

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL MISCELLANEOUS APPEAL.No.132 of 2016

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

This Civil Miscellaneous Appeal is filed against the Order of the trial Court in H.M.O.P.No.41 of 2010 dated 05.01.2016 passed by the learned Senior Civil Judge, Sangareddy.

2. One B.Balaji/petitioner/respondent herein filed H.M.O.P.No.41 of 2010 for divorce against his wife B.Padmavathi/respondent/appellant herein on the ground of cruelty. The trial Court observed that the whole trouble started from 04.01.2008 when respondent/wife lodged a complaint against the petitioner/husband under Section 498-A IPC. He was arrested and remanded to the Judicial Custody and suspended from the service. She also filed several other cases against him, it amounts to mental cruelty. As the couple were living separately for the last 7 years and moving around to the Courts, fighting with litigation, matrimonial bond has been ruptured beyond repair and thus marriage between petitioner and respondent was dissolved by granting decree of divorce.

Aggrieved by the said Order, respondent/wife preferred the present Civil Miscellaneous Appeal.

3. She contended that it is the petitioner/husband who treated her with cruelty, but the trial Court without appreciating the facts properly granted divorce. In fact, her husband compelled her to initiate legal proceedings against him as he harassed her mentally and physically. The trial Court failed to appreciate the compelling reasons under which she filed complaint under Section 498-A and also complaint under Domestic Violence Act. The trial Court wrongly held that there is no possibility for both the parties to reconcile and live together and it has not appreciated Exs.R1 to R37 in its correct perspective. She further stated that her husband filed complaint in the year 2005 and he also admitted in the cross-examination that Gram Panchayat and village elders advised him to take her back, but he did not respect their advice. Therefore, requested the Court to set aside the Order of the trial Court in H.M.O.P.No.41 of 2010 dated 05.01.2016.

4. Heard the arguments of both sides and perused the entire evidence on record. The parties herein are referred to as

petitioner and respondent as arrayed in trial Court for the sake of convenience.

5. The petitioner/husband filed H.M.O.P.No.41 of 2010 for divorce against his wife on 25.08.2010. He stated that they are Hindus by religion and their marriage was performed on 18.05.1994 as per their customary rites. He was working as fitter in the Ordinance Factory. Both petitioner and respondent belong to Schedule Tribes caste. He stated that he has to take care of his parents, un-married brother and two children of his another brother who was no more. These facts are already informed to respondent and to her parents before marriage. But, immediately after marriage, she insisted him to stay away from his parents. She did not treat his parents properly and thus they were compelled to live in village and she was not allowing him to send money to his parents for their maintenance and used to quarrel with him every month whenever he was sending money to his parents. As she could not conceive, he provided medical treatment to her and incurred Rs.5,00,000/- to correct her infertility problem. She was leaving matrimonial house frequently and going to her parent's house and abused him in filthy language and through her brother she gave false complaint on 18.03.2004 against him stating that he is

harassing her. Later compromise was entered between the parties with the intervention of the elders and the said compromise was reduced in writing in which it was mentioned that the parents of both sides should not interfere in their matrimonial affairs at least for a period of 6 months and she should not restrain petitioner to render financial assistance to his family, but within one month after the agreement his brother-in-law took respondent to her parents house. When he went there, they picked up quarrel with him and insulted him and threatened to file Criminal case against him. She came along with him on 10.11.2005, but on the next day her brother came from Hyderabad and attacked him. He reported the matter to Security Officer of the Ordinance Factory. When the department people came to enquire the matter, the respondent along with his family members left to Khammam. He gave complaint on 20.11.2005 to S.H.O, Indrakaran to take action against respondent and her family members. When they are summoned by police, they gave an undertaking before police that they will not call for Panchayaths and would not interfere in their life. Even after the undertaking there was no change in her attitude. He gave another complaint on 01.04.2007 before the same S.H.O stating that his brother-in-law threatened to kill him.

6. He further stated that his wife was having joint property with one Rama, but she sold the same in the year 2007 and gave the sale proceedings to her family members. On 28.12.2007, she broke open the lock and took away some important documents in his absence and gave complaint against him on 04.01.2008 under Section 498-A IPC in Cr.No.2 of 2008 stating that he performed second marriage and begot a child. She also filed D.V.C.No.8 of 2008 against him and his parents claiming compensation of Rs.1,00,00,000/-. The petitioner sold his plots for providing medical treatment of respondent. The plots in the name of his brother are purchased by selling ancestral land. The interim Orders were passed in the D.V.C.No.8 of 2008 and it was published in news papers. She implicated his parents who are residing in their native village which is far away from his residence. He further stated that his wife treated him cruelly and deserted him for not less than 10 years prior to the filing of the petition. As she deserted deliberately and neglected him, he requested the Court to grant divorce. He filed marriage card, mutual undertaking dated 18.03.2004, a copy of the complaint given by his brother-in-law and his wife and a copy of the complaint in D.V.C.No.8 of 2008 and also the medical report of the respondent.

7. In a counter filed by the respondent/wife, she denied all the allegations and stated that immediately after the marriage on 18.05.1994 she joined company of her husband at Mylaram Village of Medak District, where he was working in Central Government Ordinance Factory. She stated that her father gave an amount of Rs.1,50,000/- towards dowry, besides gold ornaments worth Rs.1,00,000/- and household articles worth Rs.1,00,000/-. They lived happily for a period of one year but they have no issues. Thereafter, he demanded for the additional dowry of Rs.10,00,000/-. When her parents gave the said amount, he purchased house sites at Karmanghat, Champa Pet, Kalabgur, near Chanda Nagar, a flat in Goutham Nagar, Patan Cheruvu, near Sanga Reddy and also in Hyderabad. He also invested in Real Estate business on many Binami names. He also purchased the land to an extent of Acs.9 – 27 gts in Sy.No.520/A, situated at Kampalli Village, Korivi Mandal, Warangal. The petitioner and his parents also used to harass the respondent by demanding her to bring additional dowry from her parents. The petitioner also threatened that he will perform second marriage. He had forced her to transfer all her immovable landed properties in the name of Bhukya Babu Rao who is brother of petitioner and also to other third parties.

8. She further stated that he tried to pour petrol and put her on fire on two occasions but due to interference of the public, he dropped his attempt. She stated that petitioner had developed illicit intimacy with one Swathi, D/o. Y.James H.Rao of the same locality and married her and they are also blessed with two children. She gave complaint in Cr.No.2 of 2008 under Section 498-A and 494 IPC and also D.P.Act and also filed petition in D.V.C.No.8 of 2008, another petitioner under Section 125 of Cr.P.C. She further stated that petitioner is harassing her mentally and physically and driven her away from the house and leading the illegal marital life with said Swathi and blessed with two children. He created the ground for cruelty for the purpose of case and requested the Court to dismiss the case.

9. The petitioner was examined as P.W.1 and he examined his mother as P.W.2 and marked Exs.P1 to P9 on his behalf. The respondent was examined as R.W.1 and she examined her father as R.W.2 and marked Exs.R1 to R37 on her behalf.

10. Now, it is for this Court to see whether the Order of the trial Court in granting divorce is on proper appreciation of facts or not?

11. The learned Counsel for the appellant/wife argued that both petitioner and respondent belong to Scheduled Tribe community. They clearly stated that their marriage was performed according to their customary rights, as such petition filed by the husband for divorce under Hindu Marriage Act was not maintainable. The Family Court has no jurisdiction to decide the issue and thus requested the Court to remand the matter for framing of issue regarding jurisdiction. He relied upon the decision of the Hon'ble High Court of Jharkhand in the case of ***Baga Tirkey Vs. Pinki Linda and another***,¹ dated **08.04.2021**, in which it was held as follows:

“14. There is no precedent which bars members of the Scheduled Tribe to approach the Family Court by filing any suit or proceedings relating to matters mentioned in Clauses-(a) to (g) of the Explanation to Section 7 of the FCA. If at all, such matter is filed, seeking adjudication under the law, applicable to them i.e., Customary Laws, they cannot resort to the provisions of Hindu Marriage Act, 1955, if the parties are not governed by the Hindu Marriage Act, 1955. Reference is made to the decision of this Court in the case of Rajendra Kumar Singh Munda Vs. Smt. Mamta Devi in F.A.No.186 of 2008, vide judgment dated 20.08.2015. This Court affirmed the order of the Family Court, dismissing the suit for divorce, filed by a member of Schedule Tribe, under Section 13 of the Hindu Marriage Act, 1955, on the ground that the Hindu Marriage Act does not apply. Customary Laws are applicable in the matters of succession, where parties are governed by Customary Laws.

¹ 2021 SCC Online Jhar 1339

He also relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Jagmittar Sain Bhagat Vs. Director, Health Services, Haryana***,² in which it was held that:

“9. Indisputably, it is settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings.”

12. The learned Counsel for the respondent herein/husband submitted that they are Hindus and thus their marriage was performed according to the customary rights of Hindus. Perusal of the wedding card filed under Ex.P1 shows that it is personal card of the petitioner to invite his friends and relatives. The issue of jurisdiction has to be raised at the earliest point of time before the trial Court but the wife has not raised the said objection in her counter, as such no evidence was let in by both the parties regarding the said fact. Therefore, the learned Counsel for the appellant cannot raise the issue of jurisdiction at the belated stage. No doubt both the parties belong to Scheduled Tribes, but it was claimed in the petition that they are Hindus. There is no dispute regarding their marriage. Their marriage was performed on 18.05.1994 and the application for

² (2013) 10 SCC 136

divorce was filed on 25.08.2010 i.e, after 16 years. Appellant herein contested H.M.O.P.No.41 of 2010 by engaging an Advocate, in fact she also filed several cases against her husband in different forums, therefore the argument of the appellant regarding jurisdiction cannot be accepted at appellate stage.

13. Appellant herein contended that her husband demanded additional dowry of Rs.10,00,000/- and her parents gave him the said amount, with that amount he purchased several properties. Whereas, the petitioner/husband stated that properties in the name of his brother were purchased by selling ancestral properties. He himself stated that he has 2 to 3 acres of agricultural lands and he was getting a salary of Rs.1500/- per month in the year 1991. He purchased a house plot in the name of respondent/wife in the year 2007. He also purchased another plot in her name, but she sold away the same. He further stated that he has 4 plots under registered document in his name and there is some agricultural land which is situated at Kompally Village of Warangal District.

14. The respondent/wife stated that in D.V.C.No.8 of 2008, maintenance was granted in her favour and also an Order restraining the petitioner and his parents from alienating the movable and immovable properties was granted, but later D.V.C was dismissed for non-appearance. In the cross-examination she stated that Exs.R2 to R5 and R7 were executed by her father in favour of third parties. She has not filed any document to show that land was transferred by her in favour of P.W.1 or his family members. It was suggested that P.W.1 purchased certain house plots in her name with his own money under Ex.R13 and she sold the same to the third parties under Ex.R15 and R22 and it was also suggested that brother of P.W.1 purchased plots with his own money under Exs.R19 to R21. It is suggested that PW.1 and another purchased the plots jointly with their own money under Exs.R6, R8 to R12, R14, R23, R24, R27 and R28 and she is not concerned with them. It was suggested that the name of Swathy was shown as vendee under Exs.R25, R29, R30 and R32, but she denied all the above suggestions. Though the respondent/wife for the first time in her counter in divorce O.P contended that her husband demanded Rs.10,00,000/- and the same was paid by her parents but, she has not stated the same version in her earlier complaint under Section 498-A. Her evidence was supported by

her father and he stated that she is the only daughter. Respondent stated that she is having 3 brothers and her father is an agriculturist, her father is not doing business and depending on the income of the agriculture, as such she has not filed any other document to show that she paid Rs.10,00,000/- as additional dowry. Therefore, her contention regarding payment of Rs.10,00,000/- as dowry to her husband and P.W.1 purchased all the properties with the said amount cannot be believed.

15. The main contention of the petitioner/husband is that she filed several cases against him and also gave complaint to the department officials, as such he was suspended when a complaint was filed under Section 498-A and he was compelled to roam around Courts and before the enquiry authorities. Whereas, the appellant herein stated that he performed another marriage with Swathi and blessed with two children and he along with his family members harassed her mentally and physically, as such she filed first complaint under Section 498-A, 14 years after the marriage. As he performed another marriage, she filed complaint under Bygamy and also filed D.V.C and for maintenance against him. The petitioner/husband admitted that he also gave complaint

against his brother-in-law and family members of his wife to the Security Officer of their department and also before S.H.O, Indrakaran in the year 2005 and the same was admitted by his mother. This clearly shows that both the parties approached the concerned authorities and gave complaints against each other and Panchayats are also conducted between them and they also gave undertaking but did not keep up the same. The respondent/wife stated that he performed another marriage and blessed with two children and neglected her. Therefore, in the light of the above facts, it cannot be said that mere filing of number of cases by the wife amounts to cruelty against her husband.

16. The petitioner/husband stated that respondent/wife broke open the lock and took away some important documents in his absence and later gave complaint under Section 498-A. She filed the said documents in O.P for divorce also. As per the cross-examination of P.W.1 & R.W.1, one house plot is in the name of appellant herein/wife and other properties were in the name of her husband and some of the properties were in the name of Swathi. Even a suggestion was given to P.W.2 who is mother of the petitioner/husband that the marriage of P.W.1 was performed with Swathi and they are blessed with two

children. She stated that she did not know the same. It was also suggested that both of them living in a house constructed at Isnapur, but she stated that she does not know anything. She gave evasive answers. The fact that some of the properties were in the name of Swathi and the fact that appellant herein could not conceive any children clearly shows that petitioner/husband is living together with Swathi even during the existence of the marriage with the appellant herein.

17. Though the petitioner/husband stated that he provided Rs.5,00,000/- for treatment of respondent/wife, he did not file any prescription and not filed any record to substantiate his version. He might have provided medical treatment but the fact that he spent Rs.5,00,000/- is not established.

18. As per the Order in Maintenance Case, Rs.5,000/- per month towards her maintenance and Rs.1,000/- towards medical expenses was granted and as per the demand of the respondent/wife, he paid Rs.1,50,000/- but she stated that he was not paying regularly.

19. The petitioner/husband stated that from the date of marriage his wife was not taking care of his parents and picking

up quarrel with him when he was rendering financial assistance to his parents, but in the undertaking given after the first complaint, it was clearly mentioned that his wife should not restrain him from sending amount to his parents, this substantiates the version of the petitioner/husband. The learned Counsel for the petitioner/husband argued that wife restrained husband from looking after his parents and it amounts to cruelty as per the recent decision of the Hon'ble Supreme Court. The trial Court considering the litigation between the parties for more than 7 years, observed that the matrimonial bond was ruptured beyond repair and held that it amounts to mental cruelty, but the learned Counsel for the petitioner/husband also relied upon the Judgment of the Hon'ble Supreme Court in the case of **K.Srinivas Rao Vs. D.A.Deepa dated 22.02.2013**,³ in which it was held that – *“when the marriage is irreparably broken down, husband is entitled for the grant of decree of divorce. The wife fought the litigation for more than 10 years and is depending entirely on her parents, therefore, her future must be secured by directing the husband to give her permanent alimony and thus directed husband to pay Rs.15,00,000/- to the wife by way of permanent alimony in three instalments.”* In this case wife was not blessed

³ 2013(3) ALD 11 (SC)

with children but the husband was living with another woman and blessed with three children. As the husband is working as fitter in the Ordinance factory and central Government employee, if the marriage is dissolved, she is deprived of pensionary benefits at the fag end of life.

20. The petitioner/husband filed H.M.O.P.No.41 of 2010 for divorce on 25.08.2010, from then onwards parties are not residing together for more than 12 years. Even in the case of ***Naveen Kohli Vs. Neelu Kohli***,⁴ the Hon'ble Supreme Court held as follows:

"74.once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties."

21. In view of the above discussion and the position of law as enunciated in the Supreme Court, this Court finds that it is not possible for both the parties to reside together amicably and admittedly they are not living together for the past 12 years.

⁴ (2006) 4 SCC 558

Therefore, no purpose would be served in continuing the marital tie and there is irretrievable break down of marriage. Therefore, this Court finds that the Order of the Court below in dissolving the marriage by granting a decree of divorce does not call for any interference in this appeal. However, having regard to the fact that during the subsistence of the first marriage, the respondent herein/husband had contracted 2nd marriage and begotten two children, this Court is of the view that the respondent/husband is to be directed to pay permanent alimony to the appellant/wife. Considering the nature of the work of the respondent/husband and the properties in his name and also the house plot in the name of appellant/wife, this Court finds that the permanent alimony quantified in a sum of Rs.20,00,000/- would be just and reasonable.

22. Accordingly, the respondent/husband is directed to make a payment of Rs.20,00,000/- to the appellant/wife as permanent alimony. Upon making such payment by the respondent/husband, the appellant/wife would not be entitled to any further payment in the MC case, which she is presently receiving. Since the appellant has filed the sale deeds under Exs.R-1 to R-34 pertaining to the respondent/husband herein before this Court, the Registry is directed to return all the

documents to the respondent/husband except the document which is in the name of appellant/wife.

23. For the foregoing reasons, the Civil Miscellaneous Appeal is disposed of. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.VINOD KUMAR

JUSTICE P.SREE SUDHA

DATED: 17.02.2023

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**THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**

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DATED:17.02.2023

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