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**(2012) 02 AP CK 0030**

**In the Andhra Pradesh High Court**

**Case No : Civil Miscellaneous Appeal No. 923 of 2005**

Seepana Rajeswari Rao

APPELLANT

Vs

Seepana Raja Rao

RESPONDENT

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**Date of Decision : 09-02-2012**

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 13, 13(1)

**Citation :** (2012) 4 ALD 110 : (2012) 4 ALT 425

**Hon'ble Judges :** K.S. Appa Rao, J; Ghulam Mohammed, J

**Bench :** Division Bench

**Advocate :** S.R. Sanku, for the Appellant; T.V. Sreedevi, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K.S. Appa Rao

1. Aggrieved by the order and Decree dated 16.09.2005 passed in M.O.P. No. 8 of 2003 by the Senior Civil Judge, Rajam, Srikakulam District, the present Civil Miscellaneous Appeal is filed. Appellant herein is the respondent-wife and the respondent herein is the petitioner-husband in M.O.P. No. 8 of 2003.

2. For brevity and for better understanding, the parties as arrayed in the Lower Court are similarly arrayed in the present appeal.

3. The husband filed M.O.P. No. 8 of 2003 against the wife u/s 13 (ib) of Hindu Marriage Act for passing a decree of divorce on the ground of desertion. The trial Court on going through the evidence available on record, allowed the petition by granting divorce against the wife. Aggrieved by the same, the present Civil Miscellaneous Appeal is filed by the wife.

4. The learned counsel for the appellant while placing reliance on the appeal grounds mainly urged that because of the conduct of the husband that he was having illicit intimacy with the sister-in-law besides having vices like drinking and womanising, she deserted the husband from 1995 onwards. Therefore, the

conduct of the appellant-wife with the respondent-husband cannot be treated as desertion. In support of his arguments he placed reliance on the judgments of the Supreme Court reported in Bipin Chander Jaisinghbhai Shah Vs. Prabhawati, , Lachman Utamchand Kirpalani Vs. Meena alias Mota, Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi, , Ravi Kumar Vs. Julmi Devi, and S. Hanumantha Rao Vs. S. Ramani,

5. In Bipin Chander Jaisinghbhai Shah Vs. Prabhawati, ) the Supreme Court observed as under:

For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned; (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example when the separating spouse abandons the marital home with the intention, express or implied of bringing cohabitation permanently to a close.

6. In Lachman Utamchand Kirpalani Vs. Meena alias Mota, the Supreme Court observed that "abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage (S) Bipin Chander Jaisinghbhai Shah Vs. Prabhawati,

7. In Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi, the Supreme Court observed "So, the failure on the part of the wife to substantiate a serious allegation of infamous conduct of indecent advances said to have been made to her by the father-in-law, taken together with the absence and omission from her side to demonstrate her readiness and willingness to discharge her continuing obligation to return to the matrimonial. home, establish sufficiently the animus deserendi, necessary to prove legal desertion as required u/s 13(1)(i-b)."

8. On the other hand, the learned counsel appearing for the respondent-husband submits that the husband proved the desertion of wife since 1995 for no "cause by showing dislike towards the husband, the court below rightly allowed the

petition granting decree of divorce dissolving the marriage. He placed reliance on the judgment of the Supreme Court in *Y. Anjaneyulu Vs. Andhra Bank and Another*, . He also placed reliance on a Division Bench judgment in *B. Srinivasulu @ Srinivasachari Vs. Mrs. Veena Kumari @ Lathasree*, , wherein the Division Bench at paragraph 14 observed as under:

14. The further allegation in the said counter is that,

.....This respondent submits that the petitioner threatened the respondent by saying that his sister's in-law father is a noted criminal, he had undergone imprisonment for seven years, in a murder case and even if he murdered this respondent, he would come out with clean hands.....

9. Now the point that arises for consideration is whether the impugned order is sustainable and whether the petitioner is able to establish the conduct of the respondent for desertion for granting divorce u/s 13 (ib) of the Hindu Marriage Act.

10. Before going into the merits of the case, it is pertinent to refer the pleadings of the parties briefly. The averments of the petition read as under:

The marriage of the petitioner and the respondent took place at town hall, Srikakulam on 6.5.1990 according to Hindu rites and customs. After marriage the respondent joined the petitioner and lived together at Modalavalasa, the native place of the petitioner for about two months and after that the respondent became pregnant and later gave birth to a female child at Modalavalasa. The respondent belongs to a well to do family whereas, the petitioner belongs to a middle class family and both of them lived happily for about one year and later the respondent developed hatred and dislike towards the petitioner for no fault of his and she was very often leaving the house and going back to her parents house. The petitioner had to go to her parents house and got her back every time. For which, the petitioner raised disputes before the elders and the elders also persuaded the respondent for her joining with the petitioner but that exercise remained futile due to non-cooperation of the respondent for appearance, the mediators could not compromise the matter. In January 1995 while the compromise talks are pending with the village elders, the respondent made a false report to the police, Ponduru and unnecessarily dragged the matter to the police station. Finally the mediators have succeeded in their attempts to persuade the respondent to join the petitioner to live with the petitioner. The petitioner and the respondent lived at Bondilapuram near Srikakulam, while the petitioner is working as a teacher at Boddepalli. The respondent lived with the petitioner for about three months and again left to her parent's house in the month of May 1995 without informing the petitioner. When the petitioner went to the respondent's parent's house to request her to join him, the respondent's parents have abused the petitioner and beat him and refused to send the respondent with him. Apprehending that the petitioner will give a police report for the beatings received by him in the hands of the respondent's parents, the

respondent gave a false report against the petitioner for dowry harassment and also filed M.C. 15 of 1995 on the file of Munsif Court, Rajam with false and untenable grounds claiming maintenance from the petitioner. The petitioner thereupon filed a petition in O.P. No. 24 of 1995 for restitution of conjugal rights, but the respondent filed counter stating that she is not willing to live with the petitioner.

11. Before the trial Court petitioner was examined as PW-1 and got marked Ex. P1 and the respondent herself was examined as RW-1 and examined RWs 2 and 3, alleged mediators and no exhibits were marked.

12. It is an admitted fact that the marriage between the petitioner and the respondent was performed as per Hindu rites and a child was born during their wedlock. It is the contention of the petitioner that the respondent without any reasonable cause staying with her parents house and not showing any interest in marital life and made the petitioner's life miserable for which, made conciliations through elders but the same remained unsuccessful and thereafter, filed a petition, for divorce. It is also evident from the record that the petitioner also filed OP for restitution of conjugal rights for which the respondent filed counter, wherein it is stated that she is not willing to join the petitioner. Thereafter, the petition was dismissed. Having waited for two years, the husband filed a petition seeking divorce on the ground of desertion. The respondent made allegations on the petitioner that he is having illicit intimacy with his sister-in-law but the entire evidence goes to show that the petitioner is the 7th son to his father and the respondent is his cousin sister's daughter. The relation between the petitioner and the respondent is a close relationship in the alleged marriage. The petitioner is also an employee working in different places in his employment. The entire evidence goes to show that the respondent deserted the company of the petitioner for over 10 years by living separately with her parents so it is an irretrievable break down of marriage and the respondent did not make any steps to go back to her matrimonial home. The evidence of RWs 2 and 3 goes to show that the petitioner raised disputes on number of times before the elders and the respondent refused to join the company of the petitioner for no cause by showing dislike towards the petitioner and his parents.

13. In view of the aforesaid background the arguments advanced by the learned counsel for the appellant that the conduct of the wife amounts lawful desertion cannot be appreciated at any stretch of imagination. Therefore, the plea taken by the respondent-wife that her husband is having illicit intimacy with his sister-in-law is of no significance and the same cannot be appreciated. Hence, we do not find any ground to interfere with the order and decree passed by the court below. Accordingly, the Civil Miscellaneous Appeal is dismissed. The appellant-wife can take appropriate steps before the appropriate forum for her redressal, if she is otherwise entitled to as per law. There shall be no order as to costs.