
Smt. Nethravathi M.L @APPELLANT@Hash Dr. B.N. Shivaswamy & Ors

Writ Petition No.39350 of 2016

Court: Karnataka High Court

Date of Decision: March 8, 2018

Acts Referred:

Constitution of India, 1950 " Articles 227#Hindu Marriage Act, 1955 " Section 13 (1)(ia), 13 (1)(ib)

Hon'ble Judges: VINEET KOTHARI, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

1. The petitioner, Smt. Nethravathi M.L. has filed this writ petition under Article 227 of Constitution of India on 18/07/2016 aggrieved by the order

passed by the Principal Judge, Family Court, Hassan on 22/06/2016 in Matrimonial Case, M.C.No.17/2013, a Divorce Petition filed by the Respondent

Husband, Dr. B.N. Shivaswamy against the present petitioner, Smt. Nethravathi M.L under Section 13 (1)(i-a) & (i-b) of the Hindu Marriage Act,

1955.

2. The impugned order dated 22/06/2016 has been passed by the learned Family Court rejecting the I.A.No.10 filed by the present petitioner, Smt.

Nethravathi M.L. seeking impleadment of one Smt. Revathi @ Vedavathi and Master Khushadwaj, who according to the petitioner Smt. Nethravathi

M.L. were the second wife and her son of the second, but illegal marriage with the Respondent Dr.B.N. Shivaswamy.

3. The Court below rejected the said Application for impleadment of these two persons, viz. Smt. Revathi @ Vedavathi and Master Khushadwaj by

the impugned order dated 22/06/2016 giving the following reasons for the same.

19. As such, order 1 rule 10(2) of code of civil procedure, provides that at any stage of the proceedings, the Court is empowered to implead the

parties to the proceedings who are necessary parties or proper parties to the proceedings and whose presence is required for effective adjudication of

the dispute between the parties to the proceedings.

20. In the light of these provisions, it is noted that the petitioner has not sought any relief against the proposed respondents and more so as per the law,

the respondent is not permitted to seek any reliefs against the proposed respondents in the present proceedings before this Court in this case. From

that angle of the matter the presence of the proposed respondents are not required before this Court in this case as parties to the proceedings.

21. The maintainability of contention taken by the respondent regarding the alleged second marriage of the petitioner with the proposed respondent

No.2 may be considered in the proceedings by this Court on merits, at the time of final disposal of this case. In the opinion of this Court, the presence

of the proposed respondents as parties to the proceedings is not necessary and required to adjudicate the case made out by the respective parties.

22. Keeping note of the contention of the respective parties, in the opinion of this Court, no prejudice will be caused to the proposed respondents if

they are not arrayed as parties because this Court is not going to decide any alleged rights of alleged second wife and child of the petitioner in this

case.

23. Hence, from any angle of the matter the respondent is not entitled for the reliefs sought for in this application. Accordingly the points are answered

in the Negative.

4. The learned Senior Counsel for the petitioner Smt. Nethravathi M.L., Mr. M. Sivappa along with Mr.K.T. Govinde Gowda have submitted before

the Court that the proposed Respondent parties, viz., Smt. Revathi @ Vedavathi and her son, Master Khushadwaj were proper parties to the said

Divorce Petition filed by the husband and the learned Court below has erred in not impleading them in the present lis pending between the parties

under Section 13 (1)(i-a) & (i-b) of the Hindu Marriage Act, 1955.

5. The learned Senior Counsel Mr. M. Sivappa relied upon the two Division Bench decisions of this Court, viz. in the case of Arun Kumar Agarwal

Vs. Radha Arun and another, AIR 2003 Kar.508 and a subsequent decision of another Division Bench of this Court in the case of K.N. Sunil Kumar

Vs. Preethi Prasad and others, 2007 (1) KCCR p.594 (DB) and submitted that the impleadment of these two parties, viz. the alleged second wife of

the petitioner Dr.B.N. Shivaswamy in the Divorce Petition was essential as it also amounted to adultery on the part of the petitioner, Dr.B.N.

Shivaswamy and the Division Bench of this Court in the afore-cited judgments has clearly held that where a Divorce Petition is filed on the ground of

adultery, then the adulterer is a proper party if not a necessary party in such Divorce Petitions.

6. The relevant extract of the Division Bench judgment of this Court in Arun Kumar Agarwal's case (supra) is quoted below for ready reference.

10. There can be no doubt that in a proceeding where the Court has to decide whether the spouse of the petitioner had voluntary sexual

intercourse with another person, by adding such person (alleged adulterer) as a Respondent, the Court would be in a better position to effectually and

completely adjudicate upon the controversy. Nor can it be said that in a proceeding under S.13(1)(i) of H.M. Act, when the spouse and alleged

adulterer are impleaded as respondents, the alleged adulterer is improperly joined as a Respondent. Therefore the alleged adulterer will be a proper

party to a proceeding under S.13(1)(i) of H.M. Act. The Family Court and the learned single Judge merely concentrated on the fact no relief was

sought against the second Respondent. They, therefore, considered only whether the adulterer is a necessary party to a petition seeking divorce on the

ground of adultery, but completely ignored that the alleged adulterer is a proper party.

7. The second Division Bench judgment in the case of K.N. Sunil Kumar (supra), following the aforesaid judgment also granted similar relief in the

matter.

8. Per contra, Mr. Pratheep K.C. and Mr. Nandish Patil appearing for the Respondent No.1, Dr.B.N. Shivaswamy have submitted before the Court

that the Divorce Petition has been filed by the husband Dr.B.N. Shivaswamy on the ground of cruelty and desertion under Section 13(1)(i-a) & (i-b)

of the Hindu Marriage Act, 1955 and initially an ex-parte divorce decree was granted by the learned Family Court below, since the present petitioner,

Smt. Nethravathi M.L. failed to appear for Cross-examination of the petitioner husband, Dr.B.N. Shivaswamy and therefore, the Court below granted

an ex-parte decree of the divorce which was however, set aside by the Division Bench of this Court in M.F.A.No.4150/2014 (FC) (Smt.Nethravathi

Vs Dr. B.N. Shivaswamy) on 11/03/2016 restoring the trial to the Family Court for adjudication on merits and also directing the petitioner Smt.

Nethravathi M.L. to deposit the costs of Rs.25,000/- towards the litigation expenses.

9. However, upon a Review Petition filed by Smt. Nethravathi M.L. namely, Review Petition No.228/2016 (Smt. Nethravathi Vs. Dr. B.N.

Shivaswamy), another Division Bench of this Court vide order dated 02/12/2016 on the concession given by the Respondent Dr.B.N. Shivaswamy, the

cost of Rs.25,000/- was set aside by the Division Bench and a new time frame was fixed for disposal of the M.C.No.17/2013 between the parties.

10. The learned counsels for the Respondent Dr.B.N. Shivaswamy further submitted that the Division Bench judgments cited by the learned counsels

for the petitioner Smt. Nethravathi M.L. are not applicable to the facts of the present case because the Divorce Petition has not been filed by the

Respondent Dr. B.N. Shivaswamy on the ground of alleged adultery by the petitioner Smt. Nethravathi M.L.

11. The learned counsels for the Respondent Dr.B.N. Shivaswamy have also brought to the notice of the Court as noted in the impugned order dated

22/06/2016 by the Family Court also that the present petitioner, Smt. Nethravathi M.L. has also filed a private complaint on 13/01/2012 in PCR

No.15/2012 now numbered as C.C.No.821/2012 against the Respondent husband, Dr.B.N. Shivaswamy which is pending trial on the ground of

alleged Bigamy.

12. The learned Court below has also noted in the impugned order that the present petitioner, Smt. Nethravathi M.L. has also filed a O.S.No.50/2014

against the husband Dr.B.N. Shivaswamy for declaring the said second marriage of Dr.B.N. Shivaswamy with Smt. Revathi @ Vedavathi as null and

void and that the said Civil Suit is also pending in the Court of the Principal Civil Judge (Sr.Dn.) at Channarayapatna.

13. These facts of institution of these cases between these parties are not disputed by the learned counsel for the petitioner, Smt. Nethravathi M.L.

14. I have heard the learned counsels for the parties.

15. In the considered opinion of this Court, the impugned order passed by the learned Family Court Hassan on 22/06/2016 does not require any

interference by this Court.

16. The alleged second marriage of the Respondent Dr.B.N. Shivaswamy with Smt. Revathi @ Vedavathi for which appropriate legal proceedings

have been initiated by the present petitioner, Smt. Nethravathi M.L. does not entitle her to implead the said alleged second wife, Smt. Revathi @

Vedavathi also as a party in the present Divorce Petition filed by the Respondent husband, Dr.B.N. Shivaswamy.

17. The present petitioner, Smt. Nethravathi M.L. has not filed the said Divorce Petition on the ground of alleged adultery by the Respondent husband

in which case, applying the above-cited Division Bench judgments, perhaps the petitioner wife Smt. Nethravathi M.L. could claim that even the

adulterer partner, viz.Smt. Revathi @ Vedavathi could be impleaded in the Divorce Petition filed by her.

18. The case in hand is reverse one, where the Respondent husband Dr.B.N. Shivaswamy has filed the Divorce Petition under Section 13 (1) (i-a) &

(i-b) of the Hindu Marriage Act on the ground of cruelty and desertion. Merely because the Respondent Smt. Nethravathi M.L. who is the petitioner

before this Court in her Statement of Objections to the said Divorce Petition, has raised the ground of alleged second marriage of Dr.B.N.

Shivaswamy with Smt.Revathi @ Vedavathi and therefore it amounts to an adulterous life led by the Respondent, Dr.B.N. Shivaswamy, that does not

entitle the petitioner Smt. Nethravathi M.L. to seek necessarily the impleadment of the said alleged second wife Smt. Revathi @ Vedavathi and a son

born to her out of such alleged illegal second marriage. The husband Dr.B.N. Shivaswamy has not filed the Divorce Petition on the ground of adultery

under Section 13 (1)(i) of the Hindu Marriage Act nor the petitioner Smt. Nethravathi M.L. is claiming any Divorce on the ground of adultery under

Section 13 (1)(i) of the Act, as were the facts before the Division Bench of this Court in the aforesaid two decisions.

19. The parties to the case have to prove their respective cases on the basis of evidence to be led by them. They can not depend upon the evidence

led by the other side nor the strength or weakness thereof.

20. In a Divorce Petition under Section 13 of the Hindu Marriage Act, the lis is essentially only between the two parties to the matrimony, viz. husband

and the wife. The specified grounds on which the divorce can be obtained under Section 13 of the Act have to be established by the Applicant or the

petitioner who files the Divorce Petition. The concept of necessary and proper parties under Order 1 Rule 10 (2) of the Civil Procedure Code cannot

be widely construed to be applied to such matrimonial dispute between the two parties. It is not a Civil Suit in the nature of a property dispute which is

being decided by the Court below. But it has to decide the fate of a Hindu marriage, whether it is to be dissolved or not, on the established ground

under Section 13 of the Act or not.

21. The scope of such litigation cannot be widened by the Court below on the concept of necessary and proper parties that too by applying a case law

in a case under Section 13 (1)(i) of the Act to the cases under Section 13(1)(i-a) & (i-b) of the Act as argued by the learned Senior Counsel appearing

for petitioner, Smt. Nethravathi M.L. before this Court.

22. The remedy available to the complaining party in such a case of alleged Bigamy either under Civil law or Criminal law as may be available to such

a party has already been availed by the petitioner in the present case, viz. Smt. Nethravathi M.L., i.e., a private complaint in C.C.No.821/2012 and

O.S.No.50/2014 which are admittedly pending trial in the competent Courts.

23. The present petitioner Smt. Nethravathi M.L. cannot claim as a matter of right that the said alleged second wife, Smt. Revathi @ Vedavathi

should also be impleaded as a necessary or proper party in the present Divorce Petition filed by the husband Dr.B.N. Shivaswamy under Section

13(1)(i-a) & (i-b) of the Act on the ground of cruelty and desertion alleged to be committed by the wife Smt. Nethravathi M.L.

24. The principles applied by the learned Court below to reject the said I.A.No.10 of the present petitioner Smt. Nethravathi M.L. are, therefore,

found to be perfectly justified and requires no interference by this Court under Article 226 of the Constitution of India.

25. The judgments relied upon by the learned counsel for the petitioner are of little help to the petitioner wife and have no application to the facts of

the present case. The same are clearly distinguishable on facts.

26. The present writ petition under Article 227 of the Constitution of India is therefore, liable to be dismissed. Accordingly it is dismissed with no order

as to costs.