
(1974) 12 AP CK 0014
In the Andhra Pradesh High Court
Case No : A.A.O. No. 277 of 1971

Pillalamarri Vara Prasada Sarma

APPELLANT

Vs

Pillamarri Seshalakshmi

RESPONDENT

Date of Decision : 30-12-1974

Acts Referred:

Hindu Marriage Act, 1955 — Section 9

Citation : AIR 1975 AP 239

Hon'ble Judges : Ramachandra Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : N. Rajeswara Rao, for the Appellant; V.R. Mohan Rao, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Rao, J.—This is a husband's appeal against the order of restitution of conjugal rights passed by the III Additional Judge, City Civil Court, Secunderabad in O. P. No. 134 of 1969. The appellant husband and the respondent-wife were married on 9-3-1966. The husband is an Assistant Engineer. Structural Design Office employed in the Heavy Engineering Corporation at Ranchi. The wife, a graduate was employed as Assistant Instructress in Gram Sevika Training Centre at Samalkota. After a couple of years of the marriage some disputes arose between the parties and the wife went away to Samalkot where she was employed as Gram Sevika. The husband then filed a suit. T. S. No. 1315 of 1968 on the file of the court of the Mun-sif, Ranchi for granting a decree directing the wife to come and live with him permanently and render him conjugal rights. That suit ended in a compromise on 4-12-1968 and a decree in terms of the compromise was passed directing the wife to live with the husband at Ranchi and she also undertook not to join service.

2. However, this petition O P. No. 134 of 1969 out of which this appeal arises was filed by the wife u/s 9 of the Hindu Marriage Act for a decree for restitution of conjugal rights. In the petition it was alleged that the husband is not a strong-

willed person and is liable to be easily influenced by his mother and sisters, that his eldest sister was having considerable influence over the respondent and that she was expressing dissatisfaction with the wife as the marriage was performed without her approval. It is further alleged that at the time of the marriage, the wife was employed and she offered to resign her job but the husband persuaded her to stay on and she continued in service for some time and that she was applying for leave and was staying with the husband. The husband's mind was poisoned against the wife by his eldest sister and there was a lot of ill-treatment by the husband's mother and sister and the wife was ultimately deserted. The husband was aggrieved that the wife is educated and employed and he was insisting upon her resigning her job and also obtaining a certificate that she was relieved from service as a condition precedent to his living with her. The obvious idea is to make the wife helpless and utterly dependent upon him so that she would be completely at the mercy of the husband to be abused or beaten according to his pleasure. It was further alleged that the last attempt was made by the wife by going to the husband in October, 1968 and living with him. According to the wife, there were then no extraneous influences and the husband lived in terms of love and affection with the wife and she also became pregnant and was brought to Samalkot, her father's place for confinement by the husband himself and was left there for confinement in 1969. The wife further states that the husband obtained a chance of going to the States as an immigrant for five years and so encouraged the wife to resign her job and she resigned her job on 5-5-1969. But again the husband began to insist on the wife securing a certificate that she was relieved from service and that he would then only think of sending her to Akividu their native place. She states that the husband was suffering from a complex that a Hindu wife should economically be helpless and live only at the mercy of the husband. It was also alleged that the petition for restitution of conjugal rights filed by her husband at Ranchi was withdrawn as the wife was only too anxious to live on amicable terms with the husband and that did not even help the husband in changing his outlook and that petition seems to have been conceived by the persons behind the husband as stepping stone for securing the ultimate dissolution of the marriage by divorce and was not at all bona fide. She therefore filed this petition u/s 9 for restitution of conjugal rights alleging that the cause of action for the petition arose on 1-9-1969 when the husband refused to take her back unless she resigned her job.

3. The husband filed a counter, denying all the allegations made in the petition. He stated that he was living by himself at Ranchi and that none of his sisters or mother have ever stayed with him for any considerable length of time. He further stated that he was suffering a great inconvenience by the wife withdrawing from his company and society and by her refusal to perform the marital obligations towards him on the ground that she was employed. He requested her several times to resign her job and give her company and society; but she refused. He then filed the Suit T. S. No. 1315/ 68 on the file of the District Munsif, Ranchi on

26-8-1968 and the same was closed on 4-12-1968 by a compromise. According to the terms of the compromise the wife had to resign the job and had undertaken not to desert the respondent. But contrary to the said undertaking the wife again joined the service and refused to join the husband. With a view to forestall any action being taken by the husband the wife filed the present petition on untenable and false grounds. He further stated that he never insisted or encouraged the wife to join service. While the husband had no objection for the wife being employed, he feels that the first duty of the wife is towards the husband and she could be economically independent by taking other vocations while living with her husband. He therefore states that the wife had withdrawn from his company and society without just and sufficient cause. He further stated that the wife should be directed to join the husband at Ranchi and also she should be directed to resign her job as per the terms of the compromise in T. S. No. 1315 of 1968 and that he is willing to treat the wife as a partner in life.

4. No evidence was recorded in the case. But the learned Judge heard both the sides and held that as the parties are anxious to live together and as the wife undertook to go and live with the husband and that he would allow her to live with him and that she represented that she would resign the job soon after her life with the husband gets adjusted and runs smoothly he allowed the petition and granted a decree for restitution of conjugal rights. He however rejected the contention of the husband that a direction should be given to the wife to resign her job as agreed to by her under the terms of the compromise in the Ranchi Court on the ground that it was not open to the Court to give such a direction while exercising jurisdiction under the Hindu Marriage Act.

5. When this appeal came up for hearing on 5-12-1974. we adjourned the matter to enable the parties to be present to see whether any amicable settlement could be brought about between them. The parties accordingly appeared on 23-12-1974. We heard both the husband and wife and the learned counsel in the Chambers to find out whether the parties could adjust the matter. We again adjourned the matter to 26th December, 1974 to give them further time to see whether they could compose their differences. On 26th December, 1974 it was reported by both the learned counsel that they could not arrive at settlement. Therefore we heard the case on merits.

6. Sri N. Rajeswara Rao, the learned counsel for the appellant submits that when once there is an order for restitution of conjugal rights made by the Ranchi Court, it is not open to the wife, to file another petition u/s 9 of the Hindu Marriage Act for the same relief. But it is contended by Sri G. V. R. Mohan Rao, the learned counsel for the wife that the decree for restitution of conjugal rights passed by the Ranchi Court was satisfied by the wife going and living with the husband. Therefore that decree lapsed and is no longer in force and hence the wife can again file the petition u/s 9 of the Act. But it is not possible to accept this submission because nowhere in the petition filed u/s 9 the wife had alleged that the decree for restitution of conjugal rights was passed by the Ranchi Court

and that it was satisfied. On the other hand the allegation made in para 9 of the petition is as follows:-

"The petition for restitution of conjugal rights filed by the respondent at Ranchi was withdrawn as the petitioner herein is only too anxious to live on amicable terms with her husband, but that did not help the respondent in changing his outlook and even that petition seems to have been conceived by the persons behind the present respondent as merely a stepping stone to securing ultimate dissolution of the marriage by divorce and was not at all bona fide."

These averments do not show in what manner the decree was satisfied. Sri G. V. R. Mohan Rao the learned counsel also could not cite any authority in support of the said submission. Therefore there is no material in support of the contention raised by the learned counsel for the wife that the decree was satisfied. So long as that decree is in force there is no reason why the wife should resort once again to proceeding u/s 9 of the Hindu Marriage Act. Apparently this proceeding is intended to forestall the husband taking any further proceedings open to him. We therefore agree with the contention of Sri Rajeswara Rao, the learned counsel for the appellant that this petition u/s 9 cannot be sustained as the wife if anxious to get restitution of conjugal rights could have very well obeyed the earlier decree for restitution of conjugal rights passed by the Ranchi Court.

7. It is also contended by Sri Rajeswara Rao, the learned counsel for the appellant that under Hindu Law it is the duty of the wife to live with the husband and that she cannot stay away from him on the ground that she was employed in service in another place and that the very insistence of the wife in staying away and refusing to resign her job shows that it is the wife that has withdrawn from the society of the husband without just and sufficient cause and therefore she would not be entitled to claim restitution of conjugal rights. We think this submission is also well founded. In *Smt. Tirath Kaur v. Kirpal Singh* AIR 1964 P&H 28 it was held that where the wife refuses to resign her job which compels her to live away from her husband and join him. it cannot be said that she has not deserted him or has not withdrawn from his society without a reasonable cause and that the application of the husband for restitution of conjugal rights cannot be dismissed merely because she has expressed a desire that the marriage should continue and also consented to visit the husband and to allow him to visit her occasionally. In *Gaya Prasad Vs. Mst. Bhagwati*, where a wife accepted service without the consent of the husband at a place different from the husband's place to augment husband's family income and the husband called upon her to leave the service and live with him at his place and the wife refusing to obey and requesting the husband to come and live with her it was held that the wife had withdrawn from her husband's society without reasonable cause. To the same effect is the decision reported in *Surrinder Kaur Vs. Gurdeep Singh*,

8. In *Vuyyuru Pothuraju Vs. Vuyyuru Radha*, it was held that it was the bounden duty of the wife to live with her husband wherever he chooses to reside and that it is the right of the husband to require his wife to live with him and courts

cannot deprive him of this except for special circumstances which absolve the wife from that duty and an agreement entered into between the wife and the husband that they should live in the house of the wife's father does not affect the right of the husband to demand that his wife should live with him wherever he chooses to reside.

9. From these rulings it is therefore clear that the wife cannot insist on continuing in service in a place which is far away from the husband's place and refuse to live with the husband. The mere fact that the wife expressed her willingness to live with the husband by visiting him now and then would not amount to the wife performing her marital obligations to her husband. In the present case the conduct of the wife in insisting upon her continuing in service at a distant place away from her husband: amounts to withdrawing from the society of the husband without just and sufficient, cause. On this ground also the wife is not entitled to maintain the petition u/s 9. It may be mentioned that it is not the husband that has withdrawn from the society of the wife. On a consideration of the rival averments in the petition and the counter, we find that it is the wife that has withdrawn from the society of the husband without just cause. In this view we allow the appeal, set aside the order of the lower court and dismiss O. P. No. 134 of 1969. In the circumstances we direct the parties to bear their own costs here and in the lower court.