

(2013) 12 KAR CK 0328
In the Karnataka High Court
Case No : M.F.A. No. 3340 of 2012 (MC)

Sri Parera Venugopal

APPELLANT

Vs

Smt. P.B. Rukmini

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0328

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

Bench : Division Bench

Advocate : N. Jagadish Baliga, for the Appellant; M.C. Ravi Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The present appeal is directed against the order of dismissal of the petition filed u/s 13(1)(ia) and (ib) of Hindu Marriage Act in M.C. No. 25/2008 dated 22.06.2012. The learned Senior Civil Judge, Madikeri, has dismissed the petition filed by the husband. It is this order which is called in question on various grounds. The appellant was the petitioner and the respondent was the respondent in the said petition. The parties will be referred to as petitioner and the respondent.

2. Their marriage was solemnized on 24.06.1983 at Kattemadu Village, as per the Hindu customs. He was serving in the Indian Army and retired in the year 1987. At that time, respondent had been working as a School Teacher at Yedavare Village, Somwarpet Taluk. Whenever the petitioner used to get leave, he used to come and stay with his wife-respondent. According to him, his wife is rude, stubborn and cruel. She is stated to be quarreling with him for no fault. Even children also join her to give him mental and physical torture. After retirement he got appointment in State Bank of Mysore, Srirangapatna and now he has got transferred to Somwarpet. Hence, he had requested the Court to grant him the decree of divorce.

3. The respondent had filed detailed objections denying all the material allegations. Petitioner is stated to have suppressed the truth and that he was working in Mandya. He did not maintain the family as a prudent man and did not show any love or affection towards her and her children. At the age of 35, he retired and he has worked as security guard in the remaining period. Petitioner's brother Yadava and his family were residing at Mandya and he was an employee in the office of Agriculture, Srirangapatna. Yadava died in the year 2002 and since then petitioner is maintaining the family of his deceased brother. Now the family of Yadava is shifted to Madikeri and petitioner will be visiting everyday and spending his income with them. In fact the petitioner himself has deserted the respondent and her children, is the grouse. She had requested to dismiss the petition.

4. Petitioner is examined as PW 1 and respondent is examined as RW 1. No documents have been got marked. The learned Judge has dismissed the petition by formulating following three points:

1. Whether the petitioner proves the alleged desertion due to torture on the part of the Respondent?
2. Whether the petitioner is entitled for the reliefs as prayed for?
3. What order or decree?

Points 1 and 2 have been held in the negative.

5. At the stage of admission, we have heard the learned counsel appearing for the parties. We have perused the records.

6. Petitioner himself has been examined as PW 1 and he has been cross-examined at length. Admittedly, the respondent is a teacher and has two children and she is living with them. It is his case that his wife and children assaulted him many a times, but there is no acceptable evidence to that effect. He has admitted that he has not given any complaint to the police. He has admitted that his wife and children have called him many a times to come and join them. According to him, he is afraid of going there, as they are likely to assault him.

7. The said apprehension is ill founded. In fact petitioner himself was living in Srirangapatna working as Security Guard in the Bank for 12 years. He should have made all efforts to get transferred to a place nearer to the house where his wife is living along with her children. He has admitted that his wife and children are residing in the same house in which they were residing earlier. In fact, he has not withstood the rigor of the cross-examination. Whatever is deposed by him about cruelty, cannot be considered as cruelty. The assertion made by him in his examination-in-chief has only remained as an assertion without being substantiated in any manner.

8. Respondent has specifically deposed that her brother-in-law Yadava was in Mandya and he died and since then her husband was going to their house and

spending most of the amount. She has been cross-examined. She has deposed that her husband was coming once in a week, to the village. All the suggestions put to her that she was ill-treating him and she had attempted to assault him along with her children, have been specifically denied.

9. The initial burden cast upon the petitioner in the matter of proving cruelty has not been effectively discharged. On proper appreciation of the evidence placed on record, the learned Judge has come to the conclusion that no case is made out for granting a decree of divorce on the ground of cruelty. We do not find any reason to interfere with the well-reasoned order. Hence, the appeal is liable to be dismissed.

ORDER

The appeal is dismissed as not fit for admission. The impugned order dated 22.06.2012 passed in M.C. No. 25/2008 by the Senior Civil Judge, Madikeri, is affirmed.