

(2017) 05 KAR CK 0036
In the Karnataka High Court
Case No : 102221 of 2014 (MC)

Smt. Sharada, W/o. Rudrappa Kiloji

APPELLANT

Vs

Shri. Rudrappa S/o. Balappa Kiloji

RESPONDENT

Date of Decision : 31-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 24](#) - General power of transfer and withdrawal
[Hindu Marriage Act, 1955](#), [Section 9](#), [Section 28](#) - Restitution of c

Citation : (2017) 05 KAR CK 0036

Hon'ble Judges : Vineet Kothari, H. B. Prabhakara Sastry

Bench : DIVISION BENCH

Advocate : Sanjay S. Katageri

Judgement

1. The appellant/wife has filed this appeal under Section 28 of the Hindu Marriage Act, 1955, being aggrieved by the judgment and decree dated 09.07.2014 passed in Matrimonial Case No.23/2013, by the Senior Civil Judge and JMFC, Khanapur, allowing the petition filed by the respondent/husband herein under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.

2. In her memorandum of appeal, the appellant has taken a contention that the present respondent, who is her husband, has driven her along with her son away from his house, as such, since four years, she has been living in the village of her parents and trying to maintain herself and his minor son by doing household work and as coolie. She has further stated that, as a counter blast to her Criminal Misc. Petition No.320/2013, filed against the respondent/husband for maintenance, the respondent has filed Misc.Case.No.23/2013 under Section 9 of the Hindu Marriage Act, 1955 for restitution of the conjugal rights. Further stating that, though she was served with notice in the said petition, hoping that the said petition, in view of her Civil Petition No.100010/2014, under Section 24 of the Civil Procedure Code before this Court, would be transferred to Family

Court, Belgaum and tried along with her Criminal Misc. No.320/2013, she did not contest the matter. As such, an ex-parte order has been passed in the said matter. Finally, stating that no opportunity was given to her, the appellant has prayed for allowing the appeal by setting aside the judgment and decree under appeal.

3. In spite of service of notice twice, the respondent did not choose to appear in the matter.

4. Heard the learned counsel for the appellant regarding admission of the matter.

5. The learned counsel for the appellant, in his submission reiterated the contentions taken up by him in the memorandum of appeal.

The main contention of the learned counsel for the appellant is that, when the petition seeking for maintenance in a Criminal Misc.No.320/2013 was pending before the Family Court at Belgaum, the Court below ought not to have allowed the petition filed by the husband under Section 9 of the Hindu Marriage Act, 1955. His further contention was that the appellant was not given an opportunity to put forth her case.

6. The marital relationship between the appellant and the respondent herein as the wife and husband is not in dispute. The contention of the appellant that, during the pendency of her petition for maintenance, the Court below ought not to have allowed the petition under Section 9 of the Hindu Marriage Act, 1955, is an unfounded one. The learned counsel for the appellant was not able to convince this Court on his said ground taken in the memorandum of appeal.

7. It is not in dispute that the present appellant, who was the respondent in the Court below, was duly served with the notice. The said fact has been stated by the appellant by herself in the memorandum of appeal. However, the reason given by her for her non-appearance in the Court below is that, she has filed a Civil Petition No.100010/2014 before this Court under Section 24 of the Civil Procedure Code, seeking for the transfer of the said Misc.Case.No.23/2013 to the Family Court at Belgaum, where her Criminal Misc. No.320/2013 was said to be pending. Even if it is taken that the said Civil Petition was still pending, but nothing had prevented the present appellant to appear in the Court below and to make the said submission and to participate in the proceeding, if her submission was not entertained. However, the present appellant did not make any effort in that regard in the Court below. As such, the appellant has to be blamed for her own reluctance or negligence shown by her.

8. Even otherwise, when the merit of the case is considered, even according to the appellant, she has been living separately from her husband since about 4 years. The reason stated by her in the present memorandum of appeal was that, her husband himself drove her from her matrimonial home. In the very same appeal at paragraph No.3, she has further stated that efforts made by her parents and other elder members of the society failed and her husband flatly

refused to take back her to his house. This submission of the appellant clearly goes to show that she has been always ready and willing to join her husband and to lead a happy marital life. Nowhere in her memorandum of appeal, she has given any reason justifying her staying away from her husband. That being the case, from a bare reading of the memorandum of appeal itself, it goes to show that the appellant neither has, nor able to put forth any grounds justifying her residing separately from her husband. Even the Court below in its judgment has clearly observed that, despite the service of notice, the respondent (appellant herein) did not choose to appear and contest the matter. Further appreciating the materials placed before it, more importantly, the exchange of legal notices between the parties and contents of the said notice and reply, it has arrived at a conclusion that the respondent therein could not justify her staying away from her husband's company. Thus, in the Court below, neither the present appellant chose to enter appearance and contest the matter, even though she was given sufficient opportunity and was aware of the pendency of the proceeding against her, nor she has made out any ground in this appeal justifying her staying separately from her husband's company. As such, we are of the opinion that no grounds are made out to admit the appeal. Accordingly, we proceed to pass the following order.

ORDER

Appeal stands rejected at the stage of admission.