
(2013) 12 KAR CK 0031

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9370 of 2011 (FC)

B.P. Badrinath

APPELLANT

Vs

Smt. Latha Badrinath

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0031

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : H. Pavana Chandra Shetty, for the Appellant; Antitha Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the judgment and decree in M.C. No. 2656/2008 of the I Additional Principal Judge, Family Court, Bangalore dated 23.08.2011 is called in question in this appeal. The appellant is the husband. He filed a petition for grant of a decree of divorce u/s 13(1)(ia) of the Hindu Marriage Act. The marriage between the parties was solemnized on 03.05.1990 at Kashi Matt Kalyana Mantapa, Malleshwaram, Bangalore. In the marriage, they have two sons by name Abhishek and Prathik who were born on 08.10.1992 and 23.04.2003 respectively.

2. It is the specific case of the appellant that in the month of April 1992 he left for Muscat for job. The respondent wife joined after giving birth to first child. They stayed in Muscat till February 1996. Thereafter, appellant changed his service and started working in Dubai. In the circumstances, the eldest son was sent to Bangalore along with respondent/wife. She stayed in the house of her parents. Again in 1997, she joined appellant in Dubai. Though appellant was not interested in respondent working in a company, she joined for work and later they moved to Abu Dhabi in June 1998 where both of them worked together. During the said period, respondent came in contact with one Prashanth at Abu Dhabi. It is the specific case of the appellant that respondent developed illicit

relationship with Prashanth and therefore she was not willing to go for second child. Further, when they were in Abu Dhabi, the respondent's mother insisted the respondent to give divorce which caused mental cruelty to appellant. It is the further case of the appellant that first son after coming to know of illicit relationship of respondent with Prashanth, became violent which compelled the appellant to admit his first son to a boarding school at Chickmagalur. It is the further case of the appellant that thereafter respondent continued to quarrel with appellant for no fault of him. It is also his case that respondent insisted to purchase an apartment in Bangalore. Accordingly, a flat was purchased in the name of respondent in Bangalore on 03.12.2003. In the meanwhile, she gave birth to second child. Thereafter, parties returned to Bangalore on 19.09.2008. For the reasons best known to respondent, she did not return to Dubai from Bangalore. Therefore, appellant filed a petition for grant of decree of divorce on the ground of cruelty.

3. The respondent resisted the case. She denied each and every allegation made therein. She denied the alleged relationship with Prashanth. On the contrary, she contended that appellant has developed illicit intimacy with a divorcee by name Rekha and he continued his relationship with that lady. Therefore, she requested the Court to dismiss the petition.

4. Based on the pleadings, evidence was led in. Both witnesses were examined and cross-examined by the learned Counsel who were appearing for the parties. The trial court formulated the following point for consideration:

Whether the petitioner has established that subsequent to his marriage with the respondent he was subjected to cruelty by the respondent?

5. After appreciating the evidence of the parties, the Court has come to the conclusion that appellant has failed to prove the ground of cruelty. In the result, petition filed by the appellant came to be dismissed. Challenging the legality and correctness of the same, present appeal is filed.

6. We have heard learned Counsel for parties.

7. Sri Pavana Chandra Shetty, learned Counsel for appellant re iterating the grounds urged in the appeal memo contends that appreciation of the evidence by the trial court is erroneous and the same is not in proper perspective. In the circumstances, he requests the Court to re-consider the entire evidence and allow the appeal. Per contra, the learned Counsel for respondent supporting the judgment of the trial court requests to dismiss the appeal.

8. Having heard the learned Counsel for parties, the only point for consideration is whether the appellant has proved the ground of cruelty in order to secure a decree of divorce.

9. As stated supra, all was well till second child was born on 23.04.2003. The petition is filed in the year 2008. The allegation of illicit relationship of the respondent with Prashanth is prior to respondent giving birth to second child.

The said allegation is not proved by the appellant by leading proper evidence. Based on mere assertion of the appellant, Court cannot hold that respondent was living with Prashanth in adultery. Moreover, petition is not filed on the ground of adultery. It is filed on the ground of cruelty. But subsequent to birth of second child, no allegation is made by appellant or no incident is explained either in the petition or in his evidence for consideration by this Court that such an incident or occurrence can be considered as mental or physical cruelty. When allegation of cruelty is alleged by the appellant, it is for him to prove the same. The illicit relationship with Prashanth prior to 2004 cannot be a ground to consider the case of the appellant for a decree of divorce on the ground of cruelty, in a petition filed in the year 2008. As stated supra, petition is not filed for a decree of divorce on the ground of adultery. Therefore, we are of the view that appellant has not made out a case to grant a decree of divorce on the ground of cruelty, as appellant has failed to elucidate either in his evidence or by cross-examination of the respondent with regard to the alleged cruelty. In the result, appeal is dismissed.