

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.225 of 1999

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 18-03-1998 passed in O.S.No.38 of 1987 by the Senior Civil Judge, Peddapuram, East Godavari District.

2. The suit is filed by the plaintiff/wife claiming maintenance against the defendant/husband @ Rs.1,000/- per month including the past maintenance of Rs.28,000/- and to create a charge on the half share of the defendant in the plaint A & B schedule properties for recovery of such maintenance and for costs.

3. The brief averments of the plaint are that the plaintiff is the legally wedded wife of the defendant; that their marriage took place at Tamarada village about 16 years back as per Hindu customs and rites; that she was taken to Ramavaram village by the defendant to lead conjugal life; that they lived as wife and husband for some time; that her husband used to send her away to her parents' house having developed dislike towards her as she was black in colour; that he ill-treated her without any reasonable cause; that the plaintiff's father gave amounts to the defendant to purchase land and silver articles; that the defendant failed to purchase the land and clothes for his wife and spent away the amount for his personal needs; that he used to beat her and insisted

her to get money whenever required by him; that finally he beat the plaintiff and necked her out of the house in the month of September 1979; that since then she has been residing with her parents at Tamarada; that later she filed O.P.No.89 of 1980 in the Court of Principal Subordinate Judge, Kakinada for restitution of conjugal rights; that the said OP was transferred to the Subordinate Judge's Court at Peddapuram and was renumbered as OP No.10 of 1981; that during reconciliation proceedings by the Court, the defendant mischievously offered to take back the plaintiff and live with her; that the OP was dismissed for default on 25.02.1982; that he beat the plaintiff indiscriminately and sent her away from his house; that the defendant is the owner of the plaintiff's schedule properties; that she requires maintenance of Rs.1,000/- per month including her food, clothing and shelter; that the defendant is getting Rs.50,000/- per year from his own lands and Rs.25,000/- from the leasehold lands; that he is having half share in A & B schedule properties shown in the plaint; that the plaintiff is entitled for her past maintenance from October 1979 onwards, but she is claiming maintenance from April 1983 at Rs.500/- per month till May 1984 and from June 1984 till February 1986 at Rs.1,000/- per month and hence the suit.

4. The defendant filed a written statement contesting the claim of the plaintiff. He admitted his marriage with the plaintiff in the year 1969. But, he denied that he was given

any cash to purchase the land or towards silver wear etc. It is his case that he never assaulted his wife; that he did not treat her with cruelty at any time; that there was no mediation as alleged by the plaintiff; that she left the matrimonial home of her own accord without any reasonable cause and did not return; that the efforts made by him proved futile due to her adamant attitude; that in his absence she went to her parents house and did not return; that as the plaintiff deserted him without any reasonable cause and as he never assaulted her or treated her cruelty, the plaintiff is not entitled to live separately and claim maintenance.

5. Basing on the above pleadings, the trial Court framed the following issues:

- i) Whether the plaintiff is entitled to any maintenance, if so, at what rate?
- ii) Whether the plaintiff is entitled to past maintenance? If so, at what rate?
- iii) Whether the plaintiff is entitled to a charge of plaint A and B schedule property?
- iv) To what relief?

6. For the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.8 were marked. For the defendant, one witness was examined as DW.1 and Exs.B.1 to B.4 were marked. After the arguments were heard, the trial Court passed the impugned judgment. The trial Court held that that the plaintiff could not prove the desertion by the husband and therefore came to a conclusion that the plaintiff is not entitled to any maintenance.

7. This Court has heard Sri M.S.R. Subrahmanyam, learned counsel for the appellant/plaintiff and Sri P.S. Rajasekhar, learned counsel for the respondent/defendant. The parties are referred to as 'plaintiff' and 'defendant' only as this is a First Appeal.

8. In order to claim maintenance, the wife is under an obligation to prove that the husband has deserted her or that he has withdrawn from her company without any reasonable cause and against her consent. The essential grounds of desertion are (a) the factum of separation; (b) the animus or desire/intention to bring the cohabitation to an end and c) finally this animus should continue during the period of desertion. Therefore, there is an obligation cast upon the appellant/plaintiff to prove that the respondent/husband has willfully neglected to take care of her.

9. PW.1 in her examination in chief reiterated the contents of her application. In her chief examination, she describes the difficulties in the marriage, filing of the cases etc. including OP No.10 of 1981. She states that due to reconciliation proceedings in the Court the defendant took her home. She also states that he kept her in the house till the petition was dismissed and thereafter, he sent her out of the matrimonial home. However, in the cross-examination of PW.1 on 24.07.1997 she made an important admission. She admitted that as the Court at Peddapuram directed both the parties to live together they lived together as husband and

wife for one month and in that period of one month, her father came and took her back to his house. She states that later she did not go back to the defendant to lead a matrimonial life. Therefore, from the evidence of PW.1, it is clear that she herself left the matrimonial home and never returned back. Her father also accompanied her back. This admission is important in this case.

10. Similarly, PW.2 is a witness who knows both the parties. He states that the plaintiff was treated with cruelty by the husband. In his cross-examination, he admits that at no point of time, the plaintiff issued any notice to the defendant complaining of any ill-treatment. PW.3 another witness states that he was a mediator in the disputes. However, he is not able to say when he actually went to the village to mediate. Neither the day nor the month or the year is furnished.

11. This Court notices that in all the depositions, the emphasis was laid on the landed properties said to have been possessed by the defendant and the income derived there from. This Court also notices the fact that PW.1 herself made an important admission that her father took her away from the matrimonial home. Thereafter, the record is also clear that she did not take any steps whatsoever for rejoining the defendant or for re-establishing contract. She did not give any notice to the defendant asking him to come and take her back. The events with regard to the alleged cruelty are not

described with any clarity or by any of the witnesses who were examined by the plaintiff. There is no corroboration on the aspect of cruelty.

12. Therefore, this Court is essentially of the opinion that the prerequisite for claiming maintenance viz., the desertion by the husband with the necessary animus and without lawful cause is not proved. On the contrary, the evidence shows that the plaintiff left the matrimonial home and never made an attempt to rejoin the defendant.

13. The documents filed with the oral evidence introduced do not make any case of cruelty. As was noticed by the trial Court, cruelty has to be established, in such a way that there would be a reasonable apprehension in the mind of the wife that it would be harmful or injurious for her to live with her husband. In view of this potential threat, the wife can state she was justified in living away from the husband. Neither the apprehension nor the actual acts of cruelty (either mental or physical) are proved in this case.

14. Therefore, this Court is of the opinion that the plaintiff in this case has failed to prove the desertion by the husband with necessary animus or even the cruelty. Hence, on this primary point itself, the plaintiff is bound to fail. As rightly noticed by the Court below with regard to issue No.1, the plaintiff has failed to prove desertion or cruelty. The plaintiff is thus not entitled to reside separately and claim maintenance. This Court holds that the plaintiff left the

matrimonial house on her own. The case of cruelty is also not proved. This Court therefore concurs with the findings of the Court below regarding issue No.1.

15. As far as issues 2 & 3 are concerned, they do not actually survive for consideration in view of the fact that the essential pre-requisite for claiming maintenance is not made out in this case and the plaintiff is not entitled to claim maintenance or to a charge on the properties. Therefore, issues 2 & 3 are also held against the plaintiff and in favour of the defendant.

16. In view of the above discussion, this Court is of the opinion that there are no infirmities in the impugned order passed by the Court below, which is a reasoned order passed after consideration of the evidence, law and the documents on record. This Court finds no merits to interfere with the same.

17. Hence, the appeal is dismissed. The judgment and decree dated 18-03-1998 passed in O.S.No.38 of 1987 by the Senior Civil Judge, Peddapuram are confirmed. But in the circumstances of the case, there shall be no order as to costs.

18. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 06.07.2018
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