

(2010) 10 KAR CK 0009
In the Karnataka High Court
Case No : MFA No. 4461 of 2008

Sri. Ravinanda Gopal Naidu

APPELLANT

Vs

Smt. R. Revathi @ Gayathri

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Hindu Marriage Act, 1955 — Section 12
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 10 KAR CK 0009

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : Chandra Mohan J.G, for the Appellant; S. Balan and Assts., for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—Appellant is the Petitioner before the Civil Judge (Sr. Dn.), KGF, being aggrieved by the judgment and decree dated 4-3-2008 made in M.C. No. 56/2000 passed by the Civil Judge (Sr. Dn.) KGF, filed this appeal.

2. the Petitioner filed a petition u/s 12 of Hindu Marriage Act seeking for annulment of marriage on the ground of impotency of Respondent or in the alternative grant a decree of divorce dissolving the marriage solemnized on 23-6-1999.

3. The brief facts of the case are as follows:

The Petitioner and Respondent are legally wedded husband and wife. Their marriage was solemnized on 23-6-1999 as per the Hindu rituals and customs at KGF. The Respondent lived in the marital house. The Petitioner was working at Bangalore. He used to leave the house early in the morning and return late in the night. The Petitioner has contended that during the stay of the Respondent in the marital house the Petitioner and his family members noticed that she has no respect for the elders particularly to the mother of the Petitioner. Many a times,

she has misbehaved with other family members. During the Audi month she had been to her parental house on 14-7-1998. On 6-8-1999, she informed the Petitioner that she is pregnant. However on 30-8-1998, she informed the Petitioner that she had undergone abortion. In view of that the Respondent was subjected to the medical test on 2-9-1999. The Doctor who has examined her reported that the Respondent was not at all pregnant and the Respondent did not have the menstrual cycle at all. She has taken treatment with Dr. Kasturi on 28-10-1999 for a few days and left the matrimonial house on 3-11-1999. After much persuasion by the Petitioner, the Respondent was brought back to the marital house on 19-1-1999. However, she left the marital house once again on 23-1-2000 without any reasonable cause and deserted the Petitioner.

4. The Petitioner in his petition alleges that the parents of the Respondent suppressed the fact that the Respondent is an impotent and unable to beget a child, it is impossible to lead a marital life with the Respondent. He issued a legal notice to the Respondent calling upon her to join him. After four months, she has given reply to the said notice agreeing to join the Petitioner. The Petitioner has alleged that the Respondent in order to cover up her latches had lodged a Complaint u/s 498A of IPC and Sections 3 and 4 of Dowry Prohibition Act before the jurisdictional police and that the matter is pending consideration. Since the Respondent is an impotent, she is not in a position to maintain the marital life and the Petitioner filed a petition seeking for annulment of marriage.

5. In pursuance to the notice issued by the Civil Judge (Sr. Dn.), the Respondent entered appearance and filed her objections. She denied the averments made in the petition. However, admitted the marriage and relationship. She has stated that after the marriage, she stayed in the marital house from 23-6-1999 till 14-7-1999 and in view of Audi month, she left to her parental House. Due to their marital life, there was symptoms of pregnancy out of their wedlock and she had undergone a test in St. Johns Clinical Laboratory and the report was positive. Thereafter, she has taken treatment in Government Maternity Hospital. She was informed by the Doctors that she has got spontaneous abortions. The symptoms of pregnancy was informed to the Petitioner earlier and the spontaneous abortions was also informed to the Petitioner subsequently. On 23-8-1999, the Respondent joined the Petitioner and she was subjected to medical test. Then the pregnancy report was negative because of spontaneous abortions. Dr. Kasturi, who had subjected the Respondent to the medical test reported that due to the abortion, the Respondent is suffering from anemic and advised for nutritious food and suggested treatment to the Respondent. The Petitioner in order to avoid medical expenditure and other expenditure towards nutritious food, sent her to the parental house. Her parents took her to the Sham's Clinic and treatment has been given. Further, Respondent in her statement of objections alleges that the Petitioner has demanded Rs. 2.00 lakhs to do the business. Since, the father of the Respondent expressed his inability to pay the said amount, the Petitioner started harassing the Respondent for dowry. To avoid the harassment, she had filed a petition u/s 498A of IPC. The Respondent contended that she has not

deserted the Petitioner on the other hand, the Petitioner has deserted her and sent her back to her parental house on 23-1-2000. She is hale and healthy; she is fit physically, mentally and also medically; she is not an impotent and she is ready to undergo any medical test with any Doctor as per the choice of the Petitioner and sought for dismissal of the petition.

6. On the basis of the pleadings of the parties, the Civil Judge (Sr. Dn.), KGF, has framed the following issues.

(i) Whether the Petitioner has proved the marriage of the Petitioner and Respondent is null and void as the Respondent is impotent?

(ii) Whether the Petitioner is entitled for a decree of divorce as claimed by the Petitioner?

(iii) What order?

7. The Petitioner in order to prove his contention examined himself as P.W. 1 and got the documents marked as Ex. P.1 to Ex. P.5. The Respondent examined herself as R.W. 1 and got marked the documents as Ex. R. 1 and Ex. R.2.

8. The Civil Judge (Sr. Dn.) after considering the oral and documentary evidence let in by the parties held point Nos. 1 and 2 in negative and consequently, by its judgment and decree dated 4-3-2008, was pleased to dismiss the divorce petition.

9. Being aggrieved by the judgment and decree dated 4-3-2000, made in M.C. No. 56/2000, the Petitioner has filed this appeal.

10. Sri. J.G. Chandramohan, learned Counsel appearing for the Appellant contended that the judgment and decree passed by the Court below is contrary to law and facts of the case. The Court below has grossly erred in accepting the statement of Respondent that she is ready and willing to undergo medical check-up and dismissing the petition is erroneous in law. The material on evidence clearly shows that the Respondent had deserted the Appellant. Further, she is an impotent and it is impossible to lead a marital life with an impotent person. The Court below without appreciating the oral and documentary evidence dismissed the petition, which is erroneous in law and sought for dismissal of the same by allowing the appeal

11. On the other hand M/s. S. Balan and Associates, learned Counsel appearing for the Respondent contended that the Court below after considering the oral and documentary evidence led by the parties found that the Appellant has not made out a case for annulment of marriage and also a decree for divorce. Accordingly, dismissed the petition. There is no infirmity in the order passed by the Court below and sought for dismissal of the appeal confirming the order passed by the Court below.

12. We have carefully gone through the arguments addressed by the learned Counsel for the parties and also considered the oral and documentary evidence

led by the parties.

13. It is not in dispute that the Appellant and Respondent are legally wedded couple. Their marriage was solemnized on 23-6-1999. The Respondent stayed in the marital house till 14-7-1999 and in view of audi month (Ashada) she went to the parental house. Due to the wedlock and stay in the marital house till 14-7-1999, there was a symptom of pregnancy to the Respondent. She has undergone test in St. Johns Clinical Lab and the report was positive. She has informed the Appellant about the same, however, there was spontaneous abortions. The same was also informed to the Appellant. The Appellant has taken the Respondent for medical test. The Doctor reported that Respondent was not at all a pregnant. It was the allegation of the Appellant the Doctor informed him that the Respondent did not had menstrual cycle at all. However, no document has been produced by the Appellant to prove the same nor he has produced the report of the Doctor. The Appellant alleges that the Respondent is an impotent and she is unable to beget a child. He further alleges that she was very rude and used to give scant respect to the elder members of the family particularly to his mother.

14. On the other hand, the Respondent denied the allegations of the Appellant. She states that the mother of the Petitioner had taken her to Dr. Katuri at Bangarpet and the Doctor reported that in view of spontaneous abortions, the Respondent is anemic. She suggested for nutritious food and also suggested for treatment. To avoid the said expenditure the Appellant has sent the Respondent to the parental house. She also alleges that the Appellant demanded dowry of Rs. 2 lakhs.

15. The Appellant, in his evidence deposed that their marriage has been solemnized on 23-6-1999, the Respondent stayed in the marital house till 14-7-1999 and their marriage was consummated. He has deposed that the Respondent left the marital house on 23-1-2000 and he has issued legal notice as per Ex. P.1 calling upon the Respondent to join the Appellant. The Respondent has given reply as per Ex. P.2 expressing her willingness to join the Appellant. However, in the cross-examination, Appellant has expressed that he is not ready to take the Respondent to the marital house. The Respondent in her notice has stated that she is ready to undergo any medical test with any Doctor as per the choice of the Appellant. However, the Appellant is not ready to get the medical tests done. In the cross-examination he has deposed that he is not ready for any medical check-up. Further, the Appellant has deposed that he has not produced any medical report to show that the Respondent is an impotent and also that he has not taken the Respondent for any medical test. The Appellant has not examined any Doctor in support of his contention that the Respondent is an impotent and she is not in a position to beget any child.

16. On the other hand, the Respondent examined herself as R.W. 1 and reiterated the averments made in the statement of objections in the examination-in-chief. The specific case of the Respondent is that the marriage took place

between the Appellant and Respondent on 23-6-1999 and on the same day nuptial ceremony was celebrated in her parental house and the marriage was consummated. After the marriage, they lived together as husband and wife. During the audi month, she had been to her parental house where she underwent medical tests. It is found that there was a symptom of pregnancy. Subsequently, the Doctor informed that there were spontaneous abortions. The Appellant's mother took the Respondent for the medical test with Dr. Kasturi. The Doctor informed the mother of the Appellant that due to the abortion she was anemic and advised to be under medication and good diet to maintain normal health. The Appellant in order to avoid expenditure, sent the Respondent to her parental house and deserted the Respondent. In her cross-examination, the Respondent has denied the suggestion of the Appellant's counsel that there is no satisfactory sexual intercourse with the Appellant. Further she has deposed that on 23-8-1999, she was with the Appellant and she had sexual intercourse on the said date. She has denied the suggestion of the Appellant's counsel that there was no intercourse between them due to pain.

17. It is the case of the Appellant that the Respondent had left the marital house on 23-1-2000 without sufficient reason and cause. He alleges that he issued a legal notice calling upon her to come back to the marital house and join him. The Respondent sent a reply notice accepting the offer and wanted to stay in the marital house with the Appellant. However, the Appellant is not agreeable for the same. The Respondent informed the Appellant that she would undergo any medical test with any Doctor as per the choice of the Appellant. The specific case of the Respondent is that she is not an impotent and due to wedlock, there was symptom of pregnancy. However, there were spontaneous abortions. Hence it is clear that she is not an impotent, she is hale and healthy and she is physically fit to beget a child. In support of his contention, the Appellant has not examined any Doctors. To declare that the particular lady was an impotent, sufficient material must be produced before the Court. On the basis of the oral assertion made by the Appellant, a decree of divorce cannot be granted on the ground of impotency. The impotency is inability to perform sexual intercourse, even after the fair trial. In the instant case, the specific case of the Respondent is that the marriage has been consummated and due to the wedlock, there was a symptom of pregnancy. Due to premature, it was spontaneously aborted. That apart, the Appellant himself issued a notice to the Respondent calling upon her to join him in the marital house. If the Respondent is an impotent, the question of issuing notice calling upon the Respondent to join him in the marital house does not arise. Even in the notice issued, he had not made any allegations regarding impotency. Hence, the Appellant has not made out any case for grant of divorce or annulment of the marriage u/s 12 of the Hindu Marriage Act. Except, mere assertion in the petition alleging that the Respondent is stubborn, and she had scant respect for elder members of the family, no material has been produced before the Court or to show any particular incident in which she has disrespected the elders. In the absence of the same, the case of the Appellant cannot be

accepted. The Court below after considering the oral and documentary evidence led by the parties, dismissed the petition filed by the Appellant by a well considered order.

18. We do not find any ground to interfere with the well considered order passed by the Court below. Hence, we pass the following

ORDER

The appeal filed by the Appellant is dismissed.

Parties to bear their own costs.