

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

+ FAMILY COURT APPEAL No.469 OF 2018

% Date:13.11.2018

Between:

Geedi Anusha Goud D/o.G. Srinivas Goud,
W/o.N. Deepak Goud, R/o.Malkajgiri, Secunderabad.

... Petitioner

v.

\$ N. Deepak Goud S/o.N. Harikishan Goud,
R/o.Amar Nagar Colony, Mangalhat, Hyderabad.

.. Respondent

! For Petitioner : Mr. K.P. Vijay Kumar

^ For Respondent : Mr. M. Vijay Kumar Goud

< Gist :

> Head Note :

? Cases Referred : Nil

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**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI**

FAMILY COURT APPEAL No.469 of 2018

JUDGMENT: *(Per V. Ramasubramanian, J)*

The wife has come up with the above appeal challenging the dismissal of her petition for dissolution of marriage.

2. Heard Mr. K.P. Vijay Kumar, learned counsel for the petitioner and Mr. M.Vikay Kumar Goud, learned counsel for the respondent.

3. The marriage between the appellant and the respondent was solemnized on 26.11.2011. But, it appears that within a few months, the relationship got strained and the appellant and the respondent have been living separately from 12.01.2012 onwards.

4. Finding that the marriage has irretrievably broken down, the appellant/wife filed O.P. No.148 of 2013 seeking dissolution of marriage on the ground of cruelty. The respondent/husband filed a counter claim seeking restitution of conjugal rights. By a judgment dated 12.07.2018, the Family Court, R.R. District at Malkajgiri, allowed the husband's petition for restitution and dismissed the wife's petition for divorce.

5. Aggrieved by the dismissal of her petition and the grant of restitution in the counter claim, the wife filed two appeals one in FCA No.366 of 2018 and another in FC No.469 of 2018. Unfortunately, both of them were not tagged together. Therefore, FCA No.366 of 2018 came up first for hearing before another Bench. The learned Judges constituting the Bench, spoke to the parties and found that both parties were not willing to live together. Therefore, the Bench allowed FCA No.366 of 2018 and set aside the decree of restitution of conjugal rights.

6. Therefore, what remains to be considered is as to whether there must be a decree of divorce or not?

7. The appellant/wife seeks dissolution of marriage on the ground of cruelty. The appellant/wife examined herself as PW.1 and filed five documents as Exhibits. Both parties appear to have reconciled themselves to the fact that the marriage will not work out any more. Now that FCA No.366 of 2018 is allowed and the decree of restitution of conjugal rights is also set aside, the dismissal of the present appeal will only make both parties suffer eternally without reunion and at the same time without being in matrimonial relationship.

8. The evidence on record shows that there has been a separation from 2012. Even from the date on which the Court below ordered restitution, there has been no resumption of co-habitation. Therefore, the case would fall at least under the category of desertion. There is sufficient evidence on record to show desertion. Therefore, the appeal is allowed, the judgment and decree of the Family Court, Ranga Reddy at Malkajgiri, are set aside and a decree of dissolution of marriage is granted on the ground of desertion.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 13, 2018
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