
(2013) 12 KAR CK 0444

In the Karnataka High Court

Case No : M.F.A. No's. 9488 and 10686 of 2013 (FC)

Sri Ajit Devaraj

APPELLANT

Vs

Smt. Megha Nagaraja
 Smt. Megha Nagaraja Vs Sri
Ajith Devaraj

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0444

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

Bench : Division Bench

Advocate : G.R. Mohan, in M.F.A. No. 9488/2013 and Sri. S. Vinayak for Venkatadri Associates in M.F.A. No. 10686/2013, for the Appellant; A. Lalitha and Sri Vinayak, in M.F.A. No. 9488/2013, for the Respondent

Final Decision : Disposed Off

Judgement

K.L. Manjunath, J.—These two appeals are arising out of the order passed by the IV Addl. Prl. Judge, Family Court, Bangalore in M.C. No. 424/2013 dated 8.12.2013. MFA 9488/2013 is filed by the appellant/husband. MFA 10686/2013 is filed by the respondent/wife. In both these appeals, the parties are questioning the legality and correctness of the order passed by the Trial Court in fixing Rs. 25,00,000/- as permanent alimony. Therefore, these two appeals are heard together.

2. The admitted facts are as hereunder:

The marriage between the parties was solemnized at Nanjangud, Mysore on 16.5.2010 and the same was registered in Bangalore on 20.5.2010. The wife, who was petitioner before the family Court had married earlier. She married the appellant herein after obtaining a decree of nullity of her previous marriage. Even the appellant herein had married once. According to the case of the respondent-wife, the appellant-husband without obtaining decree of divorce has married the respondent-wife. The respondent-wife filed petition u/s 13(1)(ia)(ib)

of Hindu Marriage Act. Though notice was served on the appellant, he did not contest the matter. In the circumstances, based on the evidence let in by the wife, the petition came to be allowed and decree of divorce was granted dissolving the marriage solemnized on 16.5.2010 at Nanjangud on the ground of cruelty and desertion.

3. During the pendency of the matter before the Trial Court, the wife had filed an application u/s 25 of Hindu Marriage Act read with Section 20 of Protection of Women from Domestic Violence Act, 2005. Based on the application of the wife, the Family Court had awarded permanent alimony of Rs. 25,00,000/-.

4. Aggrieved by the order of the Family Court, the husband has filed MFA 9488/2103 contending that a sum of Rs. 25,00,000/- awarded towards permanent alimony is on the higher side. The wife has filed MFA 10686/2013 contending that a sum of Rs. 25,00,000/- awarded towards permanent alimony is insufficient.

5. According to the learned counsel for the appellant-husband, the Trial Court without being any material placed on record by the respondent-wife has fixed the Rs. 25,00,000/- towards permanent alimony.

6. According to the learned counsel for the respondent-wife, Rs. 25,00,000/- quantified by the Trial Court towards permanent alimony is insufficient considering the income of the appellant.

7. During the course of arguments, it is brought to the notice that respondent is also well qualified and she is an Engineering graduate. Prior to marriage she was working in India. These facts are not brought to the notice of the Trial Court. Before the Trial Court, no evidence is let in by the wife on the application filed by her. It was the duty of the wife to place the material before the Trial Court that the appellant is getting sufficient income in order to claim permanent alimony in excess of Rs. 25,00,000/-.

8. The appellant herein has produced the salary certificate issued by the company before this Court. But the same cannot be considered by this Court because the same has to be produced by the parties before the Family Court and opportunity has to be given to the respondent-wife to cross examine the appellant and to enable her to place material on record as to the actual income of the husband.

9. In the circumstances, we are of the view that since the Trial Court has not applied its mind before quantifying the permanent alimony of Rs. 25,00,000/- and as the parties have failed to let in evidence, we are of the view that the order of permanent alimony granted by the Trial Court has to be set aside and matter has to be reconsidered by the Trial Court afresh giving opportunity to the parties to lead evidence.

10. In the circumstances, the appeals are disposed of. The order passed by the Family Court, Bangalore in M.C. No. 424/2013 dated 8.10.2013 in regard to

dissolving the marriage is hereby confirmed. The matter is remanded to the Trial Court to reconsider the case of the parties on I.A.S. and to quantify the permanent alimony payable by the appellant after giving reasonable opportunities to both the parties. Both the parties shall appear before the Family Court on 3.2.2014. During the pendency of this appeal, the appellant-husband has deposited a sum of Rs. 15,00,000/-. Therefore, the respondent-wife is at liberty to withdraw the same. The withdrawal of amount would be subject to the outcome of the order of the Family Court pursuant to the order of the Family Court.