

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

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

FCA.No.66 of 2016

JUDGMENT: (Per the Hon'ble Sri Justice D.V.S.S.Somayajulu)

This appeal is filed questioning the order and decree dated 16.02.2016 passed in OP.No.1137 of 2014 by the Judge, Family Court, Ranga Reddy District.

For the sake of convenience as this is a first appeal, the parties are referred to as petitioner and respondent as in the lower Court only.

The brief facts of the case are :

Petitioner in OP.No.1137 of 2014 is the daughter-in-law of the sole respondent. She married the son of the respondent by name Mr.Kiran Kumar on 22.10.1995 at Yadagirigutta, Nalgonda District. It was an inter caste marriage. The respondent accepted the marriage and performed the reception. Kiran Kumar was an HIV +ve patient and that out of sympathy, love and affection, the petitioner married him and because of the said disease she had no issues. Her husband died in the year 1996. After the death of her husband when she came to her in-laws house, they did not allow her to enter into their house stating that they are not interested to continue their relationship and necked her out from the house without

giving any amount for her maintenance. On 15.09.2013 when the petitioner attended the marriage of the respondent brother's son at S.Convention Function Hall, L.B.Nagar, the respondent, his wife and daughter severely beat the petitioner, for which she lodged a complaint with PS., Saroornagar, who registered a case under Section 504, 506 and 509 IPC. The petitioner asked the respondent for maintenance and he refused for the same. Hence the application for maintenance.

The respondent filed his counter denying the claim of the petitioner and also the marriage between the petitioner and his son late Kiran Kumar on 22.10.1995 at Yadagirigutta. He stated that his son was a patient of HIV +ve and he and his son never thought of marriage as his right to marry is suspended. His son Kiran Kumar died on 17.10.1996 due to cardiac arrest and after the death of Kiran Kumar, the petitioner never came to the respondents home and she was not necked out. The petitioner attended the marriage function of his brother's son without any invitation and created a scene and lodged a false complaint against him and his family members. The petitioner, after a gap of more than 16 years of death of his son, started indulging in activities to defame him and extract money and that she also filed another case under Section 12 of the Domestic Violence Act. The respondent also filed additional counter contending that he is aged about 77 years and

eaking out his livelihood only on his pension and since more than 20 years, he is not doing cultivation of the land and there is nobody to look after the agriculture and that he is not having any source of income to invest in agriculture and that he is not having any income out of his advocate profession and that he is not the owner of the land measuring Ac.8.28 guntas situated at Kollapur and he has no financial capacity to pay the maintenance as prayed for.

The petitioner herself was examined as PW.1 in addition to examining PWs.2 to 5 and marked Exs.P.1 to P.11 documents. The respondent was examined as RW.1 and also examined RWs.2 and 3.

After hearing both sides, the lower Court framed the following points for consideration:

- (1) Whether the petitioner married the son of the respondent namely late Kiran Kumar on 22.10.1995?
- (2) Whether the petitioner is entitled to claim maintenance @ Rs.20,000/- per month towards her maintenance and medical expenses?
- (3) To what relief?

After trial, the lower Court allowed the application partly awarding monthly maintenance of Rs.5,000/- per month. Questioning the same, this appeal is filed.

This Court has heard Sri P.Bhaktavatsal, learned counsel for the appellant and Smt.Boddikoori Vani, learned counsel for the respondent.

Learned counsel for the appellant/respondent very strongly urged and contended that the marriage between the petitioner and late Kiran Kumar, the son of the respondent has not been proved. According to the learned counsel, absolutely no documentary or other proof is available to show that the marriage did take place as urged in the petition. His contention is that none of the documents that are filed to prove the alleged marriage. He contends that the marriage certificate marked as Ex.P.1 issued by the temple at Yadagirgutta is not proved as required under law and that nobody concerned with the said marriage certificate has been examined as a witness. According to the learned counsel, the photographs which are filed as EXs.P.2 to P.4 do not disclose that a marriage was in fact performed. He very vehemently argued that as the documents are not proved, the lower Court committed an error in coming to a conclusion that marriage did took place between the petitioner and the son of the respondent. Therefore, it is his specific contention that lower Court committed an error in holding that the respondent was liable to pay maintenance to the petitioner. In addition, he also submits that the documents that are filed Exs.P.10 and P.11 do not prove that the petitioner had any property that too ancestral

property. It is his contention that the properties that are possessed by the respondent are his self-acquired properties and that therefore, the petitioner cannot claim any maintenance from out of the same.

In response to this, learned counsel for the petitioner/respondent contended that oral evidence of the witnesses read with Exs.P.1 to P.4, P.7 receipt issued by the temple and the inland letters marked as Exs.P.8 and P.9 support the case of the petitioner that marriage had in fact taken place between the petitioner and son of the respondent. The case of the appellant/respondent is that Kiran Kumar was a HIV +ve patient and that out of sympathy and love and affection, the petitioner married him. Despite knowing that his death was imminent, out of love and affection, she took care of him as a dutiful wife and that therefore, she is entitled to claim maintenance. Counsel also submitted that a reading of the evidence in all clearly shows that the factum of marriage is satisfactorily established and the preponderance of probabilities clearly show that there is legal relationship between the petitioner and the son of the respondent by name Kiran Kumar. It is his contention that the photographs and the other documents prove the marriage even if Ex.P.1 is not taken into consideration. Learned counsel also submits that Exs.P.10 and P.11 are the records obtained from the Revenue Department and the contents of the same have not

been disproved in the cross-examination. Therefore, learned counsel submits that there is adequate evidence available to prove the marriage. He, therefore, submits that she is entitled to maintenance as prayed for.

This Court is of the opinion that the first point to be decided is whether the petitioner was able to prove her marriage with Kiran Kumar.

Ex.P.1 is a certificate issued by the Sri Laxminarasimhaswami Devasthanam of Yadagirigutta. It shows that the petitioner married one Kiran Kumar S/o Gopala Krishna. This document is a Xerox copy, but it is signed in original by the Executive Officer of the Laskhminarasimhaswami Devasthanam of Yadagirigutta, Nalgonda District. It shows that a marriage was solemnised at the said temple.

The petitioner also filed Exs.P.2 to P.4 photographs which are also supported by the negatives. These photographs show the presence of the appellant/respondent and the performance of the marriage. Particularly, the Jeelakarra Bellam episode is captured in the photograph. As rightly noticed by the lower Court, this is an integral part of the marriage ceremonies and is in fact the virtual culmination of the marriage ceremony. These photographs also disclose the presence of the appellant/respondent. In addition, Ex.P.7 is a receipt for Rs.151/- dated 22.10.1995,

which shows that the amount was paid towards registration fees for the marriage. Sl.No.166/1076 mentioned in this receipt refers to Page 161 and Sl.No.1076 of the marriage which are the details found in Ex.P.1. In addition to this, the letters that are filed show the close and intimate connection between the petitioner and the family of the respondent. The evidence of RW.1 in his chief and cross-examination also makes it clear that he admitted the contents of Ex.P.8 letter. He identified the persons in Ex.P.3 photograph. He also admits that he was present in Ex.P.4 photograph along with his wife. He also admits that the petitioner helped his son even though she knew that he was HIV +ve. It is also pertinent that this witness admitted the letters Exs.P.8 and P.9. Ex.P.8 is written by law Kiran Kumar to the petitioner.

In addition to this evidence of DW.1 in whose cross-examination many important documents were marked, there is also the evidence of PW.5, who clearly deposed about the fact that Ex.P.7 receipt was issued by the Devasthanam towards marriage registration fee. She clearly states that the receipt was given by the temple authorities and she also deposes that on the same day, the marriage was performed. Nothing was suggested in the cross-examination about this document. The cross-examination of the witness did not in any way take away the intrinsic worth of Ex.P.7.

Therefore, a reading of the oral and documentary evidence and more so the evidence of the main witnesses clearly shows that marriage did take place between the petitioner and the son of the respondent/appellant. The preponderance of probabilities clearly pointed to the fact that there was a marriage. In addition, this Court also notices that the present application is filed long after the marriage was performed. According to the petitioner, the marriage was performed in 1995. This application was filed almost 20 years later. If the intention of the petitioner is to exploit the aged respondent/appellant, she would have done so long long ago. The conduct of the petitioner does not lead to a conclusion that she is deliberately trying to exploit the situation as alleged by the respondent.

In addition to this, this Court also notices that two main documents that are filed to prove the possession and ownership of the property are Exs.P.10 and P.11. These documents were marked through PW.1. They clearly show that the appellant/respondent has inherited these properties. Col.Nos.9 and 10 of Ex.P.10 clearly show that all the extents of the land are “ancestral” in nature. The possession and enjoyment of the respondent is also recorded in Ex.P.11 certificate. There is a presumption under Section 6 of the A. P. Pattadar Pass Book Act, 1971 that the entries in the Record of Rights are correct. This was not rebutted by the respondent also. All these documents are official

documents produced from a proper source. This Court finds no reason to disbelieve the same. The petitioner has specifically urged that these documents are filed in proof of the respondent's ownership of the property. No evidence to the contrary has been produced by the respondent.

In these circumstances, this Court after considering all the submissions is of the opinion that the impugned order passed by the lower Court does not suffer from any infirmities. There are no errors and mistakes warranting interference.

This court agrees with the findings of the lower Court on issue No.1 that the marriage between the petitioner and the son of the respondent is proved. This Court also agrees that in the circumstances the finding of the Court that the petitioner is entitled to maintenance @ Rs.5,000/- p.m is also correct.

This Court finds that there are no merits in the appeal and the appeal is dismissed. No order as to costs.

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

V.RAMASUBRAMANIAN,J

D.V.S.S.SOMAYAJULU, J

Date:31.12.2018
KLP