
(2013) 04 AP CK 0098

In the Andhra Pradesh High Court

Case No : F.C.A. Nos. 183 and 184 of 2011

Smt. Gutti Sangeetha

APPELLANT

Vs

Gutti Venkata Raju @ Bobbi

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 4 ALD 435 : (2013) 5 ALT 199

Judgement

L. Narasimha Reddy, J.—These two appeals arise out of a common order dated 14.12.2010 passed by the Judge, Family Court, Visakhapatnam in O.P. No. 778 of 2007 and O.P. No. 257 of 2008. For the sake of convenience, the parties are referred to as arrayed in F.C.A. No. 183 of 2011.

The appellant is the wife of the respondent. Their marriage took place on 30-04-2006 at Visakhapatnam. Shortly thereafter, the respondent filed O.P. No. 439 of 2006 in the Court of the Judge, Family Court, Visakhapatnam, u/s 9 of the Hindu Marriage Act, 1955 (for short "the Act") for a decree of restitution of conjugal rights against the appellant. It is stated that the appellant expressed her inclination to join the company of the respondent. Later, however, the respondent has withdrawn O.P. No. 439 of 2006 and immediately filed O.P. No. 778 of 2007 in the same Court u/s 13(1)(ia) of the Act for dissolution of the marriage. On her part, the appellant filed O.P. No. 257 of 2008 in the same Court against the respondent u/s 9 of the Act for decree of restitution of conjugal rights. Through common order dated 14.12.2010, the Family Court dismissed both the O.Ps. Hence, these two appeals, one by the appellant herein and the other by the respondent.

Heard Sri P.R.K. Amarendra Kumar, the learned counsel for the appellant and Sri S.A.V. Ratnam, the learned counsel for the respondent.

2. The circumstances under which the appeals came to be filed have been furnished in brief in the preceding paragraph.

While the respondent wanted a decree for divorce, the appellant not only

opposed the same but also filed an independent O.P. for restitution of conjugal rights. Serious adjudication ought to have been taken place in the O.P. filed for divorce. In case, the O.P. filed u/s 13 of the Act is dismissed, the OP filed u/s 9 of the Act by the other spouse deserves to be allowed straight away. If, on the other hand, the decree for divorce is granted, the O.P. filed for restitution of conjugal rights becomes redundant.

3. On behalf of the respondent, P.Ws. 1 to 3 were examined and Exs. A. 1 to 10 were filed. On behalf of the appellant, RWs. 1 and 2 were examined and Exs. B. 1 to 6 were filed.

Heavy burden rested upon the respondent to prove the acts of cruelty that he attributed to the appellant. The trial Court was under obligation to record a definite finding either way on that aspect. However, no specific finding was recorded. The uncertainty expressed by it, as evident from the following paragraph:

From the discussion had above, I make it clear that P.W. 1 and R.W. 1 lived together for a very short period after their marriage i.e., three or four months and during that short period it is alleged against each other that the attitude of the other person was cruel towards each other and I further make it clear neither the petitioner nor the respondent are coming out with true and correct facts of the case and that the very evidence of the petitioner (P.W. 1) there is no such case made out from the side of P.W. 1 to say that the attitude of R.W. 1 was cruel towards him and thereby he is entitled to ask for dissolution of the marriage. At the same time it is also to be made clear that there are no bonafides from the side of RW. 1 in filing a petition in O.P. 257/2008 under Sec. 9 of the Hindu Marriage Act, for restitution of conjugal rights, as such I find that in both the petitions in OP. 778/2007 and OP. 257/2008 the petitioners are not entitled to ask for the relives claimed by them as such Points in both the O.Ps. are answered against the petitioners.

Unfortunately, this happens to be the last paragraph in the judgment under appeal and it is not preceded by other findings.

The Family Courts are constituted with an objective to deal with the matters pertaining to the family disputes exclusively. In several matters before such courts, the nature of disputes is common except that the facts are different.

It is rather surprising, if not unfortunate, that the learned Presiding Officer, who dealt with the O.Ps. filed by the parties herein was casual and callous in his approach and he did not evince interest to understand the nature of dispute before him.

In case, the learned Judge was not inclined to grant the decree for divorce, O.P. No. 778 of 2007 ought to have been dismissed and straight away the other O.P. being O.P. No. 257 of 2008 filed by the appellant herein ought to have been allowed. However, this is what the learned Judge stated about the O.P. filed by

the appellant u/s 9 of the Act.

There are no bonafides seen from the side of RW. 1 in filing a petition for restitution of conjugal rights as in fact if she was really interested in asking for restitution of conjugal rights against her husband there is no need for her to wait for two years of their living separately and the steps that are taken by both PW. 1 and RW. 1 of reconciling their differences is not put before the Court by adducing proper evidence. The two witnesses examined on the side of PW. 1 are just to say that RW. 1 was all the time insisting PW. 1 to be the illatum son-in-law of her parents, for which PW. 1 was said to be not acceptable.

Here again, the approach was totally lopsided and it did not at all go well with the functions of a Judge, Presiding a Family Court. We refrain from expressing any view on merits, lest the parties are denied their opportunity to put forward their contention before the trial Court.

Hence, we allow both the appeals and set aside the decrees passed by the Judge, Family Court, Visakhapatnam in O.P. No. 778 of 2007 and O.P. No. 257 of 2008. The matters are remanded to the trial Court for fresh consideration and disposal. The trial Court shall take up the matters on priority basis and dispose of the same within three months from the date of receipt of a copy of this order. If any of the parties submit application for additional evidence, the same shall be considered and it should not result in delay of the disposal of the matters. There shall be no order as to costs.

The miscellaneous petitions filed in these appeals shall also stand disposed of.