

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 13-8-2019

Delivered on 04-10--2019

FA No. 13 of 2005

- K. Shankar Rao s/o. Late Shri K. Gurraiya, aged about 33 years, R/o. Q.N.B, Block-6, Street No.2, Sector XI Khursipar, Zone-3, Bhilai, "Tahsil and District Durg (CG).

---- Appellant.

Versus

1. Smt. K.Padmawati w/o. Shri K. Shankar Rao, aged about 26 years, r/o. Street No. 52, Q.No. 15-D, Sector XI Zone-2, Khursipar, Bhilai, Tahsil and District Durg (CG).
2. Kumari Sarasawati d/o. Shri K. Shankar Rao, aged about 16 years.
3. Kumari K. Padma d/o. Shri K. Shankar Rao, aged about 15 years.

Both through mother K. Padmawati r/o. Street No. 5r2, Q. No.15-D, Sector 11, Zone-2, Khursipar, Bhilai, Tahsil and District Durg (CG).

---- Respondents

For appellant : Dr. N.K. Shukla, Sr. Advocate with Ku. Priya Mishra, Advocate.

For respondents : Mr. MPS Bhatia, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 23-12-2004 passed by 7th Additional District Judge (FTC), Durg (CG) in Civil Suit No. 106-A/2004 wherein the said court dismissed the suit

for divorce filed under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act, 1955") and granted maintenance to respondent/wife and minor children.

2. As per the appellant, the marriage between the parties took place on 20-2-1988 at Bhilai according to Hindu rituals. Both parties are related to each other. Respondent/wife is daughter of maternal uncle of the appellant. Out of their wedlock two daughters were born namely K. Saraswati (born on 13-8-1989) and K. Mamta (born on 14-7-1991). The married life of the parties was not happy. The appellant is being tortured and manhandled by father, mother and brother of the respondent. It is a case of the appellant that respondent was also living in adultery and was leading adulterous life with one G. Suryanarayana. Appellant filed a suit on the ground of cruelty, adultery and withdrawal of his company for more than two years. The trial court after recording evidence and hearing the parties dismissed the suit against factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

- i) The respondent has withdrawn from the company of the appellant since birth of second daughter i.e., from 14-7-1991 and thereafter she did not return to the house of the appellant, therefore, case of withdrawal of company is made out.

- ii) As per evidence of appellant (PW/1), his father-in-law and mother-in-law assaulted him and version of this witness is supported by version of D. Janardhan Rao (PW/2), therefore, case of cruelty is also made out.
- iii) The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside and decree be passed in favour of the appellant for divorce.
He placed reliance in the matter of **Satish Sitlole vs. Ganga (Smt)** reported in (2008) 7 SCC 734.

4. On the other hand, learned counsel appearing for the respondent would submit that the appellant has demanded earlier one acre of land for bringing the respondent to his house after she gave birth to second daughter in her parental house and when the respondent side agreed to allot one acre of land he demanded three acres of land as condition precedent for bringing the respondent to his house but this demand was not satisfied because father-in-law of the appellant was not able to allot that much of land. He would further submit that it is not a case where

respondent is living separately on her own will but since appellant himself is not bringing her that is why she is taking shelter in the house of her parents. The evidence of cruelty is not established because there is nothing on record to show any role of respondent played in any kind of violence against the appellant. The husband is under obligation to maintain his wife and children, therefore, maintenance amount granted by the trial court is also not liable to be disturbed. Again, ground of adultery is also not established, therefore, finding of the trial court is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether respondent committed cruelty against the appellant. Appellant side adduced evidence of K. Shankara Rao (PW/1), D. Janardhan Rao (PW/2), Rajendra Shukla (PW/3) and Durga Rao (PW/4). As against this, respondent side adduced evidence of K. Padmawati (DW/1), D. Erranna (DW/2), Minna Rao (DW/3) and G. Suryanarayana (DW/4). K. Shankara Rao (PW/1) deposed before the trial Court that his father-in-law and brother-in-laws assaulted him on 2-12-1988. As per evidence of this witness, the incident took place at his village in Andhra Pradesh. From the statement of this witness it is clear that the house of the appellant and father of

respondent is adjoining at Sector-11, road No.2 at Bhilai, District Durg and as per version of this witness respondent is residing adjoining to his house at Bhilai. From his evidence and evidence of his other witnesses, it is not established that respondent had any role in any kind of violence against the appellant in the village in Andhra Pradesh. The trial court has elaborately discussed the entire evidence and recorded finding that role of the respondent in any kind of violence against the appellant is not established, therefore, it is not a case where it can be adjudicated that respondent committed cruelty against the appellant.

7. The second question for consideration of this court is whether respondent is living adulterous life with one G. Suryanarayana. Though appellant K. Shankara Rao (PW/1) and Durga Rao (PW/4) deposed before the trial court that respondent is maintaining physical relation with one G. Suryanarayana, but from their evidence, it is clear that they have not made any complaint in this regard and did not state this fact to people of locality and society. G. Suryanarayana (DW/4) deposed before the trial court that right from the child-hood he knows the respondent and he treats her as his sister/daughter. Looking to the conduct of the appellant witnesses and in rebuttal looking to the evidence of G. Suryanarayana (DW/4), the ground of adultery is also not established before the trial court. The trial court dealt this issue

elaborately and recorded finding in negative and this court has no reason to take a contrary view what is recorded by the trial court after assessing the evidence.

8. The next question for consideration of this court is whether respondent has withdrawn from the company of the appellant for more than two years since filing of the suit. As per evidence of K. Shankara Rao (PW/1), respondent did not join his company after birth of second daughter i.e., 14-7-1991. The appellant deposed before the trial court that he tried to bring her many times but she did not join his company. The statement of this witness is merely a bald statement. In view of this court, if the appellant was really willing to bring the respondent, he would have filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 but instead of filing a petition for restitution of conjugal rights, he filed a petition for divorce which shows his negative approach towards the respondent. On the contrary, from the evidence of K. Padmawati (DW/1), D. Erranna (DW/2) and Minna Rao (DW/3), it is established that first appellant demanded one acre of land from parents of respondent before bringing the respondent to his house and when proposal is accepted, appellant demanded three acres of land but father of respondent was not able to allot three acres of land, that is why respondent is residing with her parents. From the statement of witnesses of

respondent side and negative approach of the appellant towards respondent in filing a divorce petition it can be inferred that respondent has not withdrawn from the company of the appellant, but she is staying with her parents because appellant demanded three acres of land which was not satisfied. The trial court has recorded a finding in favour of the respondent and after reassessing the evidence this court is in agreement with the trial court. The trial Court has granted maintenance to respondent and minor children which is the legal duty of the appellant and respondent side is free to go for alteration of maintenance amount in change circumstances.

9 On overall assessment, it is not a case where finding of the trial court is liable to be reversed. Argument advanced on behalf of the appellant is not sustainable and the appeal is liable to be dismissed. The case law cited by learned counsel for the appellant does not help to him as same is clearly distinguishable from the facts of the present case.

10. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- i) The appeal is dismissed with cost.
- ii) Appellant to bear the cost of respondents through out.

- iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju