
(2013) 12 KAR CK 0313
In the Karnataka High Court
Case No : MFA No. 6683 of 2012 (FC)

Smt Harshitha @ Manjula

APPELLANT

Vs

Sri S. Harish

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 3 AKR 102 : (2014) 1 KCCR 641

Hon'ble Judges : K.L. Manjunath, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : Parashuram R. Hattarakihal, for the Appellant; Shankar Reddy, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The appellant herein is challenging the legality and correctness of the Judgment and decree passed by the Principal Judge, Family Court, Bangalore, dt. 10.2.2011 passed in MC No. 413/2010 wherein the Family court has allowed the petition filed by the respondent to grant a decree of divorce on the ground of cruelty and desertion and has dissolved the marriage solemnized between the parties on 13.2.2005 in Rabganoetern Shorpur Taluk, Yadgir Dist. We have heard the learned counsel appearing for both the parties.

2. The respondent-husband filed the petition to grant a decree of divorce on the ground of cruelty and desertion.

3. The admitted facts are that the marriage between the parties was solemnized on 13.2.2005 at Rabganoetern, Shorpur Taluk, Yadgir District. After the marriage they lived together at P.K. Halli, Hospet taluk and in April 2007 family was shifted to Bangalore since the respondent- husband is working as an Advocate.

4. It is the case of the husband that the appellant-wife every now and then used to visit his brothers place Sandur, even though he did not like the attitude of the appellant. It is also his case that the appellant was always insisting him to set up a separate house in order to live alone with him leaving his parents and brothers

family. It is also the case of the husband that he conceded the requests of the appellant and a separate house was set up. In spite of the same she was torturing him and she was demanding the respondent-husband to purchase jewels, sarees, etc and she was creating scene in all public functions and she was quarreling with him. It is also his case in the 1st week of November 2007 by informing the husband went to the house of his brother and requested the husband to pay a sum of Rs. 25,000/- as cash and that with great difficulty by borrowing money gave a sum of Rs. 25,000/- and the appellant having gone to brother's place at Sandur did not return back. It is the further case of the husband that she has developed illicit relationship with his brother Prabhakar and even it was informed to him about the birth of his daughter. In the circumstances he filed a petition on the ground that the appellant is having voluntary sexual intercourse with other person than his spouse.

5. The court summons was not served upon the appellant. Through paper publication the service was held sufficient and she was placed ex-parte and thereafter the respondent filed an affidavit. In lieu of examination-chief se was examined as PW1. He was not cross-examined and thereafter he examined two more witnesses, PW2 Prakash is the elder brother of the respondent, PW3 Jayalakshmi is the neighbour. The Trial Court after considering the evidence, allowed the petition that the respondent- husband has proved the ground of cruelty, desertion and adultery. Accordingly, petition came to be allowed. This order is called in question in this appeal.

6. The learned counsel for the appellant contents that even though the respondent has not proved his case, the Trial Court has mechanically allowed the petition. According to him, the respondent did not prove either the ground of cruelty or desertion. Because no sufficient evidence is let in to show the alleged incidence could be termed as cruelty and even there is no evidence let in to show that appellant has voluntarily deserted the respondent-husband with an intention to put an end to the marital status. According to him, there cannot be desertion, because the appellant has given birth to the daughter on 17.7.2008. He further contends when the ground of adultery is not urged by the respondent in the petition without making the adulterer as a party, the Trial Court has committed a grave error in granting a decree of divorce on the ground of cruelty, even though such a prayer was not sought by the respondent. In the circumstances, he requests the court to allow the appeal and set aside the decree.

7. The learned counsel for the respondent supporting the Judgment of the Trial Court contends that the respondent has proved the cruelty as well as the desertion. Since November 2007 the appellant is residing separately and petition is filed on 6.2.2010 beyond 2 years from the date of desertion. Therefore, the respondent has proved the case of desertion. So far as cruelty is concerned, the evidence let in by the respondent has not been challenged. In the circumstances, this court cannot interfere with the same.

8. Having heard the counsel for the parties, we have to consider the following

points in this appeal:

1) Whether the Trial Court is justified in granting a decree of divorce on the ground of cruelty, desertion and adultery?

9. So far as desertion is concerned, when the appellant has given birth to a daughter on 17.7.2008, if the petition is filed for grant of divorce on 6.2.2010 the same will be within 2 years from the date of appellant gave birth to the daughter. Therefore the question of considering the desertion does not arise at all as the parties never lived for more than 2 years and that there is no intention of the appellant to live separately by putting an end to marital home. In addition to that before filing the petition, the respondent-husband was not even called upon the appellant to come and join him. This shows the conduct of the respondent.

10. So far as cruelty is concerned, no evidence is let in to show that any one of the incidents could be considered as physical cruelty or mental cruelty. Therefore, the said ground is also not available to the respondent.

11. So far as the adultery is concerned, admittedly, Prabhakar, is none other than the brother of the respondent. If an adultery has to be proved, a ground has to be raised in the petition. As per the Rules of the High Court, adulterer is also required to made as a party and such a procedure is not followed.

12. Therefore, we are of the view that the Trial Court even without looking into the rules governing the adultery has allowed the petition in a mechanical way, which according to us is liable to be set aside. In the circumstances, we answer all the points formulated in favour of the appellant and against the respondent. In the result, the appeal is allowed. The decree of divorce granted by the II Addl. Principal Judge, Family Court, Bangalore, on 10.2.2011 in M.C. No. 413/2010 is hereby set aside. The matter is remanded to the Trial Court for fresh consideration by giving reasonable opportunity for the respondent to file her defence and to consider the case on merits and in accordance with law. Parties shall appear before the court on 27.1.2014 without any further notice from the Family Court.