

THE HON' BLE SRI JUSTICE C. V. NAGARJUNA REDDY

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No. 501 of 2008

Date: 9th February, 2018

Between:

Gangamma, w/o Swamy

... Appellant

And

Swamy

... Respondent

COUNSEL FOR APPELLANT : Mr. Nazeer Khan

COUNSEL FOR RESPONDENT : Pratap Narayan Sanghi

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This appeal is arising out of the order dated 04.04.2008 in O.P.No.18 of 2006 passed by the Senior Civil Judge, at Adilabad, in a petition filed under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, by the husband seeking divorce. The learned Senior Civil Judge allowed the petition dissolving the marriage. Aggrieved by the same, the respondent-wife has preferred this appeal.

2. Heard the arguments of the learned counsel for the appellant, and the learned counsel for the respondent.

3. For the sake of convenience, the parties will hereinafter be referred as they were arrayed before the trial Court.

4. Brief facts of the case, as per the petition filed before the trial Court, are that the marriage of the petitioner and respondent was solemnized on 09.05.2002 at Pipparwada village according to the custom prevailing in their community, that after the marriage, the respondent was indifferent and rude towards the petitioner, that she had resided with him only for a period of three months and that thereafter, started living with her parents. That on 25.04.2003, the respondent gave birth to a female child but she did not inform the same to the petitioner, that after one month, the petitioner and his father, along with the ex-sarpanch of their village, namely, Devanna, went to the respondent to bring her back but she refused to join the company of the petitioner. Thereafter, the petitioner made several efforts to bring the respondent to his house but

he could not succeed and, therefore, he filed the petition for dissolution of his marriage on the grounds of cruelty and desertion.

5. The respondent has filed her counter admitting the marriage between her and the petitioner and the birth of a child. The respondent averred that she lived with the petitioner for about two years and led happy marital life with him, that thereafter the mother of the petitioner used to quarrel with her on petty matters, and that she went to her parents house as she was pregnant. The respondent further averred that after birth of the child, the petitioner and his parents attended the cradle ceremony and, thereafter, they brought her to their house. The respondent further averred that she lived with the petitioner for one year, that during that period, he ill-treated her and threatened to pour kerosene on her and that therefore her brother took her to his house. That after two or three months thereafter a panchayat was held in the presence of the village elders, wherein the mother of the respondent sought for assurance of the safety of the respondent, that again after three months the village elders came and held panchayat wherein it was decided that the petitioner and respondent should live away from their parents as there was frequent harassment of the respondent by her mother-in-law on petty issues. That after 1½ months later after the said panchayat, the petitioner took the respondent along with him, that again after 1½ months, the petitioner left the respondent at her brother's house informing that after taking a room at Adilabad, he would take her with him, but the petitioner did not turn up for 15 days, that later the petitioner told that he would take her to Pipparwada village, but did not come to take her to his house

and that therefore she was living with her parents. The respondent sought for dismissal of the petition.

6. The trial Court, on consideration of the evidence of PWs.1 to 3 on behalf of the petitioner and RWs.1 and 2 on behalf of the respondent, has allowed the petition, dissolving the marriage between the petitioner and respondent. Aggrieved thereby, the respondent filed this appeal.

7. The point for consideration is whether the grounds of cruelty and desertion are proved as contemplated under Section 13(1)(ia) and (ib) of the Hindu Marriage Act 1955 ?

8. Learned counsel for the appellant/wife fairly submitted that the respondent has been residing separately from the appellant after filing the divorce petition, and that the child is residing with the appellant. He has further submitted that the respondent/husband failed to prove the twin grounds of cruelty and desertion, that there are no valid grounds for grant of divorce by the trial Court and that in the interest of the child, the decree of divorce passed by the trial Court is liable to be set-aside.

9. No arguments were advanced on behalf of the respondent-husband.

10. PW.1 is the petitioner/wife, PW.2 is the Ex-Sarpanch of Pipperwada village and PW.3 is a resident of Pipperwada village. They have clearly stated about the incident that occurred in the house of the petitioner after the marriage on one night.

11. The testimony of PW.1 is self-explanatory. It is seen from the evidence of this witness that the respondent has been staying in her parents' house and in the house of her brother frequently leaving her matrimonial house and that despite several panchayats held for reconciliation between the petitioner and the respondent, the respondent did not join the petitioner.

12. The testimony of PW-2 reveals that after the petitioner brought the respondent from her brother's house after reconciliation in the Court, on one night the respondent did not allow the petitioner to enter her room by bolting the door from inside, that at the instance of PW-1, he went to the house of the petitioner and persuaded the respondent to open the door and on his request she opened the door, that at that time the respondent was in an angry mood, and that after four days of the incident, he was informed that the respondent bitten on the left hand of the petitioner.

13. The testimony of PW.3 reveals that the respondent lived with the petitioner for about three months after marriage and left his house and was residing with her parents at Kothagudem village, that after one year after the marriage, the respondent gave birth to a female child, but no information was given to the petitioner, that after one month of the birth of the female child, a Panchayat was held in which himself, the petitioner and his father Devanna, Asha Reddy and Bhagawandlu went to Kothagudem and asked the respondent to join the petitioner, but the respondent refused to go to Pipperwada and that thereafter also for three

or four times himself, the petitioner, his father and the above said persons went to Kothagudem to bring the respondent, but she refused to come to Pippewada. It is also revealed in the testimony of this witness that the respondent was not happy with the marriage, and she was not attending to the domestic chores and that she used to disturb the petitioner and his parents.

14. RW.1 is the respondent herself. Her testimony of RW.1 reveals that the mother of the petitioner used to quarrel with her over petty matters, and inspite of that she lived with the petitioner for about two years, that as per their custom, the respondent was taken to her parents house for delivery of the child, when she was in her fifth month of pregnancy, that after the birth of child, the petitioner, his parents and relatives attended the cradle ceremony, and that after the function they brought her to their house and she stayed there with the petitioner for about one year. RW-1 further deposed that after going to her in-laws house after giving birth to the child, she lived happily for about one year and that the mother of the petitioner started ill-treating her. She further deposed that the petitioner threatened to pour kerosene on her and set fire to her and on coming to know about the same, her brother took her to his house, and that the villagers came to her house and when her mother asked for assurance for her safety, the elders could not make any such arrangements and left the house. That again, after three months, the village elders came and decided that the petitioner and respondent should live away from their parents, as there were quarrels with the mother in law

of the petitioner over petty issues. That one and half months later, the petitioner took the respondent to his house, and again he left her in her brother's house, informing her that he would take her back within 2-3 days after taking room at Adilabad, but he did not turn up for 15 days. That the petitioner came on one night and told that he will take her to Pipperwada village, but her parents did not agree to send her along with the petitioner to live with her in-laws in the same house as they were ill-treating her, and also because there was threat to her life. RW-1 further deposed that thereafter the petitioner did not come to take her from her parents house. In her cross-examination, she denied the suggestion that they have not informed the petitioner about the birth of the child. She stated that her brother informed the petitioner over phone about the birth of the child. She denied the suggestion that on one night she had intentionally locked the door from inside and did not allow the petitioner to enter the room. RW-1 admitted that she refused to join the company of the petitioner at least on two occasions.

15. RW.2 is one of the caste elders. He was the Sarpanch of the village during the period 2000 to 2005 and he took part in one of the panchayats held between the parties.

16. PWs.2 and 3 are independent witnesses, and their testimony clearly reveals that the respondent was not willing to go to the house of the petitioner inspite of several mediations taken place between the parties. It is also clear from the evidence on record that after reconciliation in the Court, the petitioner brought the respondent to his house but she did not

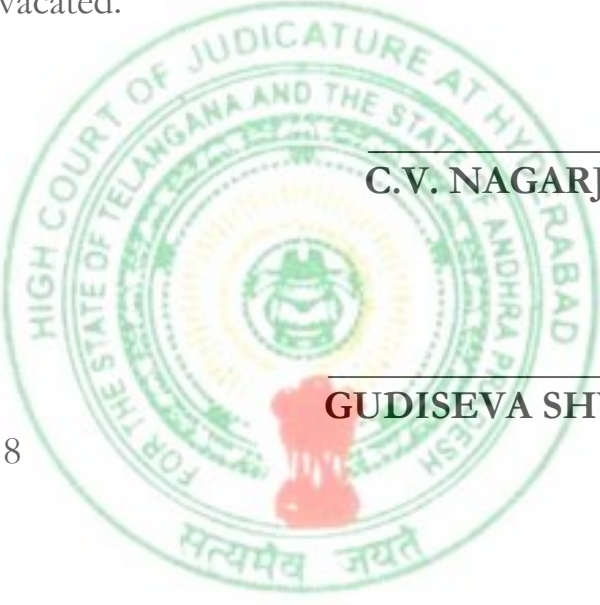
allow him to enter into the room and bolted the door from inside and she opened the door only at the instance of PW-2. This incident also clearly reveals the attitude of the respondent that she was not interested to lead marital life with the petitioner. The evidence of PW.3 reveals that on three or four occasions when the petitioner and other elders went to the respondent to persuade her to join the petitioner, the respondent refused to join the petitioner.

17. No doubt the evidence on record would clearly prove the fact that there were differences between the petitioner and respondent. The allegation of the petitioner is that the respondent was rude and not allowing the petitioner to co-habit with her and he has brought in his evidence one incident to show that even after reconciliation in 2007, she did not allow him to join her company. The testimony of PW-2 would clearly prove the said fact. The reason stated by the respondent is that as she was sleeping inside, she did not hear the tapping of the door by the petitioner and therefore she did not open the door. The apprehension of the respondent and her parents was that as the petitioner threatened to pour kerosene and set fire to her, they were concerned about the safety of the respondent at the house of the petitioner. It is also in the evidence that the respondent stayed in her parents house during her pregnancy and also thereafter and that even after several reconciliation efforts, the respondent was not inclined to join the association of the petitioner.

18. A perusal of the order passed by the trial Court clearly reveals that the grounds of cruelty and desertion have been proved by the evidence of

witnesses PWs.1 to 3 and RWs.1 and 2. On a holistic consideration of the evidence on record, the trial Court has rightly concluded that the respondent has deserted the petitioner without any reasonable cause and allowed the petition on both the counts of cruelty and desertion. Therefore, we are of the considered view that there is no merit in this appeal and that the same is liable to be dismissed.

19. Accordingly, the appeal is dismissed. No costs. The interim suspension granted by order dated 01.07.2008 in C.M.A. M.P. No.1171 of 2008 shall stand vacated.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

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