

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CIVIL MISCELLANEOUS APPEAL No. 596 of 2007

JUDGMENT:

Heard both sides and perused the record.

2. Assailing the judgment in O.P.No. 112 of 2004 on the file of the Additional Senior Civil Judge, Ongole, wherein the application filed by the petitioner under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights, was rejected, the present appeal came to be filed.

3. The averments in the affidavit filed in support of the O.P show that the marriage between the petitioner and respondent took place in the year 1996, as per Hindu rights and customs. It is stated that the petitioner was taken as an illatom son-in-law as per the agreement entered into before the marriage. As per the said agreement, the petitioner shall get half share in the property of his father-in-law and has to relinquish his share in his family properties. After joining the home of his in-laws, it is stated that the respondent was not affectionate towards the petitioner because of disparity in educational qualifications. The respondent is an educated girl, while the petitioner is an agriculturist. It is stated that the respondent used to behave indifferently towards the petitioner, but he adjusted himself with a fond hope that the

respondent would change her attitude during the course of time. But, there was no change. However, out of wedlock, they were blessed with two children. It is stated that the respondent and her mother abused the petitioner in filthy language, necked him out of their house in March, 2004 and never allowed him to enter the house. Thereafter, the respondent filed O.S.No. 117 of 2004 and also M.C.A.No. 11 of 2004 seeking various reliefs.

4. A counter came to be filed by the respondent, alleging that all the averments in petition are false, and that the respondent joined the petitioner immediately after marriage. It is stated that the grandmother of the respondent gave two acres of land, which the mother and sisters of the petitioner wanted to transfer it in the name of the petitioner, to which the respondent did not agree. It is stated that in the month of November, 2003, the petitioner necked out the respondent from his house, and in spite of the best efforts made by the mother of the respondent to send her back in December, 2003 and March, 2004, the petitioner did not allow her into his house, stating that he has no liking towards the respondent and does not want to lead a marital life with her. After exchange of notices and pursuant to a mediation by one Sri Bathola Seenu, the respondent joined the petitioner, and at that time, the petitioner is said to have registered some of the joint properties in the name of his brother and other relatives. When the respondent questioned the same, the petitioner, along with his mother and sister necked out the respondent from his house in April, 2004. Subsequently, the respondent filed O.S.No. 117 of 2004 and

M.C.No. 11 of 2004. It is stated that the alleged illatom agreement pleaded in the petition is a make-belief affair and is utterly false. The respondent also stated that the petitioner used to beat her, for which she gave a report to the police, but no action was taken. It is pleaded that only to overcome the suit and maintenance proceedings, the petition is filed with false allegations.

5. The appellant examined himself as PW1, while the respondent examined herself as RW1. Except the evidence of these two witnesses, there is no other oral or documentary evidence. Considering the claims and rival claims made by both parties, the trial court rejected the request of the petitioner for restitution of conjugal rights.

6. The learned counsel for the appellant mainly submits that the findings of the trial court regarding the appellant beating the respondent and she lodging a report against the appellant, are all false and are invented for the purpose of this case. He also disputes the exchange of notices between the parties. He further contends that the version of the respondent that there was no illatom agreement, is absolutely incorrect.

7. On the other hand, the learned counsel for the respondent would contend that the finding arrived at by the trial court warrants no interference, and even otherwise, allowing the application of the petitioner at this length of time, i.e., after nearly 10 years from the date of the order, would further

aggravate the situation and put both the parties in a very uncomfortable position.

8. A perusal of the record would show that differences arose between the parties with regard to properties. The claim of the petitioner/ appellant is that there was an illatom agreement even before the marriage, and as per the said agreement he has to get half share of the property of his father-in-law and he has to relinquish his share in the family properties, which was denied by the respondent. The claim of the respondent is that immediately after marriage, she joined the appellant and lived with him at his house, and two children were born to them at the house of the petitioner itself. It is the claim of the respondent that if really there was an illatom agreement, as contended by the petitioner, there was no necessity for her to go and live in the house of the petitioner/ appellant.

9. As stated earlier, the entire case is based on the oral evidence of PW1 and RW1. A perusal of the evidence of the witnesses shows that there was exchange of notices, but, the said documents are not placed before the court. The petitioner alleges that the respondent had an adamant attitude, due to which, differences arose, but, in the cross-examination, PW1 admits that the respondent is working as an anganvadi worker and she used to visit various places. She further admits that she used to go to work only after cooking food for the appellant. From this, it can be said that the respondent was a dutiful lady and the allegation that she

neglected the petitioner and that she is adamant, cannot be accepted.

10. A perusal of the record shows that though the petitioner alleges that the respondent is adamant, no instances are proved to show how she was adamant and what made the petitioner to say that she was adamant. It is also to be noted here that both the appellant and the respondent are known to each other since childhood and both of them were living in the same village. Therefore, the contention of the appellant that the respondent developed a behaviour which was not common in villages and that she developed an urbanite culture, cannot be believed. It is also to be noted here that the respondent filed O.S.No. 117 of 2004 for partition of the properties on behalf of the minor children and also M.C.No. 11 of 2004 for maintenance against the petitioner, and only after filing of these two applications, the present O.P came to be filed by the petitioner seeking restitution of conjugal rights. From the above, it is clear that only as a counter-blast to the suit filed by the respondent, the appellant has come forward with this appeal. The order under challenge also refers to lodging of a report in the police station, which led to an enquiry by the police. Having regard to the evidence adduced, we feel that the petitioner alone is responsible for they living separately and that the respondent cannot be found fault with. Hence, the request of the petitioner for restitution of conjugal rights cannot be accepted.

12. Having regard to the above, this appeal is dismissed.

Miscellaneous applications, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

08.02.2018
DMG

