross examination that "conference call referred to in my chief examination means when some persons have present, they hear the telephone voice. Only one telephone was there. I was handling the mouth-piece and ear-piece".

11. In view of the above, it is clear that the presence of more than two persons as witnesses on both sides was not proved by the plaintiff. More so, the persons who are said to have been present with the plaintiff in Jeddah at the time of telephonic marriage have specifically stated through their affidavits Exs.B3 and B4 attested by the Consulate General of India at Jeddah on 21-2-2002 have denied their role as witnesses to the marriage. Further, the marriage has not been consummated and the first defendant who did not met the plaintiff has left Hyderabad to United States of America, and has not chosen to come back to India to join the plaintiff. Further the criminal complaints and private complaints filed by the plaintiff and the defendants would clearly indicate that the first defendant is having refusal tendency in joining the plaintiff to lead conjugal life.

12. The plaintiff who personally present before the Court in the capacity of party in person and represented that the first defendant

has ruined his life and made him to spend money and he lost his employment benefits payable to him while coming back to India from Jeddah even before the contract period is concluded and buying tickets to the first defendant for leaving to America and also making him to move around the Courts for several years has to be considered by the Court. He insisted the Court to pass order of conjugal rights in his favour.

13. The plaintiff also drawn our attention to an order in I.A.No.720 of 2002 in O.S.No.3623 of 2002 dated 7-10-2002 on the file of the IX Junior Civil Judge, City Civil Court, Hyderabad, wherein, the first defendant has sought for temporary injunction against the plaintiff herein and the Court below dismissed the said application without expressing any opinion on merits as the interim prayer and the main prayer in the suit are one and the same. The Court expressed its opinion that the interim injunction cannot be granted in favour of the first defendant and at the same time, it is needless to say that the first defendant can marry any person of her choice at her own risk.

14. In the present appeal, this Court cannot go into the contentions and grievances of the plaintiff, the agony he underwent and prejudice caused to him and also the subject matter of O.S.No.3623 of 2002, but in so far as granting of relief for restitution of conjugal rights against the first defendant is concerned, it becomes impracticable to make the first defendant to join the plaintiff against her will and lead conjugal life, more so when the marriage is not established. Almost 18 years have elapsed till now and the first defendant has deserted the plaintiff

denying the marriage and she settled in USA. This Court cannot compel and direct the first defendant to come and join the plaintiff against her will.

15. For the foregoing discussion, the plaintiff has failed to establish that the marriage between him and the first defendant was valid under the eye of law and as such, no relief can be granted to the plaintiff for restitution of conjugal rights against the first defendant and the consequential relief needs no consideration in view of the main relief being denied.

16. The appeal is accordingly dismissed. No order as to costs. The miscellaneous petitions pending if any shall stand closed.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 12.04.2018
Shr.