V. Venkateshwarlu Vs Smt. V. Mamatha

F.C.A. No. 65 of 2005

Court: Andhra Pradesh High Court

Date of Decision: Dec. 6, 2013

Citation: AIR 2014 AP 24 : (2014) 2 ALD 437 : (2014) 2 DMC 446

Hon'ble Judges: M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: G. Madhusudhan Reddy, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.
The appellant is the husband of the respondent. Their marriage was performed on 16.08.1998 at Secunderabad

and out of the wedlock, they had two female children. The appellant filed O.P. No. 353 of 2002 in the Family Court, Hyderabad for divorce

against the respondent by pleading grounds of cruelty u/s 13(i)(ia) of the Hindu Marriage Act (for short "the Act"). He pleaded that ever since the

marriage, the respondent was harassing him on trivial issues and in fact, left the matrimonial house on 25.05.2000. Thereafter, she is said to have

returned, but again left the home on 21.09.2000. He alleged that the respondent used to insist on putting a separate residence from the parents of

the appellant and in spite of his best efforts, there was no change in her attitude. It was stated that though he got issued a legal notice, dated

28.04.2002, requiring the respondent to join him, she did not accede to the request and on the other hand, had initiated false criminal proceedings.

The O.P. was opposed by the respondent. She pleaded that at the time of marriage, dowry of Rs. 3,00,000/- was given to the appellant apart

from household articles and gold items. It was alleged that she was beaten and ill-treated by the appellant. She stated that on several occasions,

compromise was effected, but the cruel attitude of the appellant did not change. She stated that she underwent operation on 10.01.2002 for

appendicitis, which, according to her, was caused on account of the highhanded acts on the part of the appellant, and that he did not even care to

see her when she was in hospital. She pleaded that unable to bear the harassment caused to her, she had to approach the Police under the relevant

provisions of law.

2. Through its order, dated 15.10.2004, the trial Court dismissed the O.P. Hence, this appeal.

3. The appellant argued in person. Apart from reiterating the contents of the petition, he stated that the acts and omissions on the part of the

respondent constitute cruelty. Placing reliance upon certain precedents, he argued that the very fact that both of them are living separately for the

past several years and that he was acquitted in the criminal case filed by the respondent is sufficient to hold that a case is made out for divorce. He

contends that every effort was made by him to live with the respondent, but the latter harassed him. The appellant submits that the respondent

created problems not only to him, but also to his parents, at Devarakonda. The respondent is also said to have illegally occupied certain properties

with the help of anti-social elements. He submits that the trial Court ought to have granted the decree for divorce.

4. Learned counsel for the respondent, on the other hand, submits that it was the appellant, who subjected the respondent to cruelty ever since the

marriage and in the interest of the children, the respondent was bearing all that. He submits that the trial Court has analyzed not only the oral and

documentary evidence, but also had the opportunity to interact with the parties and refused the relief of divorce. He submits that if the parties

herein are living separately, the appellant is squarely responsible for the same.

5. It appears that the O.P. was initially filed u/s 10 of the Act and later on, the relief referable to Section 13(i)(ia) of the Act was claimed. The trial

Court framed only one point for its consideration, namely ""Whether the appellant is entitled to the decree for divorce on behalf of the appellant,

P.Ws. 1 to 5 were examined and Exs. P1 to P25 were marked. On behalf of the respondent, R.Ws. 1 and 2 were examined and Exs. R1 to R3

were filed. The O.P. was dismissed.

6. The point that arises for consideration before us is as to ""whether the appellant made out a case for divorce against his wife, the respondent"" The

marriage took place in the year 1998 and it appears that discard between the parties became acute by the year 2000. The respondent is said to

have left the house of the appellant more than once and the appellant got issued a notice, dated 28.04.2002, marked as Ex. P4. From the said

notice, it is evident that the appellant wanted the respondent to join his company. That was followed by two more legal notices. In the meanwhile,

the respondent instituted proceedings u/s 498-A I.P.C. resulting in C.C. No. 106 of 2003 on the file of the Judicial First Class Magistrate,

Devarakonda. Almost, simultaneously a suit was filed by the father of the appellant against the respondent in relation to some immovable property

in Nalgonda District.

7. In case the grievance of the appellant is about the respondent leaving the matrimonial house, he ought to have pleaded the ground of desertion.

The fact that such a ground was not pleaded mean that he did not have any grievance about the respondent living separately; reasons therefor,

apart.

8. The ground of cruelty needs to be proved with reference to specific acts and omissions. The mere fact that one of the spouses is living

separately cannot, by itself, constitute cruelty. The filing of the criminal case by the respondent and acquittal of the appellant therein, is being

projected as an act of cruelty. Indiscriminate institution of criminal proceedings by one of the spouses against other, just with a view to harass, can

be in a given case, treated as an act of cruelty. However, even instance of filing of a complaint u/s 498-A I.P.C. by a woman spouse, by itself,

cannot be treated as an act of cruelty, notwithstanding the acquittal of the accused therein. If that is so, the easiest way for male spouse to get rid of

his wife would be to harass her, leading to filing of a complaint u/s 498-A I.P.C. and citing the same as an act of cruelty in an O.P. for divorce.

That was never the intention of the Parliament when it enacted Section 498-A I.P.C. and other related provisions. The emphasis was to protect the

woman spouse, than to create an avenue or opportunity for the male spouse to seek divorce solely on the basis of institution of such proceedings.

9. Reliance is placed upon the judgments of the Delhi High Court in Dr. Seema Vs. Dr. Alkesh Chaudhary, and of this Court in Gajjala Shankar

Vs. Anuradha, . The facts of those cases are substantially different from those of the present case. Solitary institution of a complaint by the

respondent cannot be constituted as an act of cruelty u/s 13(i)(ia) of the Act. The appellant has also pleaded certain other facts, which, according

to him, constitute cruelty. However, most of them are not in relation to him. For instance, the respondent is said to have gone to Devarakonda and

evicted the father of the appellant from certain premises. A civil suit was filed in relation thereto. If the respondent has gone to her matrimonial

home and if she faced any harassment, it cannot be treated as an act of cruelty towards the appellant. If one takes into account, the bodily injuries

or inconveniences, if any, suffered by the parties, the swing is in favour of the respondent. The appellant did not plead any acts of assault against

him on the part of the respondent. The record, on the other hand, discloses that after two daughters were born, the respondent suggested family

planning operation to the respondent and not heeding to her request, the appellant is said to have forced her to use a devise, which resulted in

appendicitis. Exs. R1 and R2 are the documents in relation to the appendicitis operation and treatment thereof. Her plea that the appellant did not

even care to visit her when she was undergoing treatment in the hospital, remains unrebutted. We are not at all convinced that the appellant proved

the ground pleaded by him. Therefore, he is not entitled for the decree of divorce. The trial Court has analyzed the matter on correct lines and from

proper perspective.

10. The appeal is accordingly dismissed. There shall be no order as to costs. The miscellaneous petitions filed in this appeal shall also stand

disposed of.