

(2023) 11 TEL CK 0035

High Court For The State Of Telangana:: At Hyderabad

Case No: Family Court Appeal No.189 Of 2011

Venigandla Rajayalakshmi,

APPELLANT

Vs

Venigandla Venkata

RESPONDENT

Date of Decision: Nov. 17, 2023

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9, 13(1)(ia), 13(1)(ib)
- Indian Penal Code, 1860 - Section 323, 506, 509

Hon'ble Judges: K.Lakshman, J; K. Sujanam, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal is preferred by the appellant against order dated 22.03.2011 made in O.P.No.53 of 2009 on the file of the Family Court, at Secunderabad, whereunder, the learned Judge dissolved the marriage of appellant and respondent. The appellant is wife and the respondent is husband. The husband filed O.P.No.53 of 2009 for dissolution of marriage under Section 13(1) (ia) and (ib) of Hindu Marriage Act, 1955 (for short 'Act, 1955') on the grounds of cruelty and desertion. Challenging the impugned order, the wife who is respondent in O.P., filed the present appeal.

2. The brief facts of the case as per the said O.P., are that the appellant and respondent got married on 27.04.1990 at Ponnur as per the Hindu rites and customs. On 03.09.1993 they were blessed with a male child. In the year 1996 appellant left to her parents' house during her fifth month pregnancy and later they were blessed with the second male child. The appellant and her parents taking advantage of the prior relationship with the respondent started abusing the respondent and caused mental agony to him. Even then, the respondent, with all patience bore things but the appellant left the house in the year 2000. After the intervention of elders, the appellant joined the respondent in the year 2004. In the year 2004 the parents of respondent died. Later, the appellant left respondent in

March 2006 and filed criminal case against him in C.C.No.123 of 2006 under Sections 323, 509 and 506 of Indian Penal Code (for short 'IPC'). On 25.04.2006 the respondent gave notice to appellant.

3. On behalf of appellant/respondent therein, counter was filed denying the material allegations. She contended that they lived together happily for ten years and after that her husband got addicted to bad vices and was irresponsible towards the family. In spite of counseling by the elders, the respondent did not change his behavior. She alleged that respondent developed illicit intimacy with one Nagamani, neglecting the family. He also tried to take away her life with children by putting gas stove on leakage and threatening to pour kerosene and lit the fire. She was rescued with the help of relatives. Even then the respondent continued to harass appellant and necked her out along with children on 21.01.2007. Thereafter, she filed Pre Litigation Case No.15 of 2007 and DVC No.3 of 2007 with a hope of conciliation but the respondent did not turn up and the same was closed.

4. To prove the case, the husband himself got examined as PW.1 and PW.2 was examined and Exs.A1 to A5 were marked. On behalf of wife, she herself got examined as RW.1 and RW.2 was examined and Exs.B1 to B3 were marked.

5. Basing on the evidence on record and considering the documents, the Family Court dissolved the marriage of appellant and respondent.

6. Heard Sri B.Madhusudan Rao, learned counsel representing Sri N.Ravi Prasad, learned counsel for appellant/wife. Despite of service of notice, there is no representation on behalf of respondent/husband.

7. Learned counsel appearing for appellant submitted that the Family Court has not considered the evidence on record in proper perspective and has failed to appreciate that there were some differences between the parties after the year 2000 and that the appellant was driven out of the house for some time and at the intervention of the elders she again joined respondent.

8. Learned counsel for appellant further submitted that the Family Court has failed to appreciate that the respondent admitted in his cross examination that appellant used to insist him to work for the welfare of the family as a dutiful husband, and the same does not amount to cruelty. No grounds for cruelty were proved by respondent. He contended that the desertion was not at the instance of appellant as she was driven out of the house by respondent and thereby, she was forced to reside with her parents and there is ample evidence that the children were studying in Ponnur till 2007 and only after 2007 the appellant, along with her children, left the house of respondent and went to the house of her parents as she had no other option left. Therefore, prayed this Court to set aside the impugned order dated 22.03.2011.

9. Having regard to the submissions made, it is noted that there is no dispute with regard to the marriage between parties and admittedly, both the parties are relatives. In O.P.No.53 of 2009 the husband himself got examined as PW.1 and PW.2 who is his relative was examined and Exs.A1 to A5 were marked. On behalf of wife, she herself got examined as RW.1 and her father was examined as RW.2 and Exs.B1 to B3 were marked. As the husband filed petition on the ground of cruelty and desertion, he has to prove the cruelty and desertion.

10. It is an admitted fact that the wife filed criminal case against husband in C.C.No.123 of 2006 under Sections 323, 509 and 506 of IPC and the same ended in acquittal. She also filed dowry harassment case vide C.C.No.28 of 2007 which also ended in acquittal. She also filed DVC No.3 of 2007 whereunder, maintenance was granted to her. She also filed O.S.No.213 of 2006 seeking partition and possession of the family properties of the husband and mesne profits relying upon an unregistered will. The said suit was partly decreed awarding maintenance of Rs.12,000/- per annum to the wife and Rs.30,000/-per annum to the children till their majority and creating charge over item No.1 and 4 of 'A' schedule property while dismissing the rest of the claim.

11. The appellant filed this appeal contending that the Family Court has not considered the evidence on record and has hastily decided that there is cruelty by wife and that she herself deserted the husband, but she intended to continue the marital life with her husband, whereas, the evidence on record shows that she filed criminal case against her husband in the year 2006, filed DVC in the year 2007 and also filed a civil suit in the year 2006.

12. The contention of respondent is that from the year 2006 his wife is not residing with him and she resided with her parents.

13. At this stage, it is important to note that appellant filed several cases against respondent and this itself shows that she was not residing with her husband from the year 2006 as filing of such cases is not possible while residing with her husband. Though the appellant claimed to be interested to continue her marital life with respondent, no petition was filed by her under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Instead, she filed cases against her husband seeking maintenance and alleging harassment. Further, she also filed a suit for partition basing upon a will deed executed by her father in law.

14. Though appellant alleged that the respondent has developed illicit intimacy with one Nagamani, the said allegation is unfounded as no evidence is adduced or material is placed on record to prove the same. Furthermore, though appellant filed case against respondent under Sections 323, 509 and 506 of IPC, the same ended in acquittal of respondent.

15. According to appellant, her husband got addicted to bad vices after the death of his parents and thereafter, she left him and resided separately. Later, she stated

that due to the intervention of elders, she joined her husband in the year 2000, whereas, the parents of respondent died in the year 2004. Therefore, it is clearly seen that her allegation is contradictory to her own statement. Further, the appellant also alleged that her husband used to collect the lease amount of land owned by her parents, but during the cross examination of RW.1 and RW.2, both admitted that the said land was in their possession since the year 2007 and they are taking the lease amounts.

16. Admittedly, both the appellant and respondent are living separately from the year 2006. Further, the appellant filed criminal case against respondent in the year 2006, filed DVC in the year 2007 and also filed a civil suit in the year 2006, which clearly shows that she never tried to reconcile the relationship.

17. In view of the above discussion, this Court is of the opinion that the Family Court has rightly dissolved the marriage between the appellant and respondent, and there are no grounds made out by the appellant to set aside the order of the Family Court in O.P.No.53 of 2009 and there is no need to interfere with the impugned order dated 22.03.2011. Therefore, this Court is of the opinion that there are no merits in the appeal and the same is liable to be dismissed. Accordingly, the appeal is dismissed. There shall be no order as to the costs.

As a sequel, the miscellaneous petitions, if any, pending in this appeal shall stand closed.