

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE MISS JUSTICE J. UMA DEVI

CIVIL MISCELLANEOUS APPEAL No. 332 OF 2006

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

Aggrieved by the order and decree dated 28/12/2005 passed in OP.No. 162 of 2004 by the I-Additional Senior Civil Judge, Rajahmundry, East Godavari district, dismissing the petition filed by the petitioner-husband under section 9 of the Hindu Marriage Act, seeking the relief of restitution of conjugal rights, this Civil Miscellaneous Appeal is filed by the petitioner-husband.

2. The facts in issue are as follows :

The case of the petitioner-husband is that his marriage with the respondent took place on 28/01/1988, as per Hindu religious rights and customs. It is stated that by the time of marriage, the respondent-wife was working at Damanapalli village as a teacher. After marriage, she directly went to Damanapalli village, without visiting Narsapuram the place of petitioner. It is stated that the petitioner used to visit her till April 1994. They were blessed with a daughter by name Venkata Sirisha on 04/12/1988 and a son by name Naga Sivasai Chalapathi in October 1992 who were brought up by the respondent-wife. After the birth of the children, the respondent-wife did not visit the place of petitioner-husband and directly went to her work place from the house of her parents. She refused to comply the request of the petitioner for transfer to a nearby village, of his place. The working place of respondent-wife was situated in agency area, which climate was not suited for the petitioner. She refused to give access to their children and did not allow him to touch the children. Since the marriage, the father of

respondent-wife was averse to the petitioner and used to live with the respondent-wife while her parents encouraged and they never allowed the petitioner to live with the respondent as her husband. It is stated that on 22/04/1994 when he visited Bandapalli, her father used filthy language and threatened him not to visit the respondent-wife and if he persists he would see his. It is stated that the respondent-wife asked the petitioner not to visit her, other wise, he would be necked out and as such requested him to see his children, which was rejected by her. In the second week of May 1994, at his request through elders, she came to Narsapuram with children and stayed for about twenty days in his house but went away taking about Rs.10,000/- belonging to him in the first week of June, 1994. During her stay at Narsapuram, she did not mend her behaviour and harassed him, his old aged mother and brothers and never allowed her children to move freely with them. That was the last occasion where the petitioner and respondent lived together. Since then, there was no re-union between them and his efforts through elders, to get her to his house proved futile. She did not inform him about the death of her father and marriage of her brother. It is stated that in the month of August 2003, he tried for re-union through elders but she paid a deaf ear and used vulgar language against the elders asking not to visit her again. She also advised the petitioner not to send any elders and threatened to take necessary action. She filed a false criminal case against him, his mother and younger brother which is pending in Crime No. 34 of 2003 before the Sub-Divisional Magistrate, Mobile Court, Rampachodavaram. She filed M.C.No. 59 of 2004 on the file of the Court of IV-Additional Judicial Magistrate of First Class, Rajahmundry with false allegations on behalf of the children, which was pending. It is stated that with such cruel mind, she has been

harassing the petitioner taking advantage of her earning capacity. He has got love and affection to the respondent and the children inspite of the incidents stated above. He has to lookafter his old aged mother and mentally disordered elder brother. He got issued a notice on 20/6/2004 requesting her for re-union, which she received but kept quiet.

3. On the other hand, in the counter, it is stated by the respondent-wife that except her marriage with the petitioner, begetting two children and pendency of a criminal case in Cr.No.34 of 2003 and filing of M.C.No. 59 of 2004, the case of the petitioner-husband is false. It is stated that she joined the petitioner at Narsapuram immediately after the marriage and stayed there for some time and later went to Damanapalli village in pursuit of her employment as a teacher. It is stated that the petitioner-husband used to visit Damanapalli and other places of her work, once or twice in a week. He was suspecting her character and cause enquiries with her colleague teachers and students. He did not allow her parents to stay with her. He used to quarrel with her parents and used filthy language against them. It is stated that the petitioner himself left the respondent at Devarapalli. Though herself and her parents tried for re-union but they were not successful. In 2002, the petitioner-husband sent a word through one Srinu of Narsapuram stating that he changed his attitude and would lookafter her well. On that she went to Narsapuram and came to know about second marriage of the petitioner with Seshu in May 2003. On that she filed a criminal case and also filed M.C.No. 54 of 2004. After filing both the cases, he filed this petition for restitution of conjugal rights with a view to get the petitioner for compromise in criminal case and avoid payment of maintenance to the children. It is stated that if he

leaves the second wife, the respondent-wife is ready to join him. Hence, she prayed to dismiss the petition with costs.

4. To substantiate the case, the petitioner himself got examined as PW-1 and examined two other witnesses; as PW-2 and PW-3 and marked Exs.A-1 and A-2 on his behalf and no documentary evidence is marked. On behalf of the respondent, she herself got examined as RW-1 and examined two other witnesses; as RW-2 and RW-3 and no documentary evidence is marked.

5. On the basis of the above pleadings, the trial Court framed the following point for consideration :

“ Whether the petitioner is entitled to the restitution of conjugal rights, as prayed for, in this petition ? “

6. On appreciation of oral evidence adduced by both parties, the trial Court dismissed the petition filed by the petitioner seeking for restitution of conjugal rights. Challenging the order and decree dated 28/12/2005 passed in OP.No. 162 of 2004 by the I-Additional Senior Civil Judge, Rajahmundry, East Godavari district, dismissing the petition filed by the petitioner-husband under section 9 of the Hindu Marriage Act, the present Civil Miscellaneous Appeal came to be filed by the petitioner-husband.

7. For the purpose of convenience, the parties will hereinafter be referred to as arrayed in O.P.No. 162 of 2004 on the file of the Court of I-Additional Junior Civil Judge, Rajahmundry, East Godavari district.

8. Heard the learned counsel for the petitioner and none appeared on behalf of the respondent.

9. The learned counsel for the appellant-husband had took this Court through ground Nos.2 to 9 of the appeal grounds and would submits that the trial court totally erred in dismissing the petition filed by the appellant-husband under section 9 of the Hindu Marriage Act. The

learned counsel would further maintain that the trial court found the evidence of RW-2 and RW-3 with regard to the allegation that the appellant had married for second time, is only a hear-say and admittedly they are not the witnesses for the alleged marriage . Therefore, the trial Court ought to have allowed the petition filed by the appellant seeking the relief of restitution of conjugal rights.

10. As seen from the record, admittedly the marriage of the appellant with the respondent took place on 28/01/1998, as per Hindu religious rights and customs. By the time of marriage, the respondent-wife was working at Damanapalli village as a teacher. They were blessed with a daughter by name Venkata Sirisha on 04/12/1988 and a son by name Naga Sivasai Chalapathi in October 1992, who were brought up by the respondent-wife. It is an admitted case of the appellant that the respondent lived in his company till April, 1994. Nothing prevented him in filing the petition under section 9 of the Hindu Marriage Act, seeking the relief of restitution of conjugal rights. But he kept quiet all those years and attributed that she did not reside with him is not a ground to find fault with her and also attributed that she refused to give consent for her transfer to a place nearby his village. If really, the appellant wants to live with her and children, he could have transferred her to the nearby place of his native village. Except his oral evidence and contention, there is no material to believe the version of the appellant. The climate in agency area where the respondent is working is suitable to her and her children. The contention raised by the appellant that the climate in agency area does not suit to him is unbelievable. Therefore, it is clear from the record that only after filing M.C.No. 59 of 2004, claiming maintenance for her children and also filing of criminal case in Crime No. 23 of 2003, the appellant has come

to the Court with this petition just to get over criminal case and avoid payment of maintenance to his children. It appears that the intention of the appellant in filing the petition under section 9 of the Act is not a bonafide one, when he neglected the respondent and children for a long period of ten years. Hence, the respondent refused to join with him.

11. Having regard to the above facts and circumstances, the attitude of the appellant further shows that when the respondent left his company with the children, he never made any efforts till 2004 and if really he wants to live with the respondent, he would have taken steps immediately after the death of the father of the respondent. Hence, the evidence adduced by the appellant is not sufficient for restitution of conjugal rights, more so, when he neglected the respondent and children for a long period of ten years. Therefore, the respondent was justified in refusing to join with him.

12. In view of the above facts and circumstances, we are of the view that the trial Judge has rightly dismissed the petition filed by the appellant-husband under section 9 of the Hindu Marriage Act

13. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the order and decree dated 28/12/2005 passed in OP.No. 162 of 2004 by the I-Additional Senior Civil Judge, Rajahmundry, East Godavari district, dismissing the petition filed by the appellant-husband under section 9 of the Act. There shall be no order as to costs.

14. As a sequel, miscellaneous petitions if any, pending in this Civil Miscellaneous Appeal shall stands closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE MISS JUSTICE J. UMA DEVI

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(Judgment of the Division Bench delivered by
Hon'ble Sri Justice C. Praveen Kumar)

Date. 01-03-2018