

(2010) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1873 of 2002

Angara Vijaya Venkata Ramana Babu

APPELLANT

Vs

Smt. Angara Sesharatnam

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2011) 1 ALT 462 : (2011) 1 DMC 587

Hon'ble Judges : V. Eswaraiah, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : D. Hanumantha Rao, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—This Civil Miscellaneous Appeal is filed by the husband aggrieved by the order dated 21.03.2002 in O.P. No. 65 of 1996 on the file of the Court of the Senior Civil Judge, at Ramachandrapuram, East Godavari. District, whereby and whereunder the said O.P. filed by him for dissolution of the marriage u/s 13(1)(ia) of the Hindu Marriage Act, 1955 (for short "the Act"), was dismissed.

2. For the sake of convenience, the parties hereinafter be referred to as "Appellant" and "Respondent" as arrayed in this C.M.A.

3. It is the case of the Appellant that the marriage between him and the Respondent was solemnised on 10.3.1984 and at the time of consummation of marriage, the Appellant found that the Respondent was suffering with filaria disease and the same was suppressed by the Respondent and her parents at the time of marriage and he raised a dispute with the Respondent and her parents. However, the Appellant wanted to live with the Respondent. In spite of that, the Respondent turned out to be an adamant woman; that she started treating the Appellant and his parents cruelly and abused them; that she was frequently refusing to take food or to keep herself in good order and that she had no reason

for doing so. The Respondent suggested the Appellant to come as illatom son-in-law. It is realised from such a suggestion that the Respondent is suffering from mental disorder and that she did not relish or tolerate the company of others. While so, the Respondent left the house of the Appellant in the year 1985 and lived with her parents till about March, 1987. However, she joined the company of the Appellant due to the efforts made by the Appellant in March, 1987. But there was no change in her attitude and conduct and it was found that she lost mental balance to a great extent as she was always shouting at the top of her voice without any reason. She also started threatening the Appellant and his parents with dire consequences, if anybody disobeys her commands. The Appellant tolerated such attitude and conduct of the Respondent till June, 1989. When her behaviour was unbearable, her father took her away to his place with an assurance that he would send her back if there was change in her attitude and behaviour, perhaps, after getting the Respondent properly treated for her mental illness. Ultimately, in November, 1992, the Respondent along with her father came to the house of the Appellant and assured the Appellant that there was a change in her behaviour and she would conduct herself properly and she would be the dutiful wife, but those promises were found to be false. In spite of that the Appellant wanted to live with the Respondent. While things stood thus, the Respondent without informing the Appellant or his parents left the house of the Appellant on 02.06.1995 with an intention to sever all her relations with the Appellant and as such she deserted the Appellant from June, 1995 onwards. The Appellant got issued a notice dated 11.5.1996 to the Respondent calling upon her to join the conjugal life but she did not respond. As such, the O.P. is filed for dissolution of the marriage.

4. On the other hand, the Respondent denied the allegations made by the Appellant except those which are specifically admitted. She admitted that the Appellant is her husband. She denied that she was a filarial patient. She stated that her family and the family of the Appellant are related long prior to the marriage between her and the Appellant. There was exchange of visits in between their family members. She stated that she sustained an injury to her left leg on the ankle part, consequent to which, her left ankle was swollen and the injury was cured but swelling of the left ankle remained. This fact is known to the Appellant and his family members. After the marriage, she was taken to a Doctor, who examined her and said it was not filaria and that the ankle appeared to be swollen due to blood clot. In spite of knowing this fact, the Appellant and his parents used to harass the Respondent stating that it is a filaria. Further, the Appellant and his mother used to harass the Respondent to bring some more amount from her parents. The Appellant also demanded a new scooter from her parents. Then, the Respondent's father purchased a Bajaj scooter and gave it to the Appellant. In spite of that, the Appellant, his father and his sisters did not mend their ways and made the life of the Respondent miserable. Even they used to beat the Respondent. In the month of April, 1996, the Appellant necked her out from the matrimonial home. Having no other go, the Respondent had gone to

her father's place at Modekuru. Thereafter, the Appellant came to Modekuru on 21.4.1996 and warned that unless the Respondent brings Rs. 20,000/- she should not come to his house and she could stay at her father's house and that he would marry another woman. When the Respondent questioned such warning, the Appellant abused and beat her in front of her parents and went away. In that context, she gave a police report to the P.S. at Kothapeta and the Police brought the Appellant and questioned him. He admitted his fault and promised that he would not harass the Respondent and take her back and live with her peacefully.

5. The Respondent stated that she did not desert the Appellant, but it is the Appellant who deserted the Respondent. The Respondent is always willing to live with the Appellant. The Appellant filed the O.P. with false allegations apprehending that she would take action through the Police.

6. Basing on the pleadings of both the parties, the court below framed the following points for consideration:

i. Whether the Respondent treated the Petitioner (Appellant herein) cruelly?

ii. To what relief?

7. On behalf of the Appellant, he himself and two others were examined as P Ws 1 to 3 and Ex.A.1 was marked. On behalf of the Respondent, she herself and two others were examined as R Ws 1 to 3 and no documents were marked.

8. The court below after taking into consideration both oral and documentary evidence brought on record as well as factual and legal aspects of the matter, dismissed the O.P. on the ground that the Appellant has not established the cruelty alleged to be meted out to him by the Respondent.

9. Having regard to the facts and circumstances of the case, the point that arises for consideration before this Court is whether the Appellant has established the ground of cruelty to dissolve the marriage between him and the Respondent?

10. The Appellant-husband was examined as PW.1. He deposed that the marriage between him and the Respondent took place at the house of the Respondent as per the caste customs and Hindu rights. After the marriage during the course of their marital life, he noticed for the first time that the Respondent was suffering from filarial disease and informed the same to the parents of the Respondent. He got treated the Respondent for the said disease. From the date of notice of her suffering from filaria, disputes started between them. The Respondent used to behave cruelly towards him and his parents. In his cross-examination, PW.1 stated that the Respondent is his relative even prior to his marriage and his parents are known to the parents of the Respondent. By the time of marriage alliance, there were customary visits. PW.1 stated that he got treated the Respondent for filaria through Doctor Stalin one year after the marriage but he has no evidence to show the same; that he has not provided any medical aid for her mental disorder; that he intimated his Advocate about the acts of cruelty meted out by the Respondent but the details are not

mentioned in the O.P.; that the Respondent filed a case for maintenance on the file of the Judicial First Class Magistrate, Kothapeta and Rs. 500/- per month was granted to the Respondent. PW.1 further stated that he has no evidence to show that the Respondent is mentally suffering.

11. PW.2 is the paternal uncle of PW.1. He deposed that the Appellant and the Respondent are related to him. He acted to settle the disputes between the parties. In his cross-examination, he stated that he knows the Respondent even from her childhood. PW.2 stated that his elder brother informed him that the Respondent is suffering from filaria; that he has no medical evidence to show that the Respondent is suffering with filaria disease; that he has not seen personally the Respondent refusing to take food and coffee.

12. PW.3 was the tenant in the house of the Appellant. He deposed that he was tenant up to 1988 or 1989. After the marriage, the Appellant and the Respondent resided in the front portion of the house of Appellant's father. He stated after the marriage, the Appellant and the Respondent visited Tirupathi and it was noticed that the Respondent is suffering from filaria disease and for that she was got treated at Ramachandrapuram Govt. hospital and also by Doctor Stalin. When the matter was placed before the elders, the Respondent started behaving in unruly manner. She used to abuse the Appellant and his parents. In his cross-examination, PW.3 stated that he was informed by the Appellant that the Respondent is suffering with filarial disease and he never accompanied them to any hospital when the Respondent was examined.

13. The Respondent-wife was examined as RW.1. She deposed that their marriage took place in the year 1984. She denied that she has been suffering from filaria disease. She stated that prior to her marriage with the Appellant both families of Respondent and Appellant are related to each other. Even prior to the marriage, she and her family members used to visit the house of the Appellant and the Appellant's family members used to visit their house. She stated that there is swelling to her leg. A brick fell on her leg when she climbed the wall to pluck flowers and she sustained an injury and the injury was cured but swelling remained. The allegations of the Appellant that she abused the Appellant, his mother and his sister; that she failed to take food; that she is not interested in the company of the Appellant and that she behaved like a person of unsound mind are not correct. She stated that she has not abused the Appellant or his mother or his sister; that at the time of marriage, the Appellant was presented the cash of Rs. 25,000/-, half sovereign weight of gold ring, silver tumbler and a silver glass. In spite of that, the Appellant demanded additional amount. To that effect, he used to abuse her father and others and threatened them and she gave a report to Kothapeta Police. Before the S.I. of Police, the Appellant admitted that he is at fault and he would look after her well. However, the Appellant has not taken her with him. That she is ready to join and live with the Appellant. She stated that her mother-in-law and her sister-in-law also harassed her. That after the police complaint, the Appellant filed the O.P. In her cross-

examination, RW1 stated that she was sent away by the Appellant on 10 or 15 occasions from the matrimonial home demanding "katnam". She denied a suggestion that prior to her marriage, there was no relationship between her family and the family of the Appellant. RW.1 stated that in the year, 1995 she was dropped at Modekuru by the Appellant and demanded Rs. 25,000/-. Thereafter, the Appellant threatened her to bring Rs. 25,000/- stating otherwise, he would marry another woman. She stated that she had instructed her Advocate to give reply to the notice issued by the Appellant; that she has not enquired from the Advocate whether he issued reply or not because of her confidence in him. Respondent denied a suggestion that after receipt of summons in the O.P., she got issued a reply. She denied a suggestion that she has not given any police report against the Appellant. She stated that she filed M.C. No. 3/97 for maintenance. She denied a suggestion that she demanded the Appellant to come as illatom son-in-law and as the Appellant refused, she started harassing the Appellant.

14. RW.2 stated that the Appellant is his maternal uncle's son. He knows the Respondent since his childhood and she is keeping good health and she is also mentally sound.

15. RW.3 stated that he is resident of Modekuru village and his house is nearer to the house of RW.1 and the Respondent is mentally sound.

16. The O.P. was filed by the Appellant for dissolution of the marriage on the ground of cruelty. Having regard to the evidence brought on record by both the parties, it has to be seen whether the Appellant was put to cruelty at the hands of the Respondent. Neither PW.1 nor P Ws 2 and 3 have specifically stated in their evidence the acts of the Respondent constituted the cruelty. They simply stated that the Appellant and his parents were harassed by the Respondent. They stated that the Respondent is suffering with filarial disease at the time of marriage, which fact was suppressed by the Respondent and her parents and that she used to behave cruelly towards the Appellant and his parents and that she is facing mental disorder. These aspects would not constitute the ground of cruelty. Cruelty must be of such a nature that the parties cannot reasonably be expected to live together. Further, the Appellant has not specifically pleaded the acts which tantamount to cruelty, in the O.P. Even in the notice- Ex.A.1, the Appellant has not mentioned the acts of cruelty meted to him by the Respondent.

17. As regards the term "Cruelty", the Apex Court observed in V. Bhagat Vs. Mrs. D. Bhagat, as under:

Mental cruelty in Section 13(1)(ia) of the Act can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In order words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with

the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the Petitioner. While arriving at such conclusion regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

18. On appreciation of the entire evidence on record, we are of the opinion that the Appellant-husband miserably failed to establish the cruelty alleged to have been meted out to him by his Respondent-wife by adducing substantial evidence.

19. Therefore, having regard to the facts and circumstances of the case, we do not find any irregularity or illegality in the impugned order dated 21.3.2002 passed in O.P. No. 65 of 1996 by the learned Senior Civil Judge, Ramachandrapuram, East Godavari District in dismissing the said divorce O.P. filed by the Appellant-husband.

20. In the result, the C.M.A. is dismissed. There shall be no order as to costs.