(2013) 12 AP CK 0056

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 4286 of 2013

P. Utheja		APPELLANT
	Vs	
S. Srinivas		RESPONDENT

Date of Decision: Dec. 23, 2013

Citation: (2014) 2 ALD 322 : (2014) 3 ALT 753

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: D. Pramada, for the Appellant; Eranki Phani Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.
This Civil Revision Petition is directed against the order dated 19.7.2013 in I.A. No. 269 of 2013 in FCOP No. 248 of 2012 on the file of the Court of the Family Judge, Secunderabad. The revision petitioner is the legally wedded wife of the respondent. She filed O.P. No. 248 of 2012 against the respondent seeking a decree for annulment of the marriage on the ground of non-consummation of marriage as well as a decree for divorce on the ground of cruelty.

2. The respondent herein filed I.A. No. 269 of 2013 under Order 7 Rule 10 of C.P.C. with a prayer to return O.P. No. 248 of 2012 for want of territorial jurisdiction. The said I.A. was allowed by the Court below by order dated 19.7.2013 and aggrieved by the same this revision petition is filed.

3. For the sake of convenience, the petitioner and the respondent shall hereinafter be referred to as "wife" and "husband" respectively.

4. I have heard the learned counsel for both the parties.

5. As could be seen from the material available on record, the marriage between the petitioner and the respondent is not in dispute. According to the revision petitioner/wife, the marriage was performed at Nama Kalyana Mandapam, Surya Convention Centre, Beside Balaji Hospital, Kompally Road, Secunderabad. It is claimed by her that at the time of presentation of O.P. she was residing at Plot No. 61, Phase-II, Sancharapuri Colony, Old Airport Road, New Bowenpally, Secunderabad. Thus O.P. No. 248 of 2012 was filed in the Family Court, Secunderabad.

6. The respondent/husband filed I.A. No. 269 of 2013 alleging that the wife was not a resident of New Bowenpally, Secunderabad and that at no point of time she lived in the address given in O.P. No. 248 of 2012. It was also pleaded that the revision petitioner/wife is a resident of Alwal and even in the criminal complaint lodged by her on 6.3.2013 vide FIR No. 133 of 2013 at Alwal P.S. her address was shown as H. No. 2-25, Near Harijan Basthi, Old Alwal. Thus it was alleged that the O.P. was presented in the Family Court, Secunderabad suppressing her true residence and claiming falsely that she is a resident of New Bowenpally, Secunderabad. Thus, he prayed to return the main O.P. for want of territorial jurisdiction.

7. Though the petitioner filed a counter and contended that by the date of presentation of O.P. No. 248 of 2012 she was actually residing at New Bowenpally, Secunderabad, the Court below passed the order under Revision holding that the wife did not produce any evidence to substantiate her claim that she was resident of the address furnished in the main O.P. and therefore the O.P. ought not to have been numbered accepting the jurisdiction of the Family Court, Secunderabad.

8. Assailing the said order, it is vehemently contended by the learned counsel for the revision petitioner that the Court below committed a grave error in allowing I.A. No. 269 of 2013 ignoring the plea of the petitioner that she was residing with her friend in the address mentioned in the O.P. at the time of presentation of O.P. It is also contended that at the time of filing of O.P. the petitioner had produced proof to show that she was residing at New Bowenpally, Secunderabad and the said fact was also verified and then only O.P. was numbered. It is further contended that the application for return of O.P. under Order 7 Rule 10 of C.P.C. is nothing but an attempt to drag on the proceedings and it is not bona fide and therefore the Court below ought to have dismissed it in limine.

9. Contending that at the stage of considering an application under Order 7 Rule 10 of C.P.C. what is to be looked into by the Court is the plaint and the averments therein but not the plea taken in the written statement, the learned counsel for the petitioner relied upon Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and Others, , Saleem Bhai and Others Vs. State of Maharashtra and Others, and Smt. P. Himabindu Vs. P. Jayasimharaja,

10. On the other hand, the learned counsel for the respondent while supporting the order under Revision submitted that the same warrants no interference by this Court.

11. Section 19 of the Hindu Marriage Act, 1955, as amended by Act 50 of 2003 entitles a wife to present a petition under the said Act to the District Court within the local limits of whose ordinary original civil jurisdiction she is residing on the date of presentation of the petition.

12. The specific case of the revision petitioner/wife is that by the date of presentation of O.P. on 23.04.2012 she was residing at New Bowenpally, Secunderabad. The respondent/husband disputes the said fact relying upon the criminal compliant lodged by her subsequently on 6.3.2013 wherein her residential address was shown as H. No. 2-25 of Old Alwal which is the residence of her parents.

13. It was also pointed out by the respondent/husband that the address shown in O.P. No. 248 of 2012 i.e., New Bowenpally, Secunderabad is the address of one A. Swapna, who is mentioned as Witness No. 4 in the criminal complaint, dated 6.3.2013.

14. The version of the petitioner/wife is that the said A. Swapna is her friend and that at the time of presentation of O.P. No. 248 of 2012 she was staying in her friend''s house at New Bowenpally, Secunderabad since she was not interested in staying with her parents at that point of time.

15. From the own version of the respondent, the address shown by the petitioner in O.P. No. 248 of 2012 is not a fabricated address but it is the address of the witness No. 4 mentioned in the criminal complaint.

16. It is relevant to note that in the order under Revision it was recorded by the Court below that the petitioner and respondent had been to United States of America after their marriage and that they started living separately since 23.03.2012 on account of the differences between them and subsequently the wife returned to India on 27.3.2012. Admittedly the O.P. was presented on 23.04.2012 within one month from the date of her return to India. It is also pertinent to note that the revision petitioner/wife is highly educated and did her M.S. in Electrical Engineering from University of Southern California and thereafter she did M.B.A. from Indian School of Business, Hyderabad and she was employed as a Business Development Manager in a company at Hyderabad before marriage. It is not unusual or abnormal for such an educated and independent woman to opt to stay with a friend instead of her parents immediately after her return from USA where she had allegedly undergone traumatic experience. Obviously, the revision petitioner was going through a difficult phase in the life soon after her return from U.S.A. during which period she was constrained to take a decision to seek for annulment of marriage by approaching the Court of law. Therefore, there is no reason to disbelieve her plea that at the relevant point of time she stayed with her friend A. Swapna at New Bowenpally, Secunderabad. Merely because she could not produce any documentary proof to show that she was actually residing with her sister at the relevant point of time, it cannot be assumed that she had shown a false address so as to pursue her remedy in a forum of her choice.

17. In the facts and circumstances of the case, it appears to me that the conclusion of the Court below that the petitioner was not residing at New Bowenpally, Secunderabad at the relevant point of time is nothing but an erroneous assumption.

18. At any rate, the law is well-settled that the plaint is returnable under Order 7 Rule 10 of C.P.C. only where the finding about want of jurisdiction can be arrived at on the averments in the plaint itself. Where the allegation of the defendant requires enquiry and the evidence is needed to arrive at a conclusion, then it is not a matter for return of plaint at the threshold.

19. For the aforesaid reasons, in my considered opinion the Court below ought not to have arrived at a conclusion at this stage that the petitioner was not residing in the address mentioned in the O.P. and that the Court below had no territorial jurisdiction.

20. Accordingly, the order under Revision is set aside and I.A. No. 269 of 2013 shall stand dismissed. In the result, Civil Revision Petition is allowed. No costs. Consequently, Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.