

(2008) 11 AP CK 0067

In the Andhra Pradesh High Court

Case No : C. Miscellaneous A. 2733 of 1998 and Civ. Rev. Petition No. 3140 of 1999

Polavarapu Hanumantha Rao

APPELLANT

Vs

Polavarapu Siva Parvathi and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 18(1)
Hindu Marriage Act, 1955 — Section 25, 26, 28

Citation : AIR 2009 AP 98

Hon'ble Judges : Vilas V. Afzulpurkar, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : V.S. Suresh Kumar, for the Appellant; K. Ananda Rao, for the Respondent

Final Decision : Allowed

Judgement

Vilas V. Afzulpurkar, J.—The appellant in CMA No. 2733 of 1998 is the husband. His wife and children are petitioners in CRP No. 3140 of 1999. Both the matters are disposed of by this common judgment.

2. While the appeal is directed against the order dated 28.8.1996 passed by the Court in IA No. 1926 of 1995 granting maintenance to the wife and children, the revision petition is filed against the order dated 8.4.1999 dismissing EP No. 39 of 1997 filed by the wife and children for arrest and detention of the husband in civil prison for non-compliance with the order in IA No. 1926 of 1995. There is no challenge to the dismissal of the OP which was passed along with the order in IA No. 1926 of 1995. Since the order in IA No. 1926 of 1995 is challenged by the husband in CMA No. 2733 of 1998, the decision in that appeal would govern the decision in the revision.

3. For better appreciation, the facts with regard to CMA No. 2733 of 1998 are as follows.

The appellant-husband filed OP No. 132 of 1984 on the allegation that the appellant and the first respondent were married in March, 1979 and the first respondent-wife lived with the appellant for one month. It is alleged that the mother-in-law of the appellant wanted the appellant to shift the family to her place where she was carrying on rice business which the appellant refused and thereafter the mother-in-law did not send the first respondent to the appellant. Several efforts of mediation among the parties failed and as such the appellant alleged that the first respondent has deserted him from December, 1979 for no fault of his. He gave a legal notice dated 27.6.1981 and filed the OP No. 145 of 1983. However the said OP was dismissed, for non-payment of process fee on 7.4.1983 and thereupon the present OP was filed. On contest, however by the first respondent-wife, the trial court came to the conclusion that the appellant failed to prove that there was any desertion by the wife without reasonable cause and dismissed the OP for divorce. The said order is not challenged by the appellant and has attained finality.

4. The first respondent-wife and two children-respondents 2 and 3 filed IA No. 1926 of 1995 in the said OP No. 132 of 1984 for grant of maintenance of Rs. 4,500/- per month i.e., Rs. 1500/- to each of the respondents under Sections 25 and 26 of the Hindu Marriage Act, 1955 (for short "the Act"). As stated above, while the main petition for divorce was dismissed by the trial Court, the said IA No. 1926 of 1995 was allowed by granting maintenance of Rs. 800/- per month to the first respondent-wife, and Rs. 500/- per month to the respondent No. 2 and Rs. 300/- per month to the respondent No. 3-daughter with effect from the date of order of the court below i.e., 28.8.1996. While passing the aforesaid order in IA No. 1926 of 1995, the learned Counsel appearing for the respondents 1 to 3 before the court below had relied upon a decision of this Court reported in *Silla Jagannadha Prasad Vs. Silla Lalitha Kumari*, and following the said judgment, the trial court granted the maintenance as permanent alimony. The aforesaid order, as stated above, is subject matter of CMA No. 2733 of 1998 by the appellant-husband.

5. We have heard learned Counsel for either side. The primary contention of the learned Counsel for the appellant is that the OP having been dismissed, the court below had no jurisdiction to pass an order for permanent alimony u/s 25 of the Act.

5-A. The point for consideration is, therefore, whether the matrimonial court is justified in passing an order granting permanent alimony, while the substantive petition for divorce was rejected?

6. The legal position in this case was examined by this Court in *Silla Jagannadha Prasad @ Ramu v. Smt. Silla Lalitha Kumari* (supra) and it was undoubtedly held by this Court by interpreting the word "any decree" used u/s 25 of the Act to mean any decree or adjudication as contemplated under the Code of Civil Procedure. It was accordingly held that decree of dismissal would also be a decree for the purpose of Section 25 of the Act and the court would undoubtedly

have jurisdiction to grant the relief. It was further held that the technical objection as to driving the wife to a different court under the Hindu Adoption and Maintenance Act, can be avoided by granting relief to her u/s 25 of the Act.

7. The aforesaid decision of this Court has been overruled by the Supreme Court in *Chand Dhawan v. Jawaharlal Dhawan* 1993 AIR SCW 2548 wherein the Supreme Court considered judgments of various High Courts all over the country and held as follows:

The matrimonial court, a court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the matrimonial court does make an appealable decree in terms of Section 28, but neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of Section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the matrimonial court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician....

We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification u/s 18(1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance....

The judgments of the High Courts earlier quoted, and others which have been left out, which are not in line with our view are overruled.

8. In view of the judgment of the Supreme Court, the decision of this Court in *Silla Jagannadha Prasad @ Ramu v. Smt. Silla Lalitha Kumari* (supra) is no longer good law and following the decision of the Supreme Court in *Chand Dhawan v. Jawaharlal Dhawan* (supra), the order under challenge granting permanent alimony is liable to be set aside and it is accordingly set aside and the appeal is allowed.

9. In view of the judgment in CMA No. 2733 of 1998, the order passed by the court below in EP No. 39 of 1997 challenged in the revision does not survive as the EP is liable to be dismissed. Accordingly the revision petition is disposed of in terms of the judgment passed in the above CMA. However, there shall be no order as to costs.