

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SMT.JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.862 of 2005

JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

Heard and perused the records.

2. Assailing the order dated 04.07.2005, passed in HMOP No.6 of 2003, on the file of Additional Senior Civil Judge, Tenali, wherein the application seeking divorce on the ground of cruelty was dismissed, the present appeal came to be filed under Section 28 of the Hindu Marriage Act.

3. The facts in issue show that the marriage of the petitioner with respondent took place on 19.04.2000 at Tirumala Tirupathi Devasthanam, as per Hindu rites and customs. After marriage, the respondent joined the petitioner at this house at Tenali. On 25.04.2000, at the respondent's house at Chinapulivarru, the respondent told her husband that they would live as friends but not as wife and husband. They lived together happily for a period of four or five months. It is stated that the respondent used to visit her grand parents' house situated at Krapa village frequently without informing her husband. As and when she goes to Krapa village, the petitioner used to convince her and bring her back to lead a marital life. It is stated that respondent used to insist the petitioner - husband to sell away

the property of his mother and settle at Krapa by purchasing land, but the petitioner refused to do so. As her demand was not fulfilled, the respondent grew wild and started abusing the petitioner and tortured him mentally without providing food. It is also stated that on one occasion, the respondent abused the mother of the petitioner in a filthy language. When the respondent asked the petitioner to adopt a child of her relatives, the petitioner refused on the ground that they have a chance to begot children. It is stated that whenever the petitioner caught hold of his brother's daughter, the respondent used to throw her down without any mercy. On 20.05.2001, respondent threatened the petitioner that she would lodge a false report, if the petitioner do not oblige her words. It is further stated that the respondent remained silent for the behaviour of his wife so as to lead a peaceful life. But since the respondent continued to visit her grand parents' house frequently, without informing her husband and did not come back, the petitioner threatened her to commit suicide if she do not return back home with him. It is also stated that the respondent does not want to join her husband and also does not heed to the words of her relatives, to join her husband. In view of such cruel behaviour of the respondent and in view of the respondent's refusal to join the petitioner, inspite of mediation by elders, the petitioner filed the petition seeking dissolution of the marriage.

4. A counter came to be filed denying the allegations made with regard to the cruel acts alleged against the respondent. In the counter, the respondent-wife categorically stated about the harassment made by the petitioner and his family members. It is stated that though the respondent gave dowry as demanded by the parents of the petitioner in the form of cash and gold, but after few days after marriage, they started demanding additional amount for the purpose of investing it in the business, by selling the land which is in the name of the respondent. It is stated that on 20.06.2000, the petitioner and his mother necked her out of the house, to bring the demanded amount by selling away the land which is in the name of the respondent. Thereafter, the parents of the respondent tried to sell away part of the land, but nobody came forward to purchase the land and hence the parents of the respondent arranged to give an amount of Rs.53,000/- and transfer Ac.0.66 cents of land in the name of her mother-in-law by way of gift. On receiving the said amount, the petitioner and his parents treated her well for 5 or 6 months and thereafter started harassing her to sell away her land and also to adopt one of the daughter's of the brother of the petitioner. But the respondent refused all the demands made by the petitioner and her parents. The respondent is said to have remained silent with a hope that there would be change in the attitude of the petitioner and his parents. But in vain. As the

respondent did not agree for the demands made by her husband and in-laws, she was subjected to physical and mental harassment and was necked out of the house by them. Having no other alternative, the respondent went to her parents' house at Chinapulivarru. There was no change in the attitude of the petitioner and his parents and hence the parents of the respondent and herself refused to go to her husband, inspite of mediation by elders.

5. In order to substantiate the case, five witnesses were examined on behalf of the petitioner and four witnesses on behalf of the respondent. Exs.R1 and R2 came to be marked on the side of respondent.

6. Basing on the evidence on record, the trial Court dismissed the Original Petition.

7. Challenging the same, the present appeal came to be filed by the petitioner-husband.

8. Learned counsel for the appellant would submit that the scandalous allegations made by the wife-respondent against him and his family members itself would amount to cruelty. According to him, whether a particular act amounts to cruelty, depends on the facts and circumstances of each case and that it is a fit case where the request of the appellant can be accepted.

9. In spite of notices being sent to correct address, the respondent did not receive the same. Hence heard counsel for the appellant and perused the records.

10. A perusal of the evidence on record would show that in support of the allegations made, the appellant got examined himself and also his parents. Except reiterating the allegations made, which were denied, there is no other material to decide the allegation of cruel behaviour of the respondent against the petitioner. It is urged that since the alleged acts of harassment took place inside the house, it is very difficult to prove the same through independent witness.

11. Having regard to the above, it would be just and proper to scrutinize the evidence of witnesses to find out the truth in the said allegations.

12. The main allegations as culled out from the evidence of witnesses would reveal the refusal of the demand of the respondent to sell away the property of the mother of the petitioner and set up a family at Krupa village and the petitioner denying to adopt one of the children of the relatives of the respondent. Admittedly, except the said land, there is no other land in the name of the mother of the petitioner. Hence, there is no possibility of convincing her husband to sell away the property, which is in the name of his mother. It is not the case

of the appellant that the respondent demanded shifting of the entire family to Krapa. The evidence of PW2 would show that the respondent wife does not own any land and she does not know cultivation. Except house property at Tenali, she has no other property. The petitioner stated in chief as if the respondent demanded the petitioner to sell away his mother's land, but in the cross examination he admits that he did not mention in the petition as well as in the affidavit in chief that his mother has landed property. Such material inconsistency improbably the allegations against the respondent with regard to the demand to sell away the property of the mother of the petitioner.

13. Coming to the allegation with regard to the denial by the petitioner for taking the grand son of the sister of the respondent's grand mother in adoption, the evidence on record improbably that version also. It is to be noted that the marriage between the two parties took place on 19.04.2000 and they lead a happy marital life for a period of four to five months. It is stated that the respondent is said to have demanded the petitioner to adopt a child from one of her relatives, in the year 2011, between January and April. Hardly, a year has lapsed between the marriage and the date of said demand. Therefore, the respondent, in her counter, coming to a conclusion that she cannot beget children within that short span of time and hence

decided to adopt one child appears to be improbable and hence cannot be accepted.

14. When PW1/ petitioner herein was questioned about details of the proposed adopted boy, the answer given by PW1 in the cross examination is as under:

“I do not know how many sisters the grand mother the respondent has. They may be four or five sisters. I do not know their names or the details of their residents.”

If really there was a strong demand from the respondent to adopt a particular boy, it is highly difficult to believe that the petitioner and his parents would not ascertain details of that boy. The petitioner deposing that he does not know the details of the boy creates any amount of doubt about the allegation against the respondent-wife with regard to her demand for adoption. Even the evidence of PW2 is not convincing in the said aspect.

15. PW1 deposed that the respondent put forward such proposal of adoption, two years after the marriage, for which the petitioner-husband convinced her stating that they could wait for one more year and later on if they did not begot children, then only the proposed boy can be taken up for adoption. Admittedly, the marriage took place on 19.04.2000 and according to the petitioner, the respondent left his company on 06.11.2002. As such, the evidence of PW1 that such proposal or

demand made by the respondent two years after the marriage cannot be accepted.

16. In view of various inconsistencies in the evidence of PW1 and his mother and as there is no allegation against the wife proving cruelty, we feel that there are no grounds to consider the request of the petitioner seeking divorce on the ground of cruelty. Further, it is to be noted that mere abusing the husband or his family members or refusal to do domestic works does not amount to cruelty. The allegations of cruelty must be supported by cogent evidence. Therefore, it can be held that there is no sufficient material to conclude that the respondent's behaviour was so cruel to the petitioner to drive him to a conclusion that their reunion is impossible.

17. Accordingly, the appeal is dismissed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

Date: 09.08.2018
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