

(2011) 11 KAR CK 0168
In the Karnataka High Court
Case No : M.F.A. No. 5185 of 2009 (MC)

Smt. Yashodha

APPELLANT

Vs

Balaraju

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0168

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Saratchandra Bijai, for the Appellant; T N Raghupathy, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is filed challenging the order passed by the Addl. Civil Judge, Sr.Dn.Hunsur dismissing the petition for restitution of conjugal rights on the ground that there is no valid marriage between the parties.

2. For the purpose of convenience, the parties are-referred to as they are referred to in the petition before the Court below.

3. The petitioner Smt.Yashoda is a native of Ayarhalli village; Her case is her house was situated opposite to the house of the respondent. Both the families lived cordially. The family of the respondent was very well off. The respondent, his father and brothers were teachers. The family of the petitioner was very poor having a small extent of land and depending on coolie work for their livelihood. The father and mother of the petitioner used to go for coolie work in the house of the respondent. The petitioner used to help her mother in the house hold work of the respondent. There developed friendship between the families. The petitioner and the respondent developed intimacy with each other and loved each other which never came to the knowledge of both the families. In the month of December, 2000 the petitioner's mother noticed for the first time that the petitioner was carrying as she did not undergo menstrual pause. Then the

petitioner revealed to her mother about the friendship and intimacy with the respondent which was informed by her mother to her husband. Thereafter, they approached the respondent's father. After discussion the respondent's father agreed to take the petitioner as his daughter-in-law. He called upon the petitioner to make arrangements for the purpose of the marriage. The respondent's father took the petitioner to a radiologist; in Mysore and confirmed about the pregnancy. Subsequently, the respondent's father retracted and refused to perform the marriage between the respondent and the petitioner. Petitioner's father approached the police, filed complaint and also complained the matter to the Vokkaligara Sangha of Hunsur, The elders of the community convened a meeting on 12.1.2001 at APMC yard Hunsur and they advised the respondent and his parents. Father of the respondent declared the petitioner as his daughter in law and in the presence of about 500 persons of their community, the marriage between the petitioner and the respondent was performed on the same day. The people gathered in the venue blessed the couple. The respondent and the family members agreed to take the petitioner to their house after January. 15th as it was kumba masa which was not auspicious to take the petitioner to their house. Thereafter, a legal notice came to be issued by the respondent to the leaders who had gathered in the panchayath accusing them of forcing the respondent, to garland the petitioner. The father of the petitioner filed a suit against: the respondent in O.S.No. 14/2001 where there was an interim order of status-quo and thereafter, the suit was dismissed as not maintainable. The petitioner also filed a complaint against the respondent and his parents and the Bilikere police have registered a case against them.

The petitioner at present is living with her child at respondent's house at Ayarahalli Village. The respondent and his family members made an attempt to throw her out of the said house. The respondent is legally bound to take the petitioner and her child with him and to maintain them and to cohabit with the petitioner. The respondent without any reasonable cause has withdrawn from the society of the petitioner and therefore, she sought, for a decree for restitution of conjugal rights.

The respondent filed a detailed statement of objection denying the allegations made in the petition. He denied his alleged marriage with the petitioner. However, he agreed that on 12.1.2001, he and his father were forcibly taken to the APMC Yard Hunsur by the Hunsur and Bilikere police though they protested for the same. At the APMC Yard the respondent was threatened with dire consequences by the police officials and political leaders including the Ex.MLA Kariyappa Gowda and Y.P.Papanna. He was forced to garland the petitioner and some photographs were taken. The respondent: immediately thereafter threw the garland away saying that it is against his will and he informed that he never intended to marry nor he had any intimacy with the petitioner. After the incident the respondent got issued a legal notice to those persons who have taken part in the illegal acts. The respondent and his family members were acquitted in the criminal case registered against them in CrI.Case No.278/2001. When there is no

relationship of husband and wife between the petitioner and the respondent and no marriage was performed between them, the respondent maintaining the petitioner and cohabiting with her does not arise. Therefore he sought for dismissal of the petition.

The trial Court; framed the following three points for consideration.

1. Whether the petitioner proves the she is the legally wedded wife of the respondent?
2. If so, whether the petitioner proves that the respondent, without any sufficient and reasonable cause, has withdrawn from the company of the petitioner?
3. What order or decree?

To substantiate her claim the petitioner was examined as PW1 and she got produced 28 documents which were marked as exhibits P1 to P28.

On behalf of the respondent, he was examined as RW1 and he got marked five documents which are marked as exhibits R1 to R5.

The trial court on appreciation of the oral and documentary evidence on record held the evidence on record do not establish that the petitioner is the legally wedded wife of the respondent. The marriage is not established. The petitioner and the respondent: have not lived together as husband and wife at all. Therefore, the question of the respondent withdrawing from the company of the petitioner without a reasonable cause would not arise and therefore, he dismissed the petition for restitution of conjugal rights. During the pendency of the proceedings there was an interim order to pay maintenance. Certain amounts had been paid towards maintenance. In view of the aforesaid findings, he directed the petitioner to refund the amount received as maintenance. Aggrieved by the said order passed by the trial Court, the petitioner has preferred this appeal.

4. The learned counsel for the appellant assailing the impugned order contended, in the light of the pleadings in the case, the question of the petitioner proving the marriage according to the custom to which the parties belong would not arise. Because of the intimacy developed between the petitioner and the respondent, when the petitioner became pregnant, which fact when it was brought to the notice of the parents of both the parties, a panchayath was convened and in the said panchayath there was exchange of garlands and photographs were taken. Under these circumstances, the aforesaid admitted act is sufficient to constitute a marriage. The petitioner has given birth to a child i.e. a child the petitioner got through the respondent. Therefore, though the marriage in the strict sense is not established in the facts and circumstances of the case, the petitioner and the respondent have lived as husband and wife and in the presence of panchayathdars they did marry and therefore, the finding recorded by the trial Court that the marriage is not established, the relationship of husband and wife is not established is contrary to the material on record and requires to be set

aside. In terms of the interim order passed for awarding maintenance, amounts have been paid. Now the petitioner has to take care of the child. She is living independently. Under these circumstances, the trial court was not justified in directing refund of the maintenance amount. Lastly, he contended that the petitioner is willing to undergo DNA test and respondent should also be subjected to the same to find out the paternity of the child which in turn would establish the relationship of husband and wife between the petitioner and the respondent and therefore, he submits the impugned order requires to be set aside.

5. Per contra, the learned counsel for the respondent supported the impugned order.

6. In the light of the aforesaid facts and rival contentions the point that arises for our consideration is :-

Whether the findings of the trial Court that there is no relationship of husband and wife between the parties and the marriage is not established and therefore, the petition is not maintainable requires interference of this Court?

7. In the light of the aforesaid pleadings which are set out, it is not the case of the petitioner that she was married to the respondent according to the customs prevailing in the community to which they belong. On the contrary it is the specific case that, without the knowledge of the parents the petitioner and the respondent developed intimacy and consequently, she became pregnant and when this fact was brought to the notice of the elders, panchayath was convened on 12.1.2001 at the APMC yard where 500 persons belonging to the community had assembled and it is in their presence garlands were exchanged, photographs were taken. The respondents have not denied the incident that took place on 12.1.2001 at APMC yard. Immediately after the incident, they have issued the legal notice to the persons who have assembled who forced him to garland the petitioner. It is also on record that the petitioner and her parents lodged a complaint with the jurisdictional police at Hunsur who after registering the case apprehended the respondent and his parents and all of them were taken to the APMC Yard on 12.1.2001 for the panchayath. It is there this exchange of garland and photographs were taken which is sought to be put forth as a proof of marriage.

8. Though the trial Court has scanned the entire evidence and has recorded a categorical finding that all the essential requirements to constitute valid marriage does not exist in the present case and has referred to various judgments, in the light of the pleadings, the entire exercise is an exercise in futility. It is nobody's case that the marriage took place according to customs and Hindu rites and therefore, the entire discussion as rightly pointed by the learned counsel for the petitioner if of no assistance in deciding the case. The specific case pleaded is petitioner and his parents are poor and the respondent and his parents are rich. They are living in the same village and their houses are opposite to each other. The petitioner's father and mother were working as coolie in the respondents'

house. The petitioner was assisting her mother in the house and during that period, cordial relationship existed between their families. It is in that background the respondent developed intimacy with the petitioner on account of which she became pregnant. The respondent had denied all these allegations. Except the oral assertion of the petitioner there is no other evidence to prove this fact. No explanation is forthcoming why the petitioner's parents were not examined to prove this fact. However, it is brought on record in the cross-examination of PW1 where in her evidence she has admitted that there was a panchayath in the house of one Mruthunjaya about the petitioner going along with one Puttaraju s/o. Annegowda. She also admitted that this panchayath took place in the end of the year 2000. From the medical certificate produced it is evident that the petitioner gave birth to a male child on 14.4.2001. The alleged marriage with the respondent is on 12.1.2001. If the panchayath took place at the end of 2000, about the petitioner going along with Puttaraju by that time she was carrying by five months. If the petitioner was confident that the child born to her is through the respondent, she could have got done the DNA test performed to show that the respondent is the father of the child to which she has given birth. No such attempt was made. In fact, a police case was filed against the respondent and his father in C.C.NO.278/2001 alleging cruelty which came to be dismissed honourably acquitting the respondent and his parents. Immediately after the incident on 12.1.2001 the respondent got issued legal notices. There is no evidence on record to show at that point of time the respondent and the petitioner have lived together as husband and wife either before 12.1.2001 or after the said date. Curiously, it is the specific case of the petitioner that because it was Kuroba masa, an inauspicious month she was not taken to their house. If to take her to the house, it was an inauspicious month, we fail to understand how the marriage could take place on 12.1.2001 which falls in that inauspicious month. It appears an attempt is made to force the respondent to take the petitioner as his wife with the help of the parents and the community people. We fail to understand why if it was a genuine compromise, why it did not take place in anybody's house and that it took place in the APMC yard in front of five hundred people belonging to their community assembled there including the police and Ex. MLA's. Therefore, there appears to be some truth in what the respondent says that he was forced to go there, garland the petitioner and thereafter, he threw away the garland on her face. At any rate the evidence on record clearly establishes, as rightly held by the learned trial Judge, the marriage pleaded by the petitioner is not established, the relationship of husband and wife between them is not established, the child born to the petitioner is not shown to be that of the respondent. Curiously, the evidence on record shows that the respondent and her parents are residing at Mysore and the petitioner has occupied the house at their village for which there is no reference in the pleadings at all. Even in the voters list in 2009 she is described as the daughter of her father i.e. d/o.Siddaiah, father of petitioner and not wife of Balraj the respondent. Under these circumstances, we are satisfied there is no error or infirmity in the findings of the court below calling for interference by this Court.

9. Insofar as refund of maintenance amount is concerned, it is true that in terms of the interim order passed, the respondent has paid roughly about `80,000/-. If the relationship is not established, if the marriage is not proved, the order passed by the trial Court consequently directing refund cannot be found fault with. At this juncture learned counsel for the respondent submitted that having regard to the facts and circumstances of the case and in order to maintain peace and harmony, he would not insist on the issue of refund of the amount and therefore, requests that portion of the decree be set aside.

Hence, we pass the following order :-

The appeal is partly allowed. The decree directing refund of the maintenance amount is hereby set aside and in all other respects, it is confirmed.