

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

CIVIL MISCELLANEOUS APPEAL No. 536 OF 2006

J U D G M E N T : (per the Hon'ble Sri Justice C. Praveen Kumar)

Aggrieved by the order and decree dated 24/06/2004 passed in OP.No. 28 of 2003 by the Additional Senior Civil Judge, Ongole, Prakasam district, allowing the petition filed by the petitioner-husband under section 13 [1] [1a] [1-b] of the Hindu Marriage Act, seeking to dissolve the marriage dated 04/04/1982 between the petitioner and respondent, this Civil Miscellaneous Appeal is filed by the petitioner-wife.

2. The facts in issue are as follows :

The marriage between the petitioner and respondent took place on 04/04/1982. Out of wedlock they were blessed with two children. The respondent-wife lived with the petitioner-husband at Tangutur village till June, 1988. It is stated that from the very beginning the respondent-wife was not maintaining cordial relationship and she used to visit her parents house frequently at Kadavakuduru, without intimating the petitioner-husband or his family elders. It is stated that the petitioner bore the respondent with a hope that she may change her attitude but there was no change in her attitude. It is averred that the petitioner learnt about respondent giving birth to a male child, who is no other than an illegal off-spring. By virtue of the above incident, the chance of reconciliation and approach for mediation became futile. Therefore, the respondent-wife wilfully and wantonly deserted the

petitioner-husband for a continuous period of fourteen years, without any cause, which led to seek dissolution of marriage.

3. In the counter filed by the respondent, it is stated that the allegations made in the petition are all false and the petition is not maintainable. She denied the averment that the petitioner-husband treated her with love and affection though she loved him till June 1988. Since beginning the petitioner-husband did not maintain cordial relationship with her. It is stated that out of marital life she was blessed with three children; Venkateswarlu aged about 18 years, Tirumala Laxmi aged about 15 years and Venkata Kotaiah aged about 12 years. It is stated that the petitioner-husband is in the habit of maintaining illegal intimacy with others and used to educate him and warn him but the petitioner did not care her words and beat her for questioning him. It is said that when Tirumala Laxmi was two years old, the petitioner-husband beat the respondent and necked her out of the house with children. Again the mother of the petitioner-husband took her back to the house. It is stated that her father expired about twelve years back and she had gone there when she was pregnant but the petitioner-husband neither came to see the dead body nor attended the functions. She gave birth to third child at Kadavakuduru, three days after the death of her father and came to Tangutur with the child after three months but the petitioner-husband abused and beat the respondent, and did not allow her into the house. During her stay, the petitioner-husband was not coming to the house and was living at Ongole. It is stated that the respondent and her children were neglected and not maintained by the petitioner. Having no other go, she was attending to cooli work in order to maintain the family. It is said that about ten years back, the petitioner-husband beat and necked her out with children.

Later the mother of the petitioner-husband came and took the two children. It is further stated that she bore all the harassment with hope that the petitioner-husband would change his attitude. The reconciliation proceedings dated 27/09/1993 failed due to the petitioner-husband not willing to join the company of the respondent, as he is suspecting her character. Hence, the respondent-wife prayed to dismiss the petition.

4. During the course of enquiry, the petitioner examined himself as PW-1 but however did not mark any document on his behalf. On behalf of the respondent, she examined herself as RW-1 and examined petitioner's cousin as RW-2. However, no document were marked on her behalf.

5. On the basis of the rival contentions, the trial Court framed the following points for consideration :

- (i) *Whether the respondent deserted the petitioner with any cause or reason ?*
- (ii) *Whether the respondent is living in adultery ?*

6. On appreciation of oral evidence adduced by the petitioner as of PW-1 and the respondent-wife as RW-1 and RW-2, the trial Court allowed the petition dissolving the marriage between the petitioner and husband. Challenging the order and decree dated 24/06/2004 passed in OP.No. 28 of 2003 by the Additional Senior Civil Judge, Ongole, Prakasam district, allowing the petition filed by the petitioner-husband under section 13 [1] [1a] [1-b] of the Hindu Marriage Act, the present Civil Miscellaneous Appeal came to be filed by the respondent-wife.

7. For the purpose of convenience, the parties hereinafter would be referred to as "petitioner" and "respondent" as arrayed in O.P.No. 28 of 2003.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

9. The learned counsel for the appellant-wife took us through the specific grounds raised in ground Nos.2, 3, 4, 5 and 6 of the appeal grounds and would maintain that the trial court totally erred in allowing the petition filed by the petitioner-husband under section 13 [1] [ia] [ib] of the Hindu Marriage Act. The learned counsel would further contend that the trial court had not appreciated the oral evidence available on record and recorded erroneous findings.

10. Per Contra, the learned counsel for the respondent-husband would maintain that the trial court recorded reasons in detail and came to a right conclusion in allowing the petition and dissolving the marriage between the petitioner-husband and respondent-wife, and as such, the decree and judgment of the trial court do not suffer from any illegality.

11. A perusal of the evidence would show that though the petitioner-husband claims that the respondent-wife deserted him about fourteen years back, i.e., June, 1988 onwards, the respondent-wife denies the said aspect. However, she admits that since ten years prior to the date of filing of O.P.No.28 of 2003, they are living separately. There is no evidence to show that there is any negotiation between the parties. No elder was examined on behalf of either side. From the evidence placed on record, it is clear that since ten years she was staying away from her husband, though two of her children were taken by the mother of the petitioner-husband, she did not try to ensure their presence or try for an re-union with her husband. This shows her conduct of leaving the company of her husband. The trial court in its order observed that neither her parents nor brothers and sister turn up to the court to depose the injustice caused to her. On her behalf only

one witness was examined as RW-2, who is no other than the cousin of her husband, who is not having good terms with her husband. The trial court answered the point No.(ii) and concluded that the evidence available on record is half-hearted and adultery ground was not properly proved because the husband is alleging that wife is living in adultery and she gave birth to one male child long after she deserted him in 1991. Whereas in the counter, she alleges that her husband is also having illicit intimacy with another woman and that she does not know the name of that woman with whom her husband developed intimacy. Therefore, the plea of adultery taken by the wife remained un-proved.

12. In view of the above facts and circumstances, in our view, the trial Judge has rightly allowed the petition filed by the petitioner-husband under section 13 [1] [ia] [ib] of the Hindu Marriage Act. Hence, we see no ground to interfere with the order impugned in this appeal, more so, when the appellant-wife and respondent-husband are living separately for more than twenty five years.

13. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the order and decree dated 24/06/2004 passed in OP.No. 28 of 2003 by the Additional Senior Civil Judge, Ongole, Prakasam district, allowing the petition filed by the petitioner-husband under section 13 [1] [1a] [1-b] of the Hindu Marriage Act, and dissolving dissolve the marriage dated 04/04/1982 between the parties. There shall be no order as to costs. We hereby make it clear that the findings recorded by this Court will not have any bearing on the maintenance case and the same shall be considered on its own merits uninfluenced by the dismissal of this appeal.

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



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

Date. 01-02-2018