
(2014) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 616 of 2004

Garikapati Suresh Babu

APPELLANT

Vs

Garikapati Prasanna Kumari

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 41 Rule 23A, Order 6 Rule 6, Order 8 Rule 8
Evidence Act, 1872 — Section 3
Hindu Marriage Act, 1955 — Section 13(1)(ia)

Citation : (2014) 6 ALT 594 : (2015) 2 DMC 527 : (2015) 3 RCR(Civil) 1031

Hon'ble Judges : Ramesh Ranganathan, J;M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : Ravi Shankar Jandhyala, Advocate for the Appellant; V.S.R. Anjaneyalu, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—Aggrieved by the dismissal order dated 19.01.2004, passed in H.M.O.P. No. 6 of 1999 on the file of the Court of Senior Civil Judge, Avanigadda, Krishna District (For short, "the trial Court"), the unsuccessful petitioner therein preferred this Appeal. For convenience of reference, the ranks given to the parties in H.M.O.P. No. 6 of 1999 will be adopted throughout this judgment.

2. The petitioner (husband), who is appellant herein, filed Petition against the respondent (wife), under Section 13(1)(ia) of Hindu Marriage Act, 1955 (For short, "the Act") for grant of decree of divorce, dissolving the marriage between the petitioner and respondent, alleging that their marriage was performed on 21.05.1994, at the residence of the respondent's parents in Kosuruvaripalem village, as per Hindu rites and customs. At the time of marriage, parents of the respondent gifted Ac. 2.00 cents of fertile land and Rs. 40,000/- towards pasupukunkuma to the respondent and the said amount and property is kept in possession of father of the respondent for improvement. The respondent used to visit her parents occasionally, even without informing the petitioner. When the

petitioner requested the respondent to undergo medical examination for not begetting children, respondent and her parents bluntly refused to the request. The respondent and her parents ill-treated and harassed the petitioner on several occasions, in the presence of general public and treated him as their farm servant. The respondent abused, insulted and humiliated the petitioner on several occasions. Father of the respondent beat the petitioner on 27.06.1997; thereupon, the petitioner submitted a report to the S.H.O., Avanigadda P.S. against father of the respondent and on account of mediation, the matter was compromised. Subsequently, at the instance of respondent and her father, petitioner set up a separate family, but the respondent did not change her attitude and treated the petitioner cruelly. Hence, sought for decree of divorce dissolving the marriage between the petitioner and respondent.

3. The respondent filed counter admitting the marriage, marital relationship between her and the petitioner including consummation but denied the alleged acts or omissions attributed against her, more particularly, abusing, humiliating the petitioner and harassing the petitioner in any manner, which amounted to cruelty.

The marriage between the petitioner and the respondent was consummated; they led happy marital life for two years. Subsequently, the respondent was subjected to both physical and mental cruelty by the petitioner and his parents. As she failed to meet the illegal demand of additional dowry, though out of the alleged dowry amount of Rs. 75,000/-, an amount of Rs. 40,000/- was paid by father of the respondent on the date of marriage and later Rs. 35,000/-, the petitioner and his parents harassed the respondent for additional dowry and not begetting children, which was not due to fault of the respondent, but expressed her readiness and willingness to lead marital life and carry pregnancy, finally prayed to dismiss the Petition.

4. During course of enquiry, on behalf of the petitioner P.Ws. 1 to 5 were examined and Exs. A-1 to A-8 were marked. On behalf of the respondent, P.Ws. 1 to 4 were examined and marked Ex. B-1.

5. The sole point framed by the trial Court for consideration is as follows:

Whether the petitioner/husband is entitled for grant of divorce for the reasons and circumstances stated in the Petition and also on the strength of evidence available on record or not?

6. Upon hearing arguments of both the counsel, considering oral and documentary evidence available on record, the trial Court dismissed the Petition on the ground that the petitioner failed to establish the act of cruelty, attributed to the respondent, and dismissed the Petition.

7. Aggrieved by the dismissal order of the trial Court, the unsuccessful petitioner - appellant preferred this Appeal on various grounds. The main contention raised in the grounds of appeal is that the trial Court did not record any finding as to

why the respondent refused to undergo medical examination, though she did not beget any children, during marital cohabitation and such conduct amounts to mental cruelty. Apart from that, serious allegations are made in the counter, which are not substantiated by any evidence amounts to cruelty. Therefore, on this ground alone the petitioner is entitled to a decree of divorce as the unsubstantiated contentions raised in the counter caused mental agony or pain, but the trial Court did not consider the said fact in proper perspective, dismissed the Petition.

8. During course of arguments, learned counsel for the petitioner - appellant mainly contended that the unsubstantiated contentions raised in the counter affidavit by the respondent i.e., harassing the respondent for her failure to meet the illegal demand of additional dowry certainly causes mental agony, since the petitioner is a man of sensitiveness and reacts immediately, but the trial Court did not consider the contentions in proper perspective though the trial Court discussed the law laid down by a Division Bench of this Court in Naval Kishore Somani Vs. Poonam Somani, . If the principle laid down by the Division Bench of this Court in Naval Kishore Somani (supra) is appreciated properly, and applied to the present facts of the case, the petitioner is entitled to a decree of divorce and prayed to allow the Appeal by passing a decree divorce dissolving the marriage between the petitioner and respondent.

9. Per contra, learned counsel for the respondent argued totally in support of the finding recorded by the trial Court and prayed to dismiss the Appeal.

10. Considering rival contentions, perusing the impugned order, oral and documentary evidence on record, the point that arises for consideration is:

Whether the respondent failed to substantiate the allegations made in her counter by adducing any evidence? If so, whether those allegations amount to cruelty and that, whether the petitioner is entitled to a decree of divorce dissolving the marriage between the petitioner and respondent?

11. POINT: The main dispute is with regard to harassment of the petitioner by the respondent and her parents. Harassment of the respondent's parents is not a ground to grant decree of divorce, since it is not a dispute relating to the matrimonial relationship, but if the alleged harassment, either physical or mental, attributed to the respondent is proved it is a ground to grant divorce. Now, the question is whether the unsubstantiated serious allegations made in the counter would form basis for grant of divorce. Undoubtedly, the respondent made a serious allegation that the petitioner and his parents harassed her for her failure to meet the illegal demand of additional dowry, but it is not substantiated by producing cogent and satisfactory evidence. However, it is for the respondent to prove the same before the trial Court.

12. Taking advantage of the unsubstantiated serious allegations attributed to the petitioner in the counter affidavit filed by the respondent, he contended that such acts would cause mental cruelty and entitled to claim a decree of divorce. In

Naval Kishore Somani (supra), the Division Bench of this Court held as follows in Para 13:

"13. In our view a fact which is not proved does not necessarily mean that it is a false one. We may refer to the provisions of Section 3 of the Evidence Act. Section 3 of the Evidence Act gives definitions of various words and expressions. The expression "proved" is followed by the definition of the expression "disproved". This is followed by the definition of "not proved". A fact is said "not proved" when it is neither proved nor disproved. On the other hand, a fact is said to be disproved when, after considering matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. The word "disproved" is akin to word "false". What is "disproved" is normally said to be a false thing. It will thus be seen that a fact not proved is not necessarily a fact disproved. A fact which is not proved may be true or may be false, A doubt lingers about its truth. Merely because it not proved, one may not jump to the conclusion that it is disproved. A fact is disproved normally by the person, who claims that an alleged fact is not true. For disproving a fact the burden is always on the person, who alleges that the fact is not true. What we wish to emphasize is that the ratio of the cases relied upon by the learned Counsel for the petitioner/appellant is only to this effect that allegations made in the written statement, though they are subsequent to the filing of the petition, if are false and baseless then only the petitioner can claim that such false and baseless allegations have caused "mental cruelty" to him. Merely because they are not proved it cannot be said that they amount to causing of "mental cruelty".

13. Further, in Para 14, the Division Bench of this Court observed that the burden is on the petitioner to show that the charges are false. The burden cannot be thrown on the respondent because the respondent has not come to the Court for seeking any relief. It is settled law that in all matrimonial causes, burden of proof is on the petitioner. Particularly, in cases of "cruelty", it is for the petitioner to prove the element of "legal cruelty". If in the facts and circumstances of the case from evidence led on both sides, the Court comes to the conclusion that irrespective of the burden of the proof there is sufficient material from either side to prove that a particular allegation is not only not proved but is false, it will be open for the petitioner to take advantage of such finding.

14. According to settled law, when a fact is affirmed by one party and denied by the other, it would give rise to an issue under Order 14 Rule 1 of C.P.C. Here, the petitioner affirmed a fact of cruelty in the Petition whereas the respondent while denying the affirmation made by the petitioner attributed cruelty to the petitioner and his parents, which is not denied by the petitioner by filing any rejoinder after obtaining necessary permission from the Court. However, the said allegations were not put to an issue enabling both the parties to adduce evidence.

15. In a recent judgment of the Apex Court in *Makhan Lal Bangal Vs. Manas*

Bhunia and Others, , when similar question came up for consideration in an Election Petition regarding framing of issues, the Apex Court held as follows:

"19. An Election Petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission....."

16. If the principle laid down in the decision cited supra is applied to the present facts of the case, the enquiry in Original Petitions filed under the Hindu Marriage Act are purely civil in nature and when one party affirmed a fact or law and denied by the other, it would give rise to an issue and the Court is bound to frame an issue or point for consideration depending upon the pleadings on record, but the trial Court did not frame any issue with regard to the allegations made in the counter filed by the respondent.

17. One of the contentions raised by the counsel for the petitioner - appellant is that publication of notice in news paper subsequent to filing of petition amounts to cruelty, as the respondent did not substantiate those allegations. Undoubtedly, subsequent events shall also be taken into consideration, subject to rules of pleadings and such unsubstantiated allegations if put to an issue, under Order 14 Rule 1 of C.P.C. and if the respondent fails to substantiate those allegations, it is agreed to grant decree of divorce in view of law laid down by the Apex Court in Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, . Keeping in view of the principles laid down by the Apex Court including rules of pleadings under Orders 6 and 8 of C.P.C. and rules relating to issues under Order 14 of C.P.C. the trial

Court has to decide the petition. As the trial Court did not frame any issue with regard to the allegations made in the Counter filed by the respondent, the order under challenge is liable to be set-aside and, accordingly, we set aside the order under challenge. However, remanding the matter to the trial Court, exercising power under Order 41 Rule 23-A of C.P.C., directing the trial Court to restore the Petition to its original number in the H.M.O.P. Register and frame appropriate point for consideration, keeping in mind the principles laid down by the Apex Court, and decide the matter in accordance with law, as expeditiously as possible, preferable within a period of three (3) months from the date of receipt of a copy of this judgment.

Accordingly, with the above direction, the Civil Miscellaneous Appeal is disposed of. In the circumstances, the order dated 19.01.2004, passed in H.M.O.P. No. 6 of 1999 by the learned Senior Civil Judge, Avanigadda, is set-aside as the same is unsustainable under law.

In consequence, the miscellaneous petitions, if any, pending in this Appeal shall stand disposed of. No order as to costs.