
(2004) 09 AP CK 0077

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2653 of 2004

Dr. N. Shiva Mohana Reddy

APPELLANT

Vs

Smt. Aparna Reddy

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Hindu Marriage Act, 1955 — Section 10, 10(2), 13, 13(1), 13(2)

Citation : (2004) 3 APLJ 146 : (2005) 1 CivCC 471

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant; Y. Chandra Sekhar, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This C.R.P. is directed against the order dated 5-3-2004, passed by the Senior Civil Judge, Vikarabad, Ranga Reddy District, dismissing the application in I.A. No. 625 of 2003 in O.P. No. 13 of 2003, filed by the petitioner seeking to amend the O.P.

2. The facts leading to the filing of the C.R.P. may be noted, and they run thus:

The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was performed on 17.11.1996 as per Hindu rites and customs. The petitioner and the respondent led conjugal life for some time. Thereafter, some differences arose between them. Thereupon, the petitioner filed O.P. No. 13 of 2003 on the filed of the Senior Civil Judge, Vikarabad, for judicial separation, stating that the respondent wife deserted him in the month of October, 2000.

3. While so, the petitioner filed the present application I.A. No. 625 of 2003 seeking amendment of the prayer and other portions in the contents of the O.P. In effect, by the amendment, the petitioner sought to convert the O.P. filed for judicial separation into O.P. for divorce. He inter alia contended that due to

adamant behavior of the respondent, the marriage ties had broken, and as such, he should be permitted to amend the prayer and other portions in the O.P. to seek divorce. The respondent resisted the application for amendment stating that the facts mentioned by the petitioner in the affidavit filed in support of the amendment petition are not correct. According to her, the petitioner himself is responsible for break down of the marital ties between her and the petitioner. The Court below considering the rival contentions, dismissed the amendment application. The said order is assailed in this C.R.P. Heard the learned counsel for the petitioner and the learned counsel for the respondent. The arguments that were advanced before the Court below were reiterated by them.

4. The question that arises for consideration in this C.R.P. is whether the amendment application filed by the petitioner to amend the prayer in the O.P. from one of judicial separation to one for divorce, can be allowed on facts and circumstances of the present case. Before dealing with the facts of the case, it is just and necessary to look into the relevant provisions the Hindu Marriage Act, 1955 (for short "the Act"). Section 10 of the Act, which deals with "judicial separation", reads as follows:

10. Judicial separation: -

(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

Section 13 of the Act, which deals with "divorce" reads thus:

13. Divorce: -

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party, -

(i) has, after the solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

5. The consequence of a decree passed in a petition filed u/s 10 of the Act is that parties would reside separately during the period of decree without any conjugal rights over the other and the marriage between the parties is put under suspended animation: whereas in case of decree for divorce, the marital ties between the parties gets snapped as soon as the decree for divorce is passed. The object and scope of the judicial separation and divorce are different and distinct, though some of the grounds to grant decree for judicial separation and divorce appear to be one and the same. On looking into the intent of the legislation, the approach to the problems of judicial separation and divorce need not necessarily be one and the same. It is not necessary and desirable that the grounds for judicial separation and grounds for divorce should be identical.

6. While dealing with judicial separation and divorce the lofty ideals of the Hindu community and religion shall have to be taken into consideration. In case of divorce, the law was so framed to provide an opportunity for mutual adjustment between the spouses. On perusal of the legislation, and particularly the intention of both the provisions, relating to judicial separation and divorce, there are apparent differences between judicial separation and divorce.

7. In case of judicial separation, it offers an opportunity to the parties to reconcile their differences and come together, in case the parties fail to reconcile, then only the law enables u/s 13(1-A) of the Act to pass a decree for dissolution of marriage, though some of the grounds for judicial separation and divorce are one and the same. While granting a decree, different parameters are being followed. For instance under Sections 10 and 13 of the Act, unsoundness of mind is one of the grounds for seeking the respective relief. But in real sense, u/s 10 of the Act unsoundness for relevant period is a ground for seeking judicial separation, whereas for granting a decree for divorce u/s 13 of the Act, it is for the petitioner to plead and establish that such unsoundness of mind is incurable. Under Hindu Law, marriage is considered sacred. After codification of Hindu Law, and enactment of Hindu Marriage Act, 1955, Hindu Marriage, appears to be sacred as well as a contract. By virtue of the said enactment, either of the spouses can present a petition for a decree either for judicial separation or for divorce. There is fundamental difference between a petition for judicial separation and divorce. u/s 10 of the Act, even after passing a decree for judicial separation on the application filed by either of the spouses. On being satisfied the truth of the statement made in such petition, the Court can rescind the decree if it considers it just and reasonable to do so. But in the case of decree u/s 13 of the Act, the question of rescinding the decree does not arise, except by filing a petition for review or appeal by way of common law remedy.

8. The application u/s 10 of the Act permits the parties to a marriage to live apart. Even after passing a decree for judicial separation the marriage tie exists, though during the existence of such decree, it shall no longer be an obligation for either party to cohabit with the other. The effect of decree for judicial separation has mutual rights and obligations arising from the marriage, suspended, and the rights and duties prescribed by the decree are substituted between the parties. The decree does not sever the marriage ties or dissolve the marriage completely, but it continues to subsist, which ultimately may offer an opportunity for reconciliation and adjustment. On the other hand, in case of decree for divorce, the marriage ties are severed and there is no possibility of reconciliation and adjustment. In case of judicial separation, if the parties agreed for reconciliation, the rights of respective parties which flow from the marriage are restored. The provision of judicial separation is made with an intention to reconcile the parties after tempers of the rival parties are cooled down. On the other hand, seeking divorce is an extreme relief to sever the marriage ties permanently.

9. Application u/s 10 of the Act may furnish a ground for divorce if not reconsidered after passing a decree for judicial separation, and cohabitation is not resumed for a period of one year, whereas the decree for divorce has the effect of dissolution of marriage and puts an end to the marriage ties, and separation is absolute and final. The marital relationship or marriage in Hindu Law is to be treated as *samskara* or sacred. The marriage is necessarily one of the basis with regard to legal and cultural rights and obligations in the society, it is required to keep in mind while dealing with the cases on matrimonial matters, the provisions of Act cannot be liberally constructed like a beneficial legislation. While dealing with matrimonial matters, the importance and imperative character of the marriage in Hindu Dharma, should be kept in mind, as the institution of marriage is one of the stages for social order and progress. Hindu Law is not static, it changes with the time, but it does not mean that the provisions of marriage laws cannot be interpreted in a liberal manner as the same would be ultimately detrimental to the social order.

10. I perused the pleadings made by the petitioner in the application filed for amendment of the prayer in the O.P. from one of judicial separation to one of divorce, and I do not find any pleading indicating the changed circumstance to amend the petition for judicial separation into a petition for divorce. What are the changed circumstances that led to the filing of the application for amendment, are not indicated in the affidavit, and the affidavit merely reiterates the stand taken in the petition for judicial separation. No new facts are brought to the notice of the Court. Merely because the amendment sought is not prejudicial to the rights of other party, it does not mean that such an amendment is to be accepted. In the absence of specific pleading made with regard to the changed circumstances and other relevant ingredients, the order passed by the trial Court does not suffer from any infirmity.

11. The counsel for the petitioner relied on the judgment of the Calcutta High Court in *Sundari Dasi Vs. Basudeo Lal Guraliar*, . The point that arose for consideration in the said case was whether an amendment is permissible during the pendency of the appeal against the decree passed for judicial separation. He also relied on similar judgment of the Madhya Pradesh High Court in *N.C. Dass Vs. Smt. Chin Mayee Dass*, and the judgement in *Smt. Sundari Devi v. Basudeo Lal Gwaliar*, 1977 All India Hindu Law Reporter 350, wherein the question that arose for consideration was whether an amendment can be allowed at the appellate stage. In *Smt. Prakash Wati alias Krishna Devi v. Shri. P.C. Verma*, 1978 Hindu Law Reported 517, the Delhi High Court held that converting an application u/s 10 of the Act to one u/s 13 of the Act, in strict sense is not an amendment to the Original Petition, but is converting the Original Petition from judicial separation to divorce. It was a case where the husband filed the O.P. for judicial separation and subsequently it was amended as petition for divorce. The Court after elaborate consideration of the matter granted a decree for divorce. The wife filed appeal before the Delhi High Court. The question that arose for consideration before the Delhi High Court was whether an amendment application would be deemed to have been filed in August 1975 with retrospective effect. The Delhi High Court held that amendment cannot relate back to a date anterior to the date of application. The judgments relied on the petitioner is not applicable to the facts of the case on hand. The learned counsel for the petitioner also placed reliance on the judgment of Delhi High Court in *J.P. Sharma v. Shrimati Shashi Bala* ILR 1979 All 474. In that case, the Delhi High Court held that if petition for amendment from judicial separation to that of decree for divorce u/s 131(iii) of the Act, it to be ordered, it would change the very nature of the case. The amendment was allowed to the extent of seeking the decree for divorce on the ground of mental cruelty. The Delhi High Court upheld the order of the trial Court dismissing the application filed for judicial separation. In the first appellate stage, the appellant husband sought for an amendment of the petition for judicial separation to that of a petition for decree of divorce alleging that the respondent has become incurable of unsoundness of mind or has been suffering continuously or intermittently from mental disorder of such mind and to such an extent that the petitioner cannot be expected to live with the respondent. On peculiar facts and circumstances of the case, as the husband took the ground that his wife is suffering disease of unsoundness of mind, which is incurable, the Court was pleased to order amendment. The facts and circumstances of the said judgment have no application to the facts of the case on hand. Therefore, they do not, in any manner, help the petitioner. For the reasons stated above, the revision is invariably required to be dismissed. No Costs.