
(2013) 12 KAR CK 0101
In the Karnataka High Court
Case No : M.F.A. No. 1091 7 of 2012 (FC-DB)

Sri B.R. Raju

APPELLANT

Vs

Smt. C.E. Sulochana

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0101

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

Bench : Division Bench

Advocate : Rambhat and Sreepada, for the Appellant; A.V. Gangadharappa, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The unsuccessful husband has filed this appeal being aggrieved by the Judgment and decree passed by the Family Court, Davangere dt. 3rd October 2012 passed in M.C. No. 46/2006. Heard the learned counsel for both the parties.

2. The admitted facts are the marriage between the parties was solemnized on 10.4.1998 at Lingeshwara Temple choultry, Davangere. After the marriage the parties were living in Bangalore for about four months. Thereafter the respondent gave birth to a daughter by name, Shwetha in the month of April 1989 at Govt. Hospital, Chitradurga. She has given birth to another daughter by name Shruti in the month of June 1991. At the time of delivery, the respondent wife was with her parents. After the delivery of the second daughter, the respondent was taken to the native place of the petitioner which is in Davangere District. She stayed in Bhavihal village for about 5 to 6 months and that the appellant who is working as II Division Assistant at DDPI Office, Davangere, used to visit once in a week. Since 1992 the respondent is living with her parents. According to the appellant, he made several attempts to bring her back to his matrimonial house. The respondent deserted him with an intention to put an end to the marital relationship. Therefore he filed a petition for grant of decree of

divorce on the ground of physical and mental cruelty and so also on the ground of desertion. It was also alleged that the respondent-wife filed a complaint u/s. 498A, 506 IPC read with sec. 3 and 4 of the Dowry Prohibition Act in C.C. No. 231/98 and later he was acquitted in the aforesaid case. The respondent-wife has filed a suit for maintenance in O.S. No. 204/98 and the said suit came to be decreed. An Execution petition came to be filed for recovery of amount. Later she also filed a suit in O.S. No. 2/2006 seeking enhancement of the maintenance. According to the appellant filing of criminal case and filing of suits for claiming maintenance and enhancement of amount, amounts to cruelty.

3. The respondent-wife contested the case. According to her after giving birth to the second daughter, the appellant insisted her to give a consent to marry one Sujata. Since she refused to give such consent the appellant started ill-treating her by one reason or other, which resulted for her to leave Bhavihal village and take shelter at her parents house. According to her, panchayats were also held to sort out the differences between the parties herein. In the month of December 1997, the parents and elders of her family members requested the appellant herein to take the respondent and her daughters and to live with them happily. Then it was brought to their notice that he had already filed a divorce petition in MC No. 1060/1997 before the Family Court at Bangalore and on the request of the parties the M.C. case was transferred to the Civil Judge, (Sr. Dn.), Chitradurga and renumbered as M.C. No. 61/2000.

4. For the reasons best known to the appellant, he did not pursue the divorce petition filed in MC No. 61/2000 which came to be dismissed on 19.10.2001. Therefore, she contends that when once the earlier petition is dismissed, second petition on the same ground does not survive for consideration. Thereafter the present petition was disposed of by the Family Court on 23.10.2009. Aggrieved by the same, the respondent filed an appeal in MFA No. 7742/2009 before the Hon. High Court of Karnataka, which order was set aside by this court and the matter was remanded for fresh consideration.

5. Pursuant to the direction issued by this court, opportunities were given to both the parties to let in evidence and after hearing, the learned Judge has dismissed the petition. Therefore, the present appeal is filed.

6. In order to prove the grounds urged by the appellant, appellant alone came to be examined as P.W. 1. He relied upon Ex. P1 to P6. On behalf of the respondent three witnesses were examined as R.W. 1 to R.W. 3, out of them R.W. 1 is the wife - respondent. The Trial Court after considering the entire evidence came to the conclusion that the appellant has failed to prove both the grounds. Accordingly it is dismissed. Therefore the present appeal is filed.

7. We have heard the learned counsel appearing for the parties.

8. According to the learned counsel for the appellant filing of a criminal case which is ended in acquittal amounts to cruelty and that the marriage irretrievably broken. In view of the Judgment of the Apex Court in K. Srinivas Rao Vs. D.A.

Deepa, , he contends that the Trial Court was required to grant a decree of divorce on the ground of irretrievably broken down of the marriage.

9. The learned counsel for the respondent submits that if the marriage is irretrievably broken, the same cannot be attributed to the respondent's conduct and on account of the conduct of the appellant if the marriage is broken, the same cannot be a ground to grant a decree of divorce. According to him, when the respondent has secured a decree for maintenance on an earlier occasion and however the maintenance has been enhanced on account of filing of a second suit, would disclose the nature of ill-treatment given to the respondent by the appellant. When the respondent has reasons to stay away from the company of the appellant on account of the conduct of the appellant, the Trial Court is justified in dismissing the petition. In the circumstances, he requests the court to dismiss the appeal.

10. Having heard the counsel for the parties, what is to be considered by this court in this appeal is:

1) Whether the appellant has made out a ground to grant a decree of divorce on the ground of desertion and cruelty.

11. Admittedly, the parties are living separately. In the marriage they have got two daughters. No positive evidence is let in by the appellant to show the nature of physical or mental cruelty inflicted by the respondent to him except the self-serving testimony of P.W. 1. Admittedly the wife has filed a suit claiming separate maintenance on account of" the conduct of the appellant in O.S. No. 204/1998 which suit has been decreed, which discloses that on account of the ill-treatment given to the respondent by the appellant, she filed a suit for maintenance. In addition to that she filed one more suit in O.S. No. 2/2006 seeking enhancement of the maintenance granted to her and her two daughters. The said suit is also decreed. If the contention of the appellant that filing of such suits by the respondent amounts to cruelty, no court can accept such contention. It is the right given to the wife and minor children to seek maintenance if they have been neglected to maintain either by the husband or by the parents of minor children. Even though the appellant has been acquitted in criminal case, on perusal of the Judgment it is not an honourable acquittal. By giving benefit of doubt if the appellant has been acquitted in CC No. 231/98, the same cannot be a ground for us to hold that filing of complaints amounts to cruelty.

12. When the respondent has been granted separate maintenance, it cannot be held that the respondent has deserted the appellant by putting an end to matrimonial life.

13. Be that as it may, when the appellant had filed the petition earlier on the same cause of action and on the same ground and several years thereafter if he has failed to pursue the same and several years thereafter if he has filed a petition on the same ground, it also amounts to constructive Res-judicata.

14. In the circumstances, we do not see any merits in this appeal.

15. Accordingly, the Judgment relied upon by the appellant in K. Srinivas Rao v. D.A. Deepa's case is concerned, if the appellant is responsible for the respondent to live separately, on account of the folly of the appellant if the marriage is broken, the same cannot be a ground to seek divorce on the ground that marriage is irretrievably broken. In the result, the appeal is dismissed.