
(2012) 12 AP CK 0069

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 4345 of 2003

Gangula Kiran Babu Rao

APPELLANT

Vs

Smt. Nookala Madhavi Latha

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Hindu Marriage Act, 1955 — Section 9

Penal Code, 1860 (IPC) — Section 420, 498A

Citation : (2013) 2 ALD 645 : (2013) 2 ALT 281 : (2013) 2 DMC 852

Hon'ble Judges : V. Eswaraiah, J;K.G. Shankar, J

Bench : Division Bench

Advocate : C. Upendra, for the Appellant; V.V.N. Narasimham, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Shankar, J.—The appellant resisted the petition laid by the respondent u/s 9 of the Hindu Marriage Act, 1955, seeking for the restitution of the conjugal rights. The husband contended that there was no jural relationship of husband and wife between him and the respondent. The trial court held that the appellant is the husband of the respondent and granted decree for restitution of conjugal rights. Assailing the same, the present appeal is laid. The appellant and the respondent were contemporaries in the college. Both of them were students of BITS, a private Engineering College at MVP Colony, Visakhapatnam. They thus knew each other.

2. The case of the respondent is:

(a) The appellant and the respondent belong to different communities. The respondent is about 8 years elder to the appellant. However, they fell in love with each other. They got their marriage solemnized at Simhachalam Devasthanam, Visakhapatnam, on 06-10-1992 in the presence of P.W. 2, sister of the respondent and Pavan Kumar, a close friend of the appellant. The appellant and

the respondent started living together at the house of the sister of the respondent.

(b) The appellant went on postponing to inform his parents about his marriage with the respondent. The respondent consequently requested her relatives and well-wishers, by name Annapoorna and K. Rohini to inform the parents of the appellant about the marriage of the appellant and the respondent. When Annapoorna and Rohini accordingly informed the parents of the appellant on 23-12-1992 about the marriage, they declined to accept the respondent as daughter-in-law owing to the disparity of the age and also because of the appellant and the respondent belong to different communities. The appellant in his turn deserted the respondent on 30-01-1993. The best efforts on the part of the respondent to restore the matrimony proved futile.

(c) The respondent lodged a complaint with III Town Police Station, Visakhapatnam, when she did not even know the whereabouts of the appellant. The Police registered First Information Report in Crime No. 216 of 1993 as "man missing" on the complaint of the respondent. The parents of the appellant produced the appellant before the Police but refused to accept the respondent as the daughter-in-law of the family.

(d) The respondent consequently lodged a complaint before the II Metropolitan Magistrate, Visakhapatnam, under Sections 420 and 498A, IPC on 07-7-1993. The respondent also filed M.C. No. 135 of 1995 seeking maintenance. The respondent was granted maintenance at Rs. 250/- per month by the trial court. The revision of the appellant in Crl. R.C. No. 1101 of 1996 before this Court was dismissed on 24-12-1998. The appellant has not been honouring the order of maintenance and has also deserted the respondent. Hence, the petition for restitution of conjugal rights.

3. The appellant, on the other hand, denied his marriage with the respondent. He denied about the mediation by Annapoorna and K. Rohini. He pointed out that the complaint lodged by the respondent was numbered as C.C. 394 of 1997 on the file of the III Metropolitan Magistrate, Visakhapatnam, and that the case ended in acquittal after full-fledged trial. He also asserted that he has been paying maintenance awarded by the trial court regularly. He ultimately contended that as there is no jural relationship of man and wife between him and the respondent, the petition for restitution of conjugal rights deserves to be dismissed.

4. The respondent examined herself as P.W. 1. She examined 5 other witnesses as P.Ws. 2 to 6. The appellant examined himself as the only witness (R.W. 1) on his side. Exs. A-1 and A-2 are the copies of the orders in M.C. No. 135 of 1995 and Crl. R.C. No. 1101 of 1996 from M.C. No. 135 of 1995. Further, Exs. X-1 to X-4 were also marked.

5. Sri. C. Upendra, learned counsel for the appellant, contended that there is no legal relationship between the appellant and the respondent, so much so, the

question of restitution of conjugal rights does not arise. P.W. 1 is no other than the respondent herself. P.W. 2 is her elder sister. Both of them certainly are interested in the respondent in trying to prove her case.

6. The respondent relied upon Exs. A-1 and A-2 in support of her contention. It is true that maintenance u/s 125 Cr. P.C. would not be granted unless the respondent in the maintenance case is the husband of the petitioner in the maintenance case. Indeed, the finding in M.C. No. 135 of 1995 as confirmed by this Court in Crl. R.C. No. 1101 of 1996 is that the respondent herein is the legally wedded wife of the appellant. However, as rightly submitted by the learned counsel for the appellant, any observation in criminal proceedings is not per se binding on the civil court. Added to it, proceedings u/s 125 Cr. P.C. are summary in nature. We therefore agree with the contention of the learned counsel for the appellant that mere allowing M.C. No. 135 of 1995 cannot be a ground to hold that the appellant is the legally wedded husband of the respondent. The respondent has to prove her case independent of the orders in M.C. No. 135 of 1995.

7. The respondent examined P.W. 3. He was a neighbour of P.W. 2. He claimed that the appellant and the respondent resided in the house of P.W. 2 for about 5 months as man and his wife. At the same time, he admitted that albeit he was invited for the marriage, he could not attend the same as the marriage between the appellant and the respondent was celebrated on Dasara day. Thus, the effect of the evidence of P.W. 3 is that he knew the appellant and the respondent residing in the house of P.W. 2 as man and his wife. Again, as rightly submitted by the learned counsel for the appellant, merely because the appellant and the respondent resided as man and wife, they cannot be treated as man and wife unless it is substantially proved where one of the parties is disputing the marriage.

8. The respondent examined P.Ws. 4 and 5. P.W. 5 is the authorized Archaka of Simhachalam Devasthanam. He deposed that he performed the marriage of the appellant and the respondent. Ex. X-3 contains the signature of P.W. 5 confirming the evidence of P.W. 5 that he performed the marriage of the appellant and the respondent.

9. P.W. 4 is an employee of Simhachalam Devasthanam. He produced the Down Hills Choultries Leeding Register from 01-9-1992 to 10-10-1992. Ex. X-3 is copy of the same. It contains the signatures of the appellant and the respondent as the bridegroom and the bride. Ex. X-4 is the copy of the receipt passed by the Devasthanam for the collection of fee for performing the marriage.

10. Indeed, P.W. 4 was deposing on the strength of documentary evidence. He was not present at the time of the marriage of the appellant and the respondent. Be that as it is, the evidence of P.W. 5 coupled with Exs. X-3 and X-4 clinchingly establishes that the marriage of the appellant and the respondent was solemnized on 06-10-1992 at Simhachalam Devasthanam, Visakhapatnam. Such

evidence is supported by the evidence of P.W. 3, who found the appellant and the respondent residing in the house of P.W. 2 proclaiming themselves to be the man and wife. Such is the overwhelming evidence in favour of the respondent showing that she is the legally wedded wife of the appellant.

11. The learned counsel for the appellant put forth Ex. B-1 certified copy of judgment in C.C. No. 394 of 1997 in which the appellant was acquitted. The learned counsel for the appellant would appear to suggest that it is an instance to show that the appellant is not the husband of the respondent. As already asserted by the learned counsel for the appellant himself, any finding by a criminal court does not bind the civil court in respect of the same lis. Added to it, the criminal court did not hold that the appellant was not the husband of the respondent. Mere acquittal for the offences under Sections 420 and 498A, IPC cannot be read as evidence that the appellant was not the legally wedded husband of the respondent. Viewed in any angle, the judgment in Ex. B-1 cannot help the appellant in establishing that there is no jural relationship of man and wife between the appellant and the respondent.

12. As already pointed out, there is overwhelming evidence to support the claim of the respondent that she is the wife of the appellant. There is no contrary evidence barring for the ipse dixit of the appellant as R.W. 1. We therefore consider that the respondent has clinchingly established her case that she is the legally wedded wife of the appellant. There is no evidence from the appellant explaining his desertion. On the other hand, the respondent has established that the appellant deserted her with effect from 30-01-1993. In that view of the position, the trial court is perfectly justified in granting a decree of restitution of conjugal rights. There are no merits in this appeal. The appeal accordingly is dismissed. No costs.