

(2001) 03 KAR CK 0097
In the Karnataka High Court
Case No : M.F.A. No. 520 of 2000

Munesh

APPELLANT

Vs

Smt. Anasuyamma alias Parvathi

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Contract Act, 1872 — Section 25
Hindu Marriage Act, 1955 — Section 13, 13 (1)

Citation : AIR 2001 Kar 355 : (2001) 3 CivCC 583 : (2001) ILR (Kar) 3459 : (2001) 2 KCCR 1324

Hon'ble Judges : K.R. Prasada Rao, J; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : B. Veerappa, for the Appellant; Y. Lakshmikantha Reddy, for the Respondent

Judgement

Tilhari, J.—This petition under Order 23, Rule 3 of the Code of Civil Procedure, has been filed in this appeal, namely, M.F.A. No. 526 of 2000.

2. In the nutshell, the appellant filed a petition for divorce against the respondent Smt. Anasuyamma alias Parvathi with the allegations to the effect, that "the wife Parvathi, had deserted the husband without any cause u/s 13(1)(1-B), i.e. with the allegations and on the ground, that the respondent (spouse) has for a continuous period of more than two years deserted the petitioner without any reasonable cause and without any consent or wish of the petitioner.

3. The trial Court on consideration of the material on record, has recorded a finding to the effect, that present respondent wife in the divorce petition who, as also respondent in the divorce petition, has got justifiable cause

to withdraw from the Society of the husband, i.e. the petitioner

and to stay separately from him. That the petitioner-appellant failed to prove desertion against wife, and so he was, not entitled to get decree for

dissolution by divorce passed in his favour.

4. Feeling aggrieved from that judgment and Decree the Misc First Appeal has been filed by the husband.

The above petition for compromise seeking for decree for divorce in terms of the compromise has been filed. A perusal of the application does not

indicate or show that the respondent in the divorce petition has admitted the claim and the ground or allegations made in the petition for divorce,

she has nowhere admitted that she has deserted the husband and separated from his company without any justifiable cause.

5. In Paragraph 3, it has only been stated that both parties respectively, submit that since litigation, is continued for more than 15 years and, the

marriage itself is dead both emotionally, and practically, continuance of marital alliance for name sake is prolonging the agony and affliction, and

therefore with the intervention of the elders and well wishers both the parties, come to the compromise and understanding on the following terms

and conditions which are mentioned in paragraph 4. In Paragraph 4, it is mentioned :

The appellant agreed and offered to give two residential house to respondent for the full and final settlement as follows :

(a) House bearing No. 27(1) measuring 20 x 15, situated at Compounder Street, Millerpet, Bellary bounded on ;

East by : Govt. Road

West by : Shanth's House

North by : Smt. Vijaya's H,

South by : Government Road

(b) House bearing No. 27(4) measuring 20 x 15 situated at Compounder Street, Millerpet, Bellary bounded on :

East by : Govt. Vacant Land

West by : Siddappa's House

South by: Siddappa's House

North by : Govt. Road

It is mentioned in Paragraphs 5 and 6, as under :

The appellant have no objection to get the concerned documents changed in favour of the respondent in respect of the said houses and she will

become the owner of the said two houses from the date of the order passed by this High Court. The respondent agreed that she will not claim any

thing against the appellant including the maintenance, and other properties except properties given to her by appellant under the compromise

petition in future.

In Para 7 of the petition under Order 23, Rule 3, it is mentioned ""that respondent, has agreed, that she will, withdraw the maintenance case M.C.

No. 3/91, pending in the Court of Magistrate and JMFC and that the above terms and conditions, shall be binding on them and the respondent will

not claim anything in future in pursuance of this compromise and the two houses given to her for the full and final settlement and parties agreed that

hereinafter, there is no relationship between the parties.

That on the basis of above, it has been prayed that decree in terms of aforesaid compromise be passed, and parties be permitted for judicial

separation.

6. Order 23, Rule 3 of the CPC provides and reads, as under :

Order XXIII, Rule 3, Compromise of suit :-- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by

any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any

part of the subject -matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in

accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is

the same as the subject-matter of the suit :

Provided that where it is alleged by the party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide

the question, but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit

to grant such adjournment.

Explanation :-- An agreement or compromise which is void or voidable under the

Indian Contract Act, 1872 (9 of 1872), shall, not be deemed to be lawful within the meaning of this rule.

A reading of Rule 3 per se reveals, that the suit, i.e. claim in the suit can be compromised or adjusted wholly or partly by a lawful agreement of compromise in writing or where the defendant satisfies the plain-tiff in respect of the whole or any part of the subject-matter of suit Court shall order such agreement, or compromise or satisfaction to be recorded and pass decree in accordance therewith. The explanation of the Section also provides, that an agreement which is void or voidable shall not be deemed to be an lawful agreement or compromise. Therefore, for recording of compromise and passing of a decree in terms of compromise it is one of the duties of the Court to apply its mind to the question; Whether the matter is being compromised in accordance with law and by an lawful agreement or compromise. An agreement or a compromise which results in playing of fraud with the law and the intention of legislature or which runs counter to the policy of the law cannot be termed to be an lawful agreement in view of Section 23 of the Contract Act.

7. Section 23 of the Contract Act, reads :

23. What considerations and objects are lawful, and what not :-- The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or is of such a nature that, if permitted would defeat the provisions of any law or

is fraudulent, or involves or implies injury to the person or property of another or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

8. Hindu Marriage Act is the law governing as well as regulating the marriage and divorce etc. to marriage. Marriage, no doubt has always taken to

be a pious sacrament under Hindu Law, no doubt with changed circumstances the law, had taken shape and has been enacted and amended as

well and certain provisions had been made which provide for judicial separation, as well as divorce. Section 13 of the Hindu Marriage Act

provides for decree for divorce and dissolution of marriage . Material part of Section 13, Clause (1) reads, as under :

13. Divorce :-- (I) Any marriage solemnized, whether before or after the commencement of this Act, may, on 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 a 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;

Any marriage solemnized : Whether before or after the commencement of this Act, may on a petition presented by either husband or wife may be

dissolved by the Court by decree for divorce on the ground, as enumerated in Clauses (1) to (vii) which specify the grounds and conditions, on the

establishment of which that decree for divorce can be passed, similarly there is Sub-section (1)(a) also that, provides for the circumstances in

which the marriage may be dissolved as well.

9. Section 13-B, makes specific provision for dissolution of marriage by a decree of divorce, passed on a joint petition for divorce and that

Section prescribed the mode and the gap of time between the making of the petition and passing of the decree, i.e. minimum of six months or

maximum of eighteen months, with the object and expectation that the good sense may revive and prevail and petition may be withdrawn and

breaking of marriage ties may be avoid.

The provision of Section 13-B, further specifies the circumstance and condition, in which petition u/s 13-B. can be made and in satisfaction of

which, decree may be, passed by the Court. It further specifies the Court, i.e. District Court as a Court competent before which joint petition has

to be, presented as an original case or petition has to be, presented as an original case or petition for grant of relief u/s 13-B of the Act. That when

the law providing of this specific relief, specifies the Court and mode and provides, specific circumstances, and conditions in which the specific

relief, may be granted and specific jurisdiction may be exercised for then, on the satisfaction thereof only the decree can be passed or relief can be

granted. A decree of divorce no doubt on mutual consent and filing Joint Petition

is, provided for as a remedy, u/s 13-B of the Hindu Marriage Act. The compromise otherwise than u/s 13-B, so far is concerned is only one of reconciliation to be arrived at between the parties before the Main Petition is tried or decree is passed for dissolution or judicial separation. If parties come to compromise or compromise to live together, that compromise even at the time decree is, passed or even it may be stage of appeal during the pendency of appeal, may be, entered also because power of Appellate Court are, same and subject to same conditions as, those of Original Court. Thus, when the law has, provided specific modes for exercise of jurisdiction for grant of divorce when the law gives a long rope for survival of marital ties the intendment behind the law is, as far as possible reconciliation may be strived at and the marriage ties may not be allowed to be broken. The parties to marriage may live amicably after settlement. If the husband and wife want to apply the Court for divorce by a joint petition for decree for divorce then they have to approach the Court u/s 13B of Hindu Marriage Act. But, no decree can be passed otherwise than u/s 13-B for divorce on the basis of compromise, unless and until the respondent accept truthfully and not acting collusively, allegations against him or her by petitioner making or pleading as ground for divorce be it ground of adultery, cruelty or desertion

10. Looking to the scheme of the Act and the provisions of law under Hindu Marriage Act, which specifies the law and conditions on establishment of which only the decree for divorce can be granted it is not open to Court to pass any decree , for divorce on grounds not coming within the framework of Section 13(1) or 13(A) and 13(B) of the Act or under the law, as provided. That no section or provision has been pointed out, by learned Counsels for parties concerned, that a decree for divorce can be granted u/s 13(1) without requisite conditions and allegations in regard thereto being established by party claiming the decree for divorce or without those grounds or circumstances, conditions or allegation in regard thereto, being admitted by the respondent. The compromise petition filed in the appeal does contain any averment therein as respondent admitting the allegations made in petition by decree for divorce by petitioner-appellant nor it amounts to be a compromise to settle the dispute by compromise.

This alleged compromise, appears from its, perusal to be an attempt of appellant to play fraud with respondent and with the law. It, appears to run

against the scheme of the Act to provision of law including Sections 13 and 13B of Act and such compromise, appears to nullify or render

nugatory the provisions of Hindu Marriage Act.

11. In our opinion, the agreement in question is not an lawful agreement or compromise. Such an agreement cannot be, recorded, and on the basis

of such an agreement, no decree for divorce can be granted as there is, no admission of the allegations made by the petitioner in the petition. The

application for passing the decree for divorce by compromise in the form, as had been made is not, maintainable and has to be rejected.

No doubt, it is kept open to the parties or the petitioner-appellant to withdraw first the appeal and get it, dismissed and then they may file a petition

u/s 13B. A Joint petition seeking decree, for divorce u/s 13-B, does not lie in this Court but to the Principal Civil Court of the District that is

District Court (or Family Court) as Section 13(B) provides, as a original or main case not, as misapplication to be filed in an appeal. It may also be

mentioned here, that the office has reported, that in the present case the signatures of the respondent alleged to be of respondent, differ as well do

not appear to be genuine. That, as the compromise itself is not really a lawful agreement, and secondly the signature differ it appears, just and

proper to reject and it is as such, being rejected herewith.