

HON'BLE SRI JUSTICE P.NAVEEN RAO

AND

HON'BLE SMT. JUSTICE P.SREE SUDHA

FCA.No.165 OF 2005

JUDGMENT: (per Hon'ble Smt. Justice P.Sree Sudha)

None appears on either side.

2. This Appeal is filed by M.Anjamma against her husband M.Sathaiah challenging the orders of the Family Court in FCOP.No.194 of 2004 dt.14.09.2005. Parties herein after referred as wife and husband for the sake of convenience.

3. The husband filed the above OP for dissolution of marriage on the grounds of desertion and cruelty. The marriage of wife and husband took place on 25.04.1966 and they are blessed with three children i.e., one daughter and two sons. Husband was railway employee and he was travelling outstation frequently, as such differences arose between them. It is the case of the husband that wife alleged that the husband had illicit relationship and deserted him in the year 1981. It is his further case that she also filed MC.No.35/1986 for maintenance. His daughter filed OS.No.7/2003 to recover marriage expenses. During the pendency of the proceedings, he compromised with them and paid

Rs.1,00,000/- towards her future maintenance and marriage expenses. Even when he was attacked with paralysis, his wife has not attended him. There is no love and affection between them, and their marriage was broken about 20 years back, and therefore sought for dissolution of their marriage by granting decree of divorce.

4. On the other hand, the appellant-wife averred that she is deaf and dumb by birth and the husband married her knowing fully well about her health. Her father purchased a house in the name of the respondent-husband one year prior to their marriage, and after the marriage, they lived in the same house for about 4 or 5 years and blessed with three children. She further stated that as her husband-respondent was residing with a concubine and neglecting them and also necked her out of the house, she along with their children was residing with her brother. As the husband comes under pensioner's scheme, he wants to declare his concubine, Chandrakala, as his wife and her children as his children, to divert his pension to them. She further stated that there is no cruelty or desertion on her part.

5. Basing on the evidence available on record the trial Court allowed the said OP. It observed that respondent-husband was aged 60 years and the appellant-wife was aged 53 years, her 3 children are well-settled, she received alimony out of his retirement benefits and their marriage was irretrievably broken down and as such no useful purpose would be served by keeping the marriage alive on paper, and accordingly dissolved their marriage by a decree of divorce.

6. The appellant-wife challenged the said order before this Court by present appeal.

7. In the memorandum of appeal, wife asserts that the trial Court has not framed charge as to whether the respondent-husband was treated with cruelty by wife and whether wife had deserted the husband without any reasonable cause. Further, her husband is not entitled to take advantage of his own wrong for seeking the relief in the OP. She further asserts that her husband filed OP for divorce 20 years after their marriage and the delay is not explained, and thus the respondent-husband is not entitled to claim dissolution of the marriage on the ground of irretrievable breakdown of the marriage as it is not available for him under the provisions of the Hindu

Marriage Act, 1955. He also failed to prove that the wife treated him with cruelty, and the trial Court erred in concluding that they are living separately for several years; thus no useful purpose would be served in keeping the marriage alive and there is no chance of living together as they are living separately for the past two decades. She further contended that in the MC filed by her, it was observed by the Court below that the respondent-husband neglected her and her children, and he was also living with a concubine namely Chandrakala and therefore she requested the Court to set aside the order dt.14.09.2005 in FCOP.No.194 of 2004.

8. It is brought to the notice of this Court that during the pendency of the proceedings, the respondent-husband died on 14.06.2014.

9. Admittedly, marriage of the parties was performed in the year 1966. It was alleged that she deserted him in the year 1981 but her husband filed OP in the year 2004. There was no explanation on the reasons for the delay. He never made any efforts for restitution of conjugal life. Basing on the evidence of Rws.1 and 2 it can safely be presumed that the husband was in extra-marital relationship with one Chandrakala and also blessed with

three children, and thus the appellant herein was compelled to stay away from him. Therefore, the respondent-husband failed to establish that the wife is not having reasonable cause to live separately from him.

10. In **P. Ilesh Yadav v. P. Suvarna**¹ it was held that creating uncongenial and uncomfortable atmosphere for others and compel to leave the matrimonial house, cannot be a ground for desertion.

11. The husband has not attributed any act of cruelty. He neglected his wife and children for more than a decade. Only when he was bedridden due to paralysis as husband required the assistance of an attendant to take care of his necessities, he send a word to his wife and her family members. Her refusal to join his company cannot be counted as cruelty, as he is residing with Chandrakala. At that stage, he filed OP for divorce. Further, the contention of wife that the husband is now a pensioner and he intended to declare Chandrakala as his wife and divert the pension in her name cannot be brushed aside. Further, the irretrievable breakdown of the marriage cannot be a ground to grant divorce under the provisions of the Hindu Marriage Act, 1955.

¹ 2014(3) ALD 400

12. Thus, on appreciation of entire evidence and law, we would have allowed the appeal setting aside the decree of divorce. But, due to intervening event we are not adopting the said course.

13. It is appropriate to note that by order dated 18.10.2005, this Court stayed the decree granted by the trial Court. On account of interim order, decree of divorce has not come into effect. This interim order is subsisting to date. While so, on 14.06.2014 husband died. Thus, as on the date of death, the marital status of appellant and respondent remained intact as it was prior to the decree of trial Court. Appellant continued to be wife of respondent till his death. As a consequence, she is entitled to assert her right as a widow of the deceased M.Sathaiah under Hindu Succession Act, 1956.

14. Accordingly, this Appeal is disposed of. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

P.NAVEEN RAO,J

P.SREE SUDHA,J

10th NOVEMBER, 2021
Gra/pgs