

(2010) 06 KAR CK 0046

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 998 of 2010 and Miscellaneous Cvl. No. 4778 of 2010 in Miscellaneous First Appeal No. 998 of 2010

Chikkamuniyappa (since deceased by his Lrs. Smt Jayamma @ Jayanthi) **APPELLANT**

Vs

Ramanarasamma @ Sumithramma **RESPONDENT**

Date of Decision : 10-06-2010

Acts Referred:

Family Courts Act, 1984 — Section 19
Hindu Marriage Act, 1955 — Section 13 B, 13 B (2)

Citation : (2011) 2 DMC 665 : (2010) 5 KarLJ 638 : (2010) 4 KCCR 2531 : (2011) 2 RCR(Civil) 463 : (2011) 2 RCR(Civil) 463

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Praveen Kumar Raikote, for the Appellant;

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Though this appeal has come up for orders regarding compliance of office objections, the matter is taken up for disposal with the consent of learned Counsel for the appellant.

2. This is an appeal purported to be u/s 19 of the Family Courts Act, 1984 [for short "the Act"] by a person who was not a party before the family court and who claimed status of wife even during the subsistence of the marriage between one Chikkamuniyappa and Smt. Ramanarasamma @ Sumithramma who it appears were married on 22.3.1992 and as their marriage had not worked to the mutual satisfaction, had presented a petition before the family court u/s 13B of the Hindu Marriage Act on 26.10.2004.

3. It appears there were several developments between the parties even during the pendency of the petition before the family court and some collateral proceedings had taken place between the parties in a partition suit said to have been filed by the wife in O.S. No. 852 of 2003 on the file of the Bangalore Rural

Court

4. While those proceedings were in progress, the petition presented before the family court u/s 13B of the Act was blissfully lying over and it appears the husband of the parties before the family court expired on 2.8.2007 as per memo filed by the wife, presented before the family court on 31.10.2007.

5. In the wake of such memo being filed before the family court, the learned Judge of the family court passed an order accepting the contents of the memo and dismissed the petition as on 31.10.2007 as not pressed etc.

6. It. is against this order of the family court, passed on 31.10.2007 reading as under, the present appeal.

Case advanced on application. Memo filed reporting death of plaintiff No. 1. Memo accepted. Petition dismissed as not pressed

7. We have heard Sri Praveen Kumar Raikote, learned Counsel for the appellant on the merits of the matter also. Though learned Counsel for the appellant has prayed for two weeks time to comply with the office objections pointed out by the registry, we notice that the registry, without pointing out the relevant infirmity in the appeal has gone about pointing out all other not so significant defects in the presentation of the appeal.

8. In the first instance, we find there is no order passed by the court below which could be made subject matter of appeal under any statutory provision, much less, u/s 19 of the Act.

9. The court before which the petition u/s 13B of the Hindu Marriage Act, 1955, had been presented is the Principal Civil Judge [Sr.Dn.] and CJM, Tumkur which is not a designated family court. The provisions of the Family this Court. Therefore the appeal purporting to be u/s 19 of the Act is no appeal in the eye of law, as the proceedings were not initially before the family court.

10. That apart, the petition u/s 13B of the Hindu Marriage Act, 1955, which had been presented by the husband and wife with mutual consent etc., does not survive for consideration any further, once one of the spouses, namely, husband died on 2.8.2007. The petition renders itself infructuous.

11. Though Mr. Raikote, learned Counsel for the appellant would very vehemently submit that the petition having been presented on 25.10.2004 and a period of eighteen months having elapsed thereafter i.e., even before the death of the husband and with neither party having withdrawn the consent for ordering the petition, the court below should have necessarily ordered the petition and more particularly in the background of there being some settlement between the parties with the husband having taken another wife and the manner of sharing the properties amongst the parties having been worked out in the compromise memo that had been filed between the parties in the partition suit at the instance of the wife, the learned Civil Judge should have passed an order in terms of the

petition u/s 13B of the Hindu Marriage Act and should not have simply dismissed the petition as withdrawn or not pressed etc.,.

12. A petition u/s 13B of the Hindu Marriage Act for dissolution of the marriage between the husband and wife can work only so long as they are alive and not beyond the lifetime of either of the parties.

13. A dissolution of a marriage as per law is required if the marriage is subsisting and parties are alive. If nature has taken care of one of the parties, the question of the marriage continuing does not arise as there is no possibility of the husband and the wife living together any further after the death of one of the spouses. What rights spring up on the death of one of the spouses is a matter as delineated by the statutory provision, particularly, Succession Act etc.,.

14. Whatever settlement that might have been arrived at amongst the parties during their lifetime in separate proceedings, that cannot have a bearing for an order being brought into existence merely by passage of time in proceeding u/s 13B petition and merely because period of eighteen months has elapsed since the presentation of the petition by the parties and neither party has withdrawn or resetted from the petition.

15. A dissolution of marriage does not happen by mere elapse of a period of eighteen months, but it is only after both parties consciously affirm their desire to separate and dissolve the marriage in terms of the petition as had been originally presented and not by the mere passage of time. In fact, in terms of the statutory provision under 13B of the Hindu Marriage Act, 1955 and particularly sub-section [2] of Section 13B of this Act, it is a onerous duty cast on the court to be satisfied about all aspects of the matter before dissolving a marriage.

16. Section 13B of the Hindu Marriage Act, 1955 reads as under:

13-B. Divorce by mutual consent

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in Sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

16. Under the Hindu customs, marriage is a sacrament and not. merely a contract and under the customary law there was no possibility of dissolving a marriage during the lifetime of the spouses. It is only the statutory provisions being a codified law, statute prevails over the custom and that is how the marriage can be put to an end, but that can be done only in accordance with the statutory provision and not. by any other means or by, any so called deeming provision.

18. Therefore, we reject the submission made on behalf of the appellant. In fact, the appellant has no locus to maintain this appeal and though Sri Praveen Kumar Raikote, learned Counsel for the appellant submits that a separate application had been filed seeking leave of the court to present and prosecute this appeal, notwithstanding the appeal having not been listed today, we find application of this nature is wholly untenable.

19. Accordingly, the application in Misc.Cvl. No. 4778 of 2010 and appeal both are dismissed.