
(2014) 12 AP CK 0174
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 355 of 2007

Mohmed Maqsood Ali

APPELLANT

Vs

Baby Neha Fathima Begum

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Evidence Act, 1872 — Section 112

Citation : (2015) 5 ALD 349

Hon'ble Judges : A. Rajasekhar Reddy, J.

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; V. Jayakar Rao, for the Respondent

Final Decision : Dismissed

Judgement

A. Rajasekhar Reddy, J.?This appeal is directed against the decree and judgment dated 15-02-2007 passed in O.S. No. 17 of 2004 on the file of Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad, decreeing the suit by awarding an amount of Rs. 2,500/- per month towards maintenance to the plaintiff payable by the defendant from the date of filing of the suit i.e. 11-02-2004 till the marriage of the plaintiff.

2. The brief facts, which are necessary for disposal of the appeal, are that the respondent-plaintiff filed the suit stating that the mother of the respondent-plaintiff viz., Rehana Begum is the legally wedded wife of the appellant-defendant and their marriage was solemnized on 25-04-1996 as per muslim rites and customs and they lived together in the house of the respondent-defendant for a period of three months after the marriage and thereafter, the respondent-defendant left for Kuwait in pursuance of his employment and came back to India after three years in the month of December, 1999. The respondent-plaintiff was born to her mother and the appellant-defendant during their wedlock on 25-12-1996. After the appellant-defendant returned to India, he and his family

members started harassing the mother of the respondent-plaintiff for additional dowry, for which the mother of the plaintiff launched criminal prosecution against the appellant-defendant and thereafter, a compromise was entered into between them and that the appellant-defendant has to pay Rs. 60,000/- to the mother of the respondent-plaintiff towards full and final settlement and Rs. 20,000/- was paid in cash and failed to pay balance amount of Rs. 40,000/- as agreed, as such, the plaintiff filed the suit seeking for grant of Rs. 2,500/- per month towards her maintenance as the mother of the respondent-plaintiff is not capable to maintain her.

3. The appellant-defendant resisted the suit by filing written statement contending that the mother of the respondent-plaintiff is his legally wedded wife and he and the mother of the plaintiff lived together in his house and thereafter he left for Kuwait and disputed the paternity of the respondent-plaintiff. It is stated that the mother of the respondent-plaintiff was pregnant at the time of marriage and she suppressed the said fact and played fraud on the defendant and after coming back to India on 26-12-1999 he has given divorce to the mother of the plaintiff on 04-01-2000. The mother of the respondent-plaintiff lodged a complaint with the police registered as Crime No. 4 of 2000 and thereafter, they entered into compromise agreeing the appellant-defendant to give Rs. 60,000/- to the mother of the respondent-plaintiff towards full and final settlement and that he paid Rs. 20,000/- and the balance amount of Rs. 40,000/- was agreed to be given after she withdraws the criminal case and as she did not withdraw the same, the balance amount was not paid and sought for dismissal of the suit.

4. The Court below, considering the rival contentions of both parties and relying on the evidence of P.W. 1, the mother of the plaintiff and Exs. A. 1 to A. 4, decreed the suit awarding an amount of Rs. 2,500/- per month towards maintenance to the respondent-plaintiff from the date of filing of the suit i.e. 11-02-2004 till her marriage. Challenging the said decree and judgment, the appellant-defendant filed the present appeal.

5. Learned counsel for the appellant-defendant contends that no averment is made in the plaint regarding cohabitation between the mother of the respondent-plaintiff and the appellant-defendant and unless there is cohabitation, it cannot be said that the birth of the respondent-plaintiff took place out of their wedlock. He also contends that the burden lies on the respondent-plaintiff to prove her paternity and when the paternity is denied, the respondent-plaintiff should have filed a suit for declaration of her status in the absence of which the suit is liable to be dismissed. He further contends that by mere marriage the paternity of the plaintiff is not proved.

6. On the other hand, the learned counsel for the respondent-plaintiff contends that the appellant-defendant himself filed a petition seeking D.N.A. test and the respondent-plaintiff has not objected for the same and DNA report was also submitted wherein it is stated that the plaintiff is the daughter of the defendant

and since the report was made against the appellant-defendant, he did not get the report marked and suppressing the said fact, he filed the present appeal and obtained interim stay. He further contends that mere suppression of documents does not entitle the appellant-defendant to get any relief. He further contends that an averment was made that the marriage was consummated between the mother of the plaintiff and the defendant and out of their wedlock the plaintiff was born on 25-12-1996. He further contends that the mother of the plaintiff and the defendant lived together in the house of the defendant for a period of three months after the marriage and thereafter, the defendant left for Kuwait in pursuance of his employment and came back to India after three years in the month of December, 1999. He further contends that a presumption can be drawn that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eight days after its dissolution, the mother remaining unmarried.

7. In view of rival contentions of both the parties, the points that arise for consideration is whether the respondent-plaintiff is born out of wedlock of the mother of the respondent-plaintiff and the appellant-defendant; and whether the presumption under Section 112 of the Evidence Act can be drawn during subsistence of marriage between the mother of the respondent-plaintiff and the appellant-defendant?

8. In the present case, it is not in dispute that the marriage between the mother of the respondent-plaintiff and the appellant-defendant was took place on 25-04-1996, that they lived together after the marriage and the compromise entered between the appellant-defendant and the mother of the respondent-plaintiff vide Ex. P. 1. It is also not in dispute that the appellant-defendant paid Rs. 20,000/- and agreed to pay another Rs. 40,000/- and the birth of the respondent-plaintiff took place on 25-12-1996 is also not in dispute. There is a categorical averment in the plaint about consummation of marriage and cohabitation between the appellant-defendant and the mother of the respondent-plaintiff and except disputing the paternity of the respondent-plaintiff, the defendant did not take any steps to prove the same and the burden lies on the appellant-defendant since he admitted the marriage between him and the mother of the respondent-plaintiff. Though the learned counsel for the respondent-plaintiff stated that the application is filed at the instance of the appellant-defendant for DNA test and a report was received by the court, the said report was not marked since it went against the appellant-defendant. That assertion is not disputed by the learned counsel for the appellant-defendant. This itself shows that the appellant-defendant deliberately did not want to mark the said report. It is relevant to refer the provision of Section 112 of the Evidence Act, which reads as follows:

"Section 112 : Birth during marriage, conclusive proof of legitimacy:

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eight days after its

dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

9. From the above, the mandate of Section 112 of the Evidence Act is very clear that any person born during the continuance of the marriage between the mother and any man after 280 days after dissolution of marriage and the mother remaining unmarried, it is a conclusive proof that he is the legitimate son of that man. So, in view of clear mandate provided in the section, the admission of marriage between the mother of the respondent-plaintiff and the appellant-defendant and the compromise between the mother of the respondent-plaintiff proved that the respondent-plaintiff was born during subsistence of wedlock of the mother of the respondent-plaintiff and the appellant-defendant and the paternity of the respondent-plaintiff cannot be doubted in any way, more so, the evidence given by the G.P.A. holder of the appellant-defendant is only on his personal knowledge, as such, he cannot depose about the paternity of the respondent-plaintiff, which cannot be said that it is in his personal knowledge. Appellant-defendant has also not examined himself and the evidence of DWs. 2 and 3 cannot in any way throw much light on the paternity of the respondent-plaintiff, as such, he failed to discharge his burden of proof.

10. Therefore, in the above facts and circumstances, I do not see any legal infirmity in the order passed by the Court below, warranting interference of this Court, and hence, the appeal is liable to be dismissed.

11. Accordingly, the appeal is dismissed confirming the judgment and decree dated 15-02-2007 in O.S. No. 17 of 2004 on the file of Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.