

(2011) 02 KAR CK 0159

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8696 of 2009

Sri H.N. Nagaraja Rao

APPELLANT

Vs

Smt. Sushma Rani

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 9

Citation : (2011) 2 KCCR 1001 : (2011) 8 RCR(Civil) 829

Hon'ble Judges : K.L. Manjunath, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : A.G. Sridhar, for the Appellant; Seema Shivanaik, for R.L. Patil, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The Appellant is challenging the legality and correctness of the judgment and decree passed by the Civil Judge (Sr. Dn.), Additional CJM, Arasikere dated 15.10.2009 passed in MVC No. 8/04.

2. The Appellant was Respondent in the aforesaid petition. The Respondent/wife filed a petition u/s 13 of the Hindu Marriage Act seeking a decree of divorce by dissolving the marriage solemnised between them on 9.12.1998 at Hassan on the ground of cruelty. The marriage between the parties was solemnised on 9.12.1998. They have a daughter now aged about 12 years. According to the Respondent/wife, they lived together only for few months. After she gave birth to the daughter, Appellant started ill-treating her with utmost cruelty on the ground that she has given birth to a female child. The Appellant is working as an engineer in a private industry. According to the Respondent, the Appellant used to tell before others that he had committed a blunder in marrying the Respondent and if, he had married any other lady, he would have been more happy and it is also the case of the Respondent that the Appellant developed bad vices and is addicted to liquor, gambling etc., and that he used to physically assault her. In spite of several advises given to him, he failed to rectify his

behaviour. According to her, she was driven out of the house without providing basic necessities which resulted in she taking shelter with her parents along with her minor child on the ground that her life has become miserable. On the cruelty meted out to her by the Appellant, she sought a decree for divorce. She has also referred to the MC Petition filed by the Appellant in MC No. 959/01 for restitution of conjugal rights and another petition filed in G&WC 36/2002 seeking custody of the minor child.

3. The Appellant admitted the relationship between him and the Respondent. He also admitted that out of the marriage he has a daughter and he has denied all other allegations. According to him, it is the Respondent who has treated him with utmost cruelty and deserted him without any reason and that he was not allowed to see even his daughter. Therefore, he filed a petition in MC No. 959/2001 for restitution of conjugal rights and also to grant the custody of the minor child by filing G&WC 36/ 2002. Both the petitions were allowed and in spite of the petitions being allowed, the Respondent has not joined him and that Respondent has failed to obey the directions issued in G&WC case. In the circumstances, he requested the Court to dismiss the petition.

4. Based on the above pleadings, the following points were formulated by the Court below:

(1) Whether the Petitioner proves that the Respondent has subjected her into cruelty both mentally and physically?

(2) If so, the Petitioner is entitled to get a decree for divorce as prayed?

(3) What order or decree?

5. In order to prove their respective cases, on behalf of the wife six witnesses were examined as PW1 to PW6 and she relied upon 5 documents as per Ex.P1 to Ex.P.5. The Appellant/husband examined himself as RW1. He relied upon Ex.R1 to Ex.R6. The trial Court after considering the entire evidence held point Nos. 1 and 2 in the affirmative and allowed the petition by dissolving the marriage solemnised between the parties on 9.12.1998. Being aggrieved by the same, the present appeal is filed.

6. We have heard the learned Counsel for the parties.

7. The main contention of the Appellant before us is that as a counter blast to the decree obtained by the Appellant u/s 9 of the Hindu Marriage Act, a false and frivolous petition is filed. He also contends in order to overcome the order passed in G&WC, the present petition is filed making the allegation of cruelty. He also contends that the trial Court has failed to read the entire evidence led by the parties and on account of the non-appreciation of the evidence properly, a decree of divorce has been granted. In the circumstances, he requests the Court to allow the appeal.

8. Per contra, Counsel for the Respondent contends that it is impossible for the

wife to live with the Appellant. According to him, after filing the divorce petition, several developments have taken place. According to her, on the complaint lodged by the husband in CC 11445/06 before the VIth ACMM, Bangalore on the ground that the allegations made in the MC Petition amounts to defamation and the said case has ended in conviction and that the Respondent has been directed to undergo sentence of one month and to pay fine of Rs. 5000/- against which the wife has filed an appeal and obtained an order of suspension of sentences and conviction. He further contends that the Appellant herein has also filed an appeal seeking enhancement of the sentence which shows the conduct of the Appellant. According to her, the marriage between the parties is irretrievable and it is impossible for them to lead life. In the circumstances, no purpose will be served in setting-aside the judgment and decree of divorce granted by the Court below.

9. After hearing learned Counsel for the parties, the point to be considered by this Court is:

Whether the judgment and decree of divorce granted by the Court below is liable to be set-aside?

10. Learned Counsel for the Appellant is not disputing the judgment of conviction and order of sentence passed by the VI Addl. ACMM, Bangalore against the Respondent on the complaint lodged by the Appellant. If the husband has obtained an order of conviction against the wife and if he has preferred an appeal seeking enhancement of sentence, it would only show that it is not possible for any lady to stay with such person. Even though the Appellant has obtained a decree of restitution of conjugal rights, in view of the subsequent developments, we are of the opinion that it is not possible for any lady to stay along with the Appellant and lead life as a wife. In fact, in his cross-examination he has admitted that it is for the Respondent to adjust with the Appellant and that would only show his conduct. In the circumstances, we are of the opinion that the Appellant has not made out any case to set-aside the decree of divorce granted to the Respondent. On the contrary, considering the conduct of the Appellant and in the best interest of both the parties, the decree of divorce granted by the Court below has to be confirmed otherwise it may lead to several other litigations since the parties are already entangled in 5-6 litigations in different Courts. In the circumstances, we do not see any merit in this appeal. Accordingly, appeal is dismissed. The decree of divorce granted by the Civil Judge (Sr. Dn.) & Addl. CJM, Arasikere in MC 8/2004 passed on 15.10.2009 is hereby confirmed.