

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

APPEAL SUIT No.3224 OF 2004

ORDER:

Being aggrieved by the judgment and decree passed by the trial Court in O.S.No.42 of 1994 on the file of Senior Civil Judge, Kothagudem where under the suit of the plaintiff who is appellant in the present appeal against respondent Nos.1 to 4 who are shown as defendants in the above said suit was dismissed, the appellant/plaintiff preferred the present appeal.

2. O.S.No.42 of 1994 has been filed by the appellant/plaintiff for recovery of Rs.1,87,485.76 paise. According to the averments made in the plaint filed before the Court below, it is alleged that the marriage of appellant was performed with 1st respondent/1st defendant. Respondent Nos.2 and 3 are the parents and 4th respondent is the brother of 1st respondent. The parties are Hindus by religion. The plaintiff has claimed that respondents/defendants have got joint family business at Kothagudem. According to the allegations in the plaint,

her marriage was performed with 1st respondent on 24.02.1985. The appellant has claimed that respondent/defendants Nos.1 to 3 demanded a sum of Rs.1,00,000/- towards dowry. However, her father expressed his inability to pay the amount and respondent Nos.1 to 3 agreed to receive Rs.80,000/- on condition that he should deposit Rs.50,000/- in the name of plaintiff in any bank and the balance of Rs.20,000/- and household articles worth Rs.10,000/-. The plaintiff further claimed that her father paid Rs.50,000/- to her husband and in-laws and remaining amount was spent at the time of marriage.

3. Therefore, according to her claim before the trial Court that respondent Nos.1 to 3 were paid Rs.80,000/-. But, subsequently disputes arose between the couple and also between appellant and other respondents and she was sent to her parent's house with a demand to bring balance amount. The appellant has claimed that her husband filed a petition before the same Court for dissolution of marriage. However, the same was dismissed. 1st

respondent filed an appeal before the High Court. The appellant filed suit for recovery of the above said Rs.80,000/- with costs and interest on the principal amount.

4. Respondent/defendant made their appearance before the trial Court, filed their written statement disputing all the material allegation except the marriage. Basing on the rival contentions, the trial Court framed 5 issues.

5. PWs 1 to 4 were examined on behalf of the appellant. RWs 1 and 4 were examined on behalf of the respondents. Appellant has marked Ex.A1. Trial Court having considered oral evidence and also Ex.A1 came to the conclusion that the appellant was unable to prove her claim, thereby dismissed the suit.

6. The present appeal is filed on the following grounds :

The judgment and decree of the trial Court are contrary to law and the documentary evidence on record. The court below failed to see that the appellant is wife of respondent No.1, daughter in-law of respondent Nos. 2 and

3 and 4th respondent is none other than younger brother of 1st respondent. Soon after the marriage she joined the of her husband and in-laws but she was deserted by the respondent on the ground that she failed to pay balance dowry amount. The trial Court ignored the fact that the 1st respondent filed petition for dissolution of their marriage which was dismissed by the trial Court. He has preferred an appeal before the High Court, but the same was dismissed. As such 1st respondent preferred civil appeal before the Hon'ble Supreme Court which was also dismissed on 22.02.2001.

7. The appellant has submitted that the trial Court failed to see that 1st respondent deserted her without any reasonable cause. The Court below did not consider the evidence of her father through whom payment of Rs.50,000/- to the respondent/defendant was proved. The Court erroneously did not consider the evidence of PWs 1 and 2 which would prove the payment of remaining amount. The appellant claimed that since she was deserted and necked out by the respondent, Court below ought to

have directed them to return the dowry amount with costs and interest.

8. I have heard learned counsel for the appellant. None represented the respondent.

9. Now the point for consideration is :

Whether the Court below committed an error in dismissing the claim of plaintiff? If so, whether she is entitled to recover the dowry amount with costs and interest as prayed for ?

10. **POINTS:**

In order to substantiate her case, the appellant/plaintiff has been examined as PW1. The certified copy of order in O.P.No.117 of 1987 was marked as Ex.A1.

11. In order to substantiate her claim, the appellant/plaintiff has relied on oral evidence of PWs 1 to 4 and Ex.A1. Ex.A1 may at best, prove that 1st respondent/husband of the appellant herein filed a petition seeking dissolution of his marriage. But, it may not prove

the payment of dowry and the liability of the respondent in returning the said amount. As per the plaint averments and according to the evidence place before the Court the appellant claims that her father having withdrawn Rs.50,000/- from S.B. Account, paid the said amount to the respondent herein. However, except the oral evidence of PWs 1 and 2, no proof has been filed in support of the said claim. PW1 however deposed that on the date of marriage her father paid Rs.20,000/- to the father-in-law to purchase gold ornaments and he paid the remaining amount of RS.10,000/- on subsequent dates. As could be seen from the record, it shows that on 26.11.1993 the appellant herein got issued a notice and sought for return of Rs.60,000/- with interest @ 24% per annum.

12. The respondent gave a reply denying the allegations in the notice. Therefore, as per the notice, it was the claim of the appellant that only Rs.50,000/- was given to the respondent. To prove the payment of Rs.50,000/-, the appellant has examined one G.Kanthaiah as PW3. According to his evidence before the trial Court, PW3 is a

vegetable vendor. He deposed before the Court below that during February, 1985 he happen to visit the house of the appellant while she was with the respondent. It is elicited from PW3 that being vegetable vendor, he used to visit Kothagudem in the early hours i.e., 4:00 or 04:30 A.M. But, on the above dated he visited the house of PW1 at 10:00 A.M. He has no prior acquaintance with PW2. PW3 claims that he was present and witnessed the alleged payment of dowry. The Court below did not consider his evidence and concluded that he is planted evidence.

13. As rightly observed by the trial Court, PW3 who has no prior acquaintance with the parties who used to sell vegetables in early hours, had no occasion to be present at the time of alleged payment of dowry. The evidence of PW3 itself shows that he is an unnatural witness may be planted only to support the claim of the plaintiff. Therefore, the Court below rightly disbelieves his evidence.

14. The plaintiff did not produce any bank statement. Trial Court found that the claim of PW2 that he paid

Rs.20,000/- to defendant No.2 for purchase of gold ornaments is not believable. According to PW1 her father paid Rs.20,000/- to the defendant on the date of marriage. But, in the plaint, it was alleged that the said amount was paid to defendant No.2 on 25.05.1985. Therefore, there is a material discrepancy between the evidence and averments of plaint. The Court below having discussed oral evidence of all the witnesses in detail passed a reasoned order for coming to the conclusion about the failure of the plaintiff to prove her case. Therefore, there are no grounds to reverse the judgment and to direct the respondent/defendant to pay dowry amount. Therefore, the appeal is liable to be dismissed.

15. In the result, the appeal is dismissed. No costs.

16. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 19.09.2022
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