
(1954) 09 AP CK 0032

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1036 of 1950

Setty Satyanarayana

APPELLANT

Vs

Setty Kannayamma

RESPONDENT

Date of Decision : 13-09-1954

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1955 AP 128 : (1955) CriLJ 922

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : E. Venkatesam and E.L. Baghirathi Rao, for the Appellant; Y. Suryanarayana and P. Subba Rao, for the Respondent

Judgement

(1) This second appeal arises out of a suit filed by the appellant for restitution of conjugal rights against his wife.

(2) The appellant is a much married man. He had two wives before he married the defendant. His first wife deserted him and his second wife died. He married the defendant as a third wife. In 1943 he deserted her and married a fourth wife with whom he is now living. The defendant filed a petition in the Magistrate's Court for maintenance, being M. C. No. 55 of 1947 on the file of the Additional First Class Magistrate's Court, Vishakapatnam.

That petition was compromised and under compromise, it was agreed that the plaintiff should take her to his house and provide separate residence for her within three days from the filing of the compromise petition on 25-9-1947. After the petition was disposed of on 29-9-1947, the plaintiff issued a notice Ex. D.2 to the defendant throwing the entire blame on her for not carrying out the terms of compromise. It is apparent from this conduct that the plaintiff was anxious to make out a case to deprive her of her maintenance. I..... he was really serious and sincere in his attempt to live with her, it would not have been the conduct of such a person to issue a registered notice immediately after the expiry of three days. repenting husband, who intended to live with his wife, would have

made all attempts to persuade her to live with him. But, instead, he took advantage of the technical defect and tried to circumvent the compromise. He not only gave a registered notice to her but also filed O. S. No. 302 1947 for restitution of conjugal rights. Both the Courts found that the plaintiff was guilty cruelty, and therefore he was not entitled to the relief of restitution of conjugal rights. Hence..... above second appeal.

(3) The learned Counsel for the appellant exceeded that the finding of cruelty was one of for and there were no grounds for questioning that finding in a second appeal. But he argued that Ex. P. 1, the compromise, amounted to a condonation on the part of the defendant of the plaintiff's previous conduct and that the learned Judge went wrong in relying upon the previous conduct in dismissing the suit. At a proposition of law, it is well-settled that, after condonation, the act that could have entitled the wife to ask for separate maintenance could not be relied upon in a suit for restitution of conjugal rights filed after the said condonation. But, if the compromise was itself a ruse to defeather rights of maintenance it is not possible to rely upon that compromise as a condonation of the plaintiff's previous acts. From the aforesaid narration of facts, it is manifest that the compromise petition was filed to defeat th defendant's right to maintenance. The plaintiff never intended to take her back; nor did he intend to provide her maintenance. the subsequent registered notice and the filing of the present suit are clear indications that the compromise was effected with a view to defraud the defendant. If so, the compromise couldnot be in the way of the defendant's right to live separately from her husband in the circumstances found by the Courts below. When a husband impute a loathsome venereal disease to his wife, discard her and does not make any attempt to get he accured or provide for maintenance, it is a clear case of desertion on his part and such a conduct would also amount to cruelty on the part of the husband. In the circumstances, both the Court were justified in dismissing the suit of the plaintiff restitution of conjugal rights.

(4) The second appeal fails and is dismissal with costs. No leave.

(5) Appeal dismissed.