

(2013) 12 AP CK 0067

Andhra Pradesh High Court

Case No: A.S. No. 3433 of 2003 and F.C.A. No's. 179 of 2008, 306 of 2012

Sri P. Illesh Yadav

APPELLANT

Vs

Smt. P. Suvarna

RESPONDENT

Date of Decision: Dec. 12, 2013

Citation: (2014) 3 ALD 400 : (2014) 2 ALT 711

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

Bench: Division Bench

Advocate: Miland G. Gokhale, for the Appellant; T.P. Acharya, for the Respondent

Judgement

L. Narasimha Reddy, J.

The First Appeal and two Family Court Appeals are between the same parties. Hence, they are disposed of through a common order. For the sake of convenience, the parties are referred to as arrayed in A.S. No. 3433 of 2003.

2. The appellant is the husband of the respondent. Their marriage took place on 31.03.1994. It is stated that they lived together for about one year harmoniously and thereafter, the respondent left the matrimonial home. The respondent filed O.S. No. 120 of 2001 in the Family Court, Secunderabad, u/s 18 of the Hindu Adoption and Maintenance Act, 1956, seeking maintenance at the rate of Rs. 3,000/- per month. She narrated the events that have taken place, ever since their marriage and ultimately pleaded that the appellant is under obligation to maintain her. It was mentioned that the respondent initially filed M.C. No. 1 of 1998 u/s 125 Cr.P.C. in the Mahila Court, Hyderabad and that an order was passed on 28.04.2000 granting maintenance at the rate of Rs. 500/- per month. It was also stated that the appellant is employed in B.S.N.L. and drawing substantial amount as salary.

3. The suit was contested by the appellant by filing written statement. He stated that the respondent left the house on her own accord and in that view of the matter, he is not under obligation to pay amount towards maintenance.

4. Through its judgment dated 18.07.2013, the Family Court decreed the suit granting maintenance at the rate of Rs. 1500/- per month. Aggrieved by that, the appellant filed A.S. No. 3433 of 2003.
5. The appellant filed O.P. No. 595 of 2003 in the Family Court, Hyderabad, for divorce against the respondent u/s 13(1)(1a)(1b) of the Hindu Marriage Act, 1955. He pleaded that the respondent left him within one year from the date of marriage and thereafter, filed frivolous complaints and cases. He stated that the acts and omissions on the part of the respondent amount to cruelty. The O.P. was opposed by the respondent by filing a counter. She virtually repeated the contents of plaint in O.S. No. 120 of 2001. She has also pleaded that the appellant is residing with one Bhagyalakshmi and begot a son through that lady and that it is the appellant, who deserted her.
6. The O.P. was allowed by the Family Court through order dated 10.11.2005 and a decree for divorce was passed. Aggrieved by that, the respondent filed F.C.A. No. 179 of 2008.
7. Stating that the maintenance at the rate of Rs. 1500/- per month granted in O.S. No. 120 of 2001 is not adequate, the respondent filed F.C.O.P. No. 373 of 2010 for enhancement of the amount to Rs. 10,000/- per month. She also claimed medical and incidental expenses of Rs. 20,000/- per annum. The Family Court, Secunderabad, dismissed the said F.C.O.P. mainly on the ground that A.S. No. 3433 of 2003 is pending before this Court. F.C.A. No. 306 of 2012 is filed against the said order.
8. The disharmony between the appellant and the respondent gave rise to several proceedings that include an M.C. u/s 125 Cr.P.C., a complaint u/s 498-A I.P.C., a suit for maintenance by the respondent, an O.P. for divorce, by the appellant and a fresh O.P. for enhancement of maintenance by the respondent.
9. The central issue turns around the facts pleaded by the appellant in O.P. No. 595 of 2003. The other two proceedings are in relation to maintenance and are subsidiary in nature. The trial Court framed three points for consideration in that O.P., namely, (1) whether the respondent treated the petitioner with cruelty?; (2) whether the respondent deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition? and (3) whether the petitioner is entitled for divorce on the ground of cruelty and desertion as claimed by him?.
10. The appellant deposed as P.W. 1 and he filed Exs. P. 1 to P. 9. The respondent deposed as R.W. 1 and she filed Ex. R. 1-birth certificate.
11. On point No. 1, the trial Court found that the ground of cruelty is not established. However, the ground of desertion was found to have been proved.

12. Therefore, the only question that arises for consideration is as to whether the respondent can be said to have deserted the appellant?

13. Desertion if proved, would certainly constitute a ground for granting the relief of divorce. The mere fact that the parties to a marriage are living separately, cannot give rise to a presumption as to the desertion on the part of one of the spouses. It is only when one spouse has chosen to live separately from the other, without there being any justification that the former can be said to have deserted the latter. Here, itself, a note needs to be added. A spouse who created uncongenial and unfavourable atmosphere for the other compelling him or her to leave the matrimonial house, cannot plead the ground of desertion. The reason is that a perpetrator cannot be permitted to wear the mantle of an oppressed.

14. In the instant case, the appellant pleaded that the respondent left his house hardly within one year from the date of marriage and did not come back. He has also referred to certain panchayats said to have been held by the elders. The version of the respondent, on the other hand, is somewhat different. She stated that the appellant and his parents demanded her to bring additional dowry for purchase of buffaloes and cows for maintenance of dairy, and when she expressed her inability, they dropped her at the house of her parents with a promise to take her back within one week and they did not turn up thereafter. She did not dispute the conducting of panchayats. However, she stated that the appellant is living with one Bhagyalakshmi and has also begotten a child through that woman.

15. Though the appellant made an attempt to deny the allegation pertaining to his relationship with another woman by name Bhagyalakshmi, he is not successful in this regard. The respondent filed Ex. B. 1, the birth certificate of a child, whose parents are Illesh Yadav and Bhagyalakshmi. The appellant did not dispute that the person named in Ex. B. 1 as father of the child is himself. When the appellant is leading life with another woman, he just cannot expect the respondent to join him.

16. This is a typical case, in which the respondent, during the course of the counseling, stated that notwithstanding the uncongenial atmosphere in the house of the respondent, she is prepared to live there. It is the appellant, who flatly refused to take the respondent to his house. The record also does not disclose any meaningful attempt made by him, from the beginning, to take the respondent to his home.

17. In these circumstances, it cannot be said that the respondent deserted the appellant. On the other hand, it is the appellant, who created an unfavourable atmosphere for the respondent to leave and even when the latter expressed her willingness to live with him, the appellant did not show any inclination. The finding of the trial Court to the effect that the respondent deserted the appellant cannot be sustained in law. Therefore, F.C.A. No. 179 of 2008 is allowed, setting aside the decree of divorce passed therein.

18. A.S. No. 3433 of 2003 is filed challenging a decree, which granted a sum of Rs. 1500/- per month as maintenance to the respondent. The relationship between the parties is not in dispute and we do not find any ground to interfere with the decree passed by the trial Court.

19. The subject matter of F.C.A. No. 306 of 2012 is nothing but continuation of A.S. No. 3433 of 2003. An independent O.P. was filed for enhancement of the maintenance granted in O.S. No. 120 of 2001. It is not in dispute that the appellant is employed in B.S.N.L. and drawing fairly good amount as salary. The respondent has no income whatsoever. The appellant is under obligation to maintain her. By any standard, Rs. 1500/- per month is insufficient for an individual to lead life with basic necessities. We are of the view that the maintenance can be enhanced to Rs. 4,000/- per month.

20. Hence, A.S. No. 3433 of 2003 is dismissed and F.C.A. No. 306 of 2012 is allowed enhancing the maintenance from Rs. 1500/- per month to Rs. 4000/- per month with effect from January, 2014.

21. In the result, A.S. No. 3433 of 2003 is dismissed and F.C.A. Nos. 179 of 2008 and 306 of 2012 are allowed. There shall be no order as to costs. The Miscellaneous Petitions filed in these appeals shall stand disposed of.