

(2006) 11 KAR CK 0045
In the Karnataka High Court
Case No : RPFC No. 104 of 2005 (Crl. Misc)

Shantawwa Roogi and Anita

APPELLANT

Vs

Basappa Gurappa Roogi

RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2007) 2 CivCC 629 : (2007) ILR (Kar) 544 : (2007) 1 KarLJ 221 :
(2007) 2 KCCR 1193 : (2007) 2 RCR(Criminal) 23

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Savita, for R.B. Deshpande and N.M. Bhat, for the Appellant; B.T. Koller, for F.V. Patil, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This revision petition is by the petitioners in Crl Misc No. 194 of 2003, on the file of Judge, Family Court, Bijapur, the first petitioner claiming to be the wife of the respondent - Basappa Gurappa Roogi - and the second petitioner claiming to be the daughter of the first petitioner and the respondent, and being aggrieved by the order dated 15-4-2005 passed therein by the learned Judge of the Family Court, Bijapur, substantially dismissing the petitioner which was one claiming maintenance at the rate of Rs. 1,000/- in favour of the first petitioner as wife and Rs. 800/- in favour of the second petitioner as daughter, by allowing the petition only in favour of the second petitioner and limited to the extent of Rs. 300/- per month.

2. It is questioning the correctness and the legality of this order, the present revision petition on several, grounds.

3. It is urged in support of the petition that the learned Judge of the Family Court has not properly appreciated the evidence on record; that he has misread the plea and the evidence; that the very approach was improper; that the findings

are not proper or sustainable in the light of materials before the court; that it is required to be set aside and the petition allowed.

4. Notice being ordered to the respondent in this petition, the respondent has entered appearance through counsel Sri F.V. Patil, now by Sri TB T. Koller.

5. I have heard Ms Savita, learned Counsel for the petitioners and Sri B.T. Koller, learned Counsel for the respondent.

6. What is urged on behalf of the petitioners is that the learned trial judge has totally failed to appreciate the evidence on record in a proper perspective; that he has recorded the findings which are most unreasonable and unsustainable; that the findings are virtually in the nature of perverse finding; that the plea has been totally misread by the learned trial judge; that the learned trial judge has not appreciated the claim of the petitioners in its proper perspective, but has misdirected himself in law also in concluding that the first petitioner, has not only not established a valid, legally sustainable marriage with the respondent for the purpose of claiming the status of wife but also in placing the burden on the first petitioner to establish that the respondent who had married earlier has divorced the earlier wife in a manner recognized in law and dismissing the petition on such unsustainable findings as against the first petitioner.

7. Learned Counsel for the petitioner also submits that the maintenance awarded in favour of the second petitioner is too low even for her sustenance, being a growing child of 12 years age as of now, and with such meagre amount it is virtually impossible to educate her who is studying in 6th standard at present; that the learned judge of the family court should have allowed with amount in full, and the circumstances require that the amount to be increased suitably.

8. Sri B.T. Koller, learned Counsel for the respondent, on the other hand, submits that the order passed by the learned trial judge is just and proper; that the first petitioner having not proved the validity of the marriage with the respondent, particularly having admitted that the earlier marriage of the respondent with one Boramma and also having not proved the validity of termination of that marriage, can never claim the status of the wife for the purpose of claiming maintenance u/s 125 of Code of Criminal Produce; that the learned trial judge had rightly dismissed her claim petition for maintenance; that this submission and the view taken by the learned trial judge is fully in consonance with the law laid down by the Supreme Court in the case of Savitaben Somabhai Bhatiya v. State of Gujarat (2205) 3 SCC 636 and therefore urges for dismissal of this revision petition.

9. Learned Counsel for the respondent also submits that while there is some justification for slight increase in the maintenance amount in favour of the second petitioner, there is no justification for awarding maintenance in favour of the petitioners in the light of the law laid down by the Supreme Court and in the light of the findings recorded by the learned judge of the family court.

10. After hearing the arguments on both side and on perusing the impugned

order, I find that the following points arise for determination in this revision petition.

1. Whether the learned trial judge was justified in rejecting the claim of the first petitioner on the premise that she has not proved her valid marriage with the respondent?

2. Whether the maintenance awarded in favour of the second petitioner calls for any variation?

11. A perusal of the pleadings and the evidence on record indicates that the marriage of the first petitioner with the respondent as on 5-5-1993 is not seriously disputed. In fact in several places it is so admitted by the respondent himself. What is on the other hand pleaded is that this marriage has taken place even while his earlier marriage to one Boramma, which according to the respondent had taken place on 21-5-1989, had not been proved to have been dissolved in a manner known to law; that the first petitioner has not proved that the marriage of respondent with Boramma was brought to an end in the manner recognized in law and therefore it should be presumed that the earlier marriage continued to subsist in the eye of law and if so, the second marriage with the first petitioner being null and void she does not acquire the status of the wife at all and if she is not wife or so recognized in law, she cannot claim any maintenance even as per the law declared by the Supreme Court in the case of Savitaben Somabhai Bhatiya [supra].

12. If the admission that the first petitioner, who in fact had married the respondent and further that the second petitioner was born to them on 4-2-1994 and coupled with the fact that the couple lived together for as long as 4 to 5 years after the marriage i.e. from 5-5-1993, it does indicate that the two had lived as husband and wife for a sufficiently long period to indicate a sustainable relationship. The decision of the Supreme Court in the case of Savitaben Somabhai Bhatiya [supra] proceeded on the premise that the evidence in that case clearly showed that the respondent-husband in that case was having a living spouse at the time of the alleged marriage with the appellant-claimant therein. It is because of such evidence the court took the view that the subsequent marriage having taken place with such person and the person claiming the status of wife having full knowledge of the fact that the person she married not only was already married but also was having a living first wife, her claim for the status of the wife cannot be accepted by the court and in the light of marriage being void, she cannot be conferred with the status of wife even for the purpose of Section 125 CrPC.

13. On the other hand, I find that the findings recorded by the learned judge of the family court in the present case are clearly perverse finding and one ignoring the plea. The plea on the part of the petitioners to the effect that:

Even prior to this, he had married with a woman by name Boramma, who was divorced, same was known to this petitioner, after her marriage with the

respondent.

is taken as a plea of the first petitioner's admission that she had knowledge of the first marriage of the respondent and also knowledge of divorce and therefore it was incumbent upon her to have proved such divorce and in the absence of petitioner proving the same before the court, an adverse inference should be drawn against her, I find this is totally a perverse approach. I say this for two reasons. Firstly the case of the petitioners was that the first petitioner was not aware of the earlier marriage of the respondent at the time of her marriage with the respondent. The plea extracted above, was that she came to know about the first marriage and she also learnt that the first wife had been divorced, both due developments having come to her knowledge only after her marriage. The evidence on record clearly indicates that the first wife namely Boramma had never lived at any point of time either on the date of marriage of the petitioner with the respondent viz., on 15-5-1993 or at any point of time thereafter. If that is so, even the knowledge of the marriage of respondent with the said Boramma cannot be attributed to the first petitioner nor the requirement that she has to prove the valid termination of the earlier marriage.

14. The first petitioner had married the respondent believing herself to be the only wife of the respondent. She did not have any knowledge of the earlier marriage of the respondent. But after the marriage if she has come to know about the earlier marriage and also learnt that earlier marriage had been brought to an end by way of divorcing the said lady, that by itself cannot cast any burden on the first petitioner to prove anything. In fact the learned judge of the family court having held that the marriage of Shantawwa (first petitioner] is proved, but having proceeded to hold that because it was during the subsistence of the earlier marriage, the petitioner will not get the legal status as a wife, it is in my opinion, a finding clearly unsustainable. It was nobody's case that at the time of the marriage of the first petitioner with the respondent, the respondent was having a living spouse with him. In such circumstance, voiding the marriage of the first petitioner with the respondent for the purpose of denying her maintenance from the respondent who had admittedly gone through the rituals of the marriage with the first petitioner and had thereafter lived with her as husband and wife and had also begotten the second petitioner-daughter, is the most unreasonable thing to do. The evidence on record clearly leads to the inevitable conclusion that the first petitioner and the respondents had lived as husband and wife for some duration, had continued in that relationship as husband and wife for some time and thereafter the husband's conduct of cruelty etc., towards the wife and the child compelled them to leave the respondent which virtually amounts to being thrown out by the respondent, the respondent having given cause for such a situation, cannot be permitted to renege from the liability that arises from such relationship, particularly in a petition u/s 125 CrPC.

15. The provisions of Section 125 CrPC are meant for avoiding vagrancy and penury of the dependent spouse and child who have been neglected to be

maintained by the earning is responsible spouse. The petitioners are unable to maintain themselves by earning any income. It is in evidence that the respondent-husband has considerable properties including wet lands from which he is earning substantial income.

16. In fact the matter had been set down for settlement at the request of the parties on an earlier occasion, but no amicable settlement having come through, the matter is taken up for disposal on merits.

17. In the circumstances. I find that the impugned order dismissing the petition in so far as the first petitioner in toto and allowing it in part in so far as the second petitioner is concerned, is clearly not sustainable. I find that the court below is not correct in holding that the first petitioner had failed in her attempt to prove before the court that she is entitled for maintenance u/s 125 CrPC. I am of the view that the petitioners have successfully made out a case for grant of maintenance u/s 125 CrPC in favour of both the petitioners. The claim of first petitioner towards Rs. 1,000/- is, in my opinion, very reasonable and justifiable claim for maintenance and the claim of Rs. 800/- in favour of the second petitioner is also likewise justified, particularly the responsibility to educate the second petitioner also being cast on the first petitioner and I am of the view that the learned judge of the family court should have allowed the petition in full.

18. Accordingly, this revision petition is allowed, impugned order is set aside and the petition filed by the petitioners before the court-below claiming maintenance at the rate of Rs. 1,000/- in favour of first petitioner and Rs. 800/- in favour of second petitioner is allowed in full. The petitioners are entitled for this maintenance from the date of filing of the claim petition before the family court. The petitioners are also entitled to cost in this petition which is quantified at a sum of Rs. 3,000/-, to be paid by the respondent-husband along with the arrears of maintenance within a period of six weeks from today, failing which the amount can be recovered from the respondent by the petitioners through the family court by seeking realization of the amount Cost unless paid within six weeks from today, is to be added to the arrears of maintenance amount and can be realized by the petitioners before the family court. It is open to the petitioners to seek for suitable enhancement of maintenance as and when occasion arises and is justified.

19. Though the learned Counsel for the petitioners has submitted that there should be an order providing for the marriage expenses of the minor daughter who is already aged 12 years, I am of the view that this request can be made at the appropriate time and there cannot be an order in this regard in this petition at this point of time and at any rate the petitioners are if so advised such claim can be put forth before the family court independently.

20. Petition is allowed as indicated above.