

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD
CIVIL MISCELLANEOUS APPEAL No.97 OF 2020

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

Heard Sri D.Pochaiah, learned counsel for the appellant.

2. This appeal is directed against the order dated 18.12.2019 in H.M.O.P.No.21 of 2013 of the Senior Civil Judge, Asifabad.

3. The appellant and the respondent are wife and husband, whose marriage took place on 13.02.2005. During their wedlock, they were blessed with one male child. As disputes arose between them, the respondent filed H.M.O.P.No.21 of 2013 before the Court below under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking grant of divorce by dissolving the marriage between them on the ground of desertion.

4. The appellant filed a counter contending that the respondent harassed her for additional dowry, and as such she left the company of the respondent and living with her parents.

5. On considering the oral and documentary evidence on record, the trial Court came to the conclusion that there is no chance of reunion between the parties and therefore, granted decree of divorce in favour of the respondent-husband. Aggrieved by the said order, the appellant-wife preferred the present appeal.

6. The counsel for the appellant contended that granting of divorce is illegal and contrary to law and therefore prayed to set aside the order passed by the Court below.

7. For the purpose of deciding this case, it is necessary to read Section 13 of the Hindu Marriage Act, 1955, which is extracted as follows:-

“13. Divorce- (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party;

(i) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion ; or

(iii) has been incurably of unsound mind, or has suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.”

8. Admittedly, the marriage between the parties in this case was solemnized on 13.02.2005 at Mudimadugu Village of Jannaram Mandal. Out of their wedlock, a male child was born to them on 04.07.2007. Thereafter the appellant-wife left the company of the respondent-husband on 20.02.2010. After waiting for a period of more than three years, the respondent filed a petition before the trial Court on 30.04.2013 for granting divorce on the ground of desertion. In support of his case, the respondent-husband examined himself as P.W.1 and marked Ex.P1 wedding card.

9. In rebuttal, the appellant-wife was examined as R.W.1 and her son was examined as R.W.2. In the cross examination, R.W.1 admitted that she has been living with her parents since 2010. Though the appellant alleged that her husband harassed for additional dowry and that he got illegal intimacy with one Swapna, she did not file any proof to show that she gave any police complaint for the harassment and that the respondent has got illegal intimacy with said Swapna. This is nothing but character assassination and the attitude of the wife towards husband amounts to cruelty. If really, the respondent harassed the appellant for additional dowry, she would have made a complaint to the police in this regard, but she filed a case under Domestic Violence Act against the respondent after filing of divorce petition by the respondent. The appellant has not examined any independent witness, except herself as R.W.1 to show that the respondent harassed her for additional dowry and due to the said harassment, she left the company of the respondent.

10. Basing on the oral and documentary evidence, the trial Court observed that the appellant deserted the respondent for a continuous period of not less than two years immediately preceding the presentation of divorce petition under Section 13(1) of the Hindu Marriage Act, 1955 by the respondent. The trial Court rightly observed that there are no valid reasons for the appellant to desert her husband and she never tried to join his society. The respondent is paying Rs.6,000/- per month towards maintenance to her and her son and also sending Rs.10,000/- per month

towards arrears of maintenance and the respondent is receiving the same regularly. No where, the appellant pleaded before the trial Court that she tried to join the company of the respondent. The appeal is devoid of merits and therefore, the order passed by the trial Court needs no interference and accordingly, the same is liable to be confirmed.

11. In view of the above discussion, the appeal is dismissed, confirming the order dated 18.12.2019 in H.M.O.P.No.21 of 2013 passed by the Senior Civil Judge, Asifabad. No costs.

12. Miscellaneous petitions, if any, pending shall stand dismissed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 03.03.2020
Shr.

