

Narra Sushe Vs. Narra Srinivas Re

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Court : Andhra Pradesh

Decided On : Sep-13-2013

Judge : (Judgment of the Bench delivered by

Appellant : Narra Sushe

Respondent : Narra Srinivas Re

Judgement :

THE HON'BLE Sr.JUSTICE L .NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE S.V.BHATT C.M.A.No.2943 of 1999 (Judgment of the Bench delivered by the Hon'ble Sr.Justice L.

Narasimha Reddy) dated:13-09-2013 Narra Susheela ..appellant Narra Srinivas Reddy ..Respondent Counsel for the appellant: Sr.M.

Raja Malla Reddy Counsel for the Respondent : Sr.P.

Venugopal Kumar HEAD NOTE: ?.Cases referred THE HON'BLE Sr.JUSTICE L.

NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE S.V.BHATT C.M.A.No.2943 of 1999

JUDGMENT

: (Per the Hon'ble Sr.Justice L.

Narasimha Reddy) The respondent in O.P.No.78 of 1997 on the file of the Senior Civil Judge, Siddipet, filed this appeal under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act').The O.P was filed by the respondent herein under Section 13(1) (ia) and (ib) of the Act, for divorce against the appellant.

The trial Court allowed the OP and dissolved the marriage between the parties through its order and decree dated 19-04-1999.

The respondent is the husband of the appellant.

Their marriage took place in or about the year 1987.

They are also blessed with a son.

Ten years after the marriage, the respondent filed the O.P., for divorce, alleging the grounds of desertion and cruelty on the part of the appellant.

He stated that the appellant left the matrimonial house on 28-11-1991, without any justification, and there is no possibility of restoration of the relationship.

He pleaded that the appellant used to dislike him on the ground that he is deaf and that his father was suffering from the disease of leprosy.

It was also alleged that the appellant filed criminal cases and, forcibly got a deed of gift, by the father of the respondent executed in favour of the minor child, and subjected the entire family to litigation.

The appellant filed counter, opposing the OP.

She denied all the allegations and stated that herself and the minor child were driven out by the respondent under the influence of his sister.

She stated that the sister of the respondent left her matrimonial home, and after she started living in the family of her parents, an attempt was made to sell substantial extent of land.

She pleaded that her father-in-law, i.e.the father of the respondent, objected to the same, and to protect the property from being sold, he executed a gift deed in

favour of his grand-son, i.e.the son of the parties herein.

She has narrated the nature of treatment said to have been meted out to her.

Apart from opposing the O.P., the appellant filed counter-claim for restitution of conjugal rights.

The trial Court decreed the OP, as prayed for, through its order and decree dated 19-04-1999 and rejected the counter-claim.

Hence, this appeal.

Sr.M.

Raja Malla Reddy, learned counsel for the appellant submits that the respondent did not prove the grounds of desertion or cruelty, and still, the trial Court granted the decree of divorce.

He submits that the disputes in the family arose, ever since the sister of the respondent started living separately from her husband and in the house of her parents.

He contends that the allegation that the appellant disliked the respondent on the ground that he is deaf, and his father, who was suffering from leprosy; is totally baseless.

Learned counsel submits that by the time the marriage between the parties took place, the respondent and his father were having those ailments.

He contends that the OP was filed at the instigation of the sister of the respondent and that the same woman was instrumental in filing a suit for cancellation of the gift deed, executed by the father of the respondent, in favour of the son of the parties herein.

He further submits that the very admission by the respondent that he is not willing to live with the appellant, even if she is coming forward, discloses the fallacy of the claim.

According to the learned counsel, the cruelty, if at all was on the part of the respondent, towards the appellant.

Sr.P.

Venugopal, learned counsel, who appeared for the respondent, on the other hand, submits that the appellant is living separately from 1991 onwards, and that itself is sufficient to prove the ground of desertion.

He submits that the appellant harassed the respondent and his family in several ways and subjected them to extensive litigation.

Learned counsel submits that the trial Court has appreciated the oral and documentary evidence from the correct perspective and arrived at a just and proper conclusion.

He contends that it is not at all desirable to set aside the decree of divorce, granted way back in the year 1999.

The respondent prayed for the relief of divorce against the appellant by pleading the grounds of desertion and cruelty.

The appellant filed counter-claim.

However, the trial Court framed only one point for its consideration, viz., ".Whether the petitioner (respondent) is entitled for a decree of divorce on the ground of cruelty and desertion, as prayed by him and whether the respondent is entitled for restitution of conjugal rights based on the contentions raised in the counter?".

On his behalf PWs 1 to 3 were examined and Exs.A-1 to A-5 were filed.

On behalf of the appellant, RWs 1 to 3 were examined and Exs.B-1 to B-3 were filed.

In view of the arguments advanced before this Court, the points that arise for consideration are, as to, 1) Whether the respondent proved the ground of desertion on the part of the appellant; 2) Whether the respondent established that

the appellant committed cruelty; and 3) Whether the appellant is entitled for decree of restitution of conjugal rights.

The relationship between the parties is not disputed.

The marriage between them took place in or about 1987 and they were also blessed with a male child.

The OP was filed ten years thereafter.

Desertion of one spouse by the other is recognized as a ground for divorce under the Act.

Basically, if a spouse lives separately from his or her life-partner, for a period, exceeding two years, it is treated as desertion.

However, if the very reason for a spouse to live separately is the harassment or ill-treatment, the one, who is accused of such acts, cannot take the plea of desertion.

It is only when the husband or wife leaves the matrimonial home out of his or her own volition, with an intention to live separately from the other spouse, that the act of desertion can be said to have taken place.

Another aspect is that the ground of desertion cannot be decided on the basis of one or two assertions or denials.

The circumstances that led to the living of the parties separately, need to be taken into account in entirety.

The respondent pleaded that the appellant left his company on 28-11-1991 on her own accord and did not come back.

It is pleaded that the appellant filed M.C.No.8 of 1992, in the Court of Judicial Magistrate, Class I, Siddipet, claiming maintenance and that the same has been compromised on 30-04-1993.

In his deposition, the respondent stated that there is no possibility for him to live with the appellant, since she deserted him illegally, without any excuse.

The statement, which is contained in the chief-examination reads: "....There is no possibility to live with my wife in near future on the ground of desertion because respondent illegally deserted me without excuse and illegally harassed me by filing criminal cases against me...".

Another sentence reads, "....There is no possibility of myself and respondent living together for purpose of leading any married life and as such the plea raised by the respondent as a counter claim for passing a decree of restitution of conjugal rights in her favour is untenable...".

According to the respondent, the basis for the appellant to leave the matrimonial house is that, he is a deaf person and that his father is a leper.

In the cross-examination, the following was elicited from the respondent: "....My father is big landlord and a respected man in the village.

Before marriage myself and respondent looked each other.

The respondent knows that I am deaf.

My wife knows that my father was having leprosy...".

The extent of the influence under which the respondent was reeling, or his inability to act independently, is evident from the fact that he went to the extent of saying that he does not know the name of his son, since he is not living with him.

He stated that he did not ask the appellant about the reason for desertion.

The tone and tenor of his evidence is that the act of desertion took place on the date on which, the appellant left the matrimonial home.

It was suggested to him that when the appellant objected to the attempt to sell the properties of the family, the respondent and his sister beat the appellant and tried to kill her, by throwing into a well, and that one Taduri Ramchandram rescued her.

The type of the harmony, which the respondent maintained with the appellant, is evident from a statement.

It reads, ".I have no affection on my son born to the respondent".To a specific question as to whether he can lead matrimonial life with the respondent (appellant) in the absence of his sister, his answer was, the ".respondent (appellant) is not willing to live with me".At another place, he said, ".I am not willing to live with the respondent (appellant).though she now expresses her intention to live with me".The episode of the respondent having been hospitalized, the appellant visiting him in the hospital, and the sister of the respondent throwing milk upon the appellant was also elicited from him.

Though he stated that his sister is ready to give evidence on his side, she was not examined.

Another question was, as to whether he is prepared to take the appellant and lead matrimonial life with her, by executing a bond before the Court that he would not harass or beat her, the answer of the respondent was, ".I am not supposed to execute any bond to take the respondent for my own reason".PW-2 is a childhood friend of the respondent.

He stated that the appellant left the company of the respondent on the ground that the respondent is a deaf person and his father is a leprosy patient.

It was elicited from him in the cross- examination that himself and others have informed the appellant at the time of marriage itself that the father of the respondent is of a leprosy patient and still, the appellant agreed to marry the respondent.

At a subsequent stage, he stated that he did not inform the appellant about the health condition of the respondent and his father.

The evidence of PW-2 did not support the plea of desertion in any manner.

The evidence of PW-3 is absolutely of no help to the respondent herein.

He is said to have come to know about the dispute between the parties at a subsequent stage.

In his cross-examination he stated ".I do not know what are the misunderstandings between the petitioner and the respondent..I did not personally enquire respondent (appellant) why she is living separately."

The documentary evidence filed on behalf of the respondent comprised of the certified copies of the petition in M.C.No.8 of 1992, deposition therein, and documents pertaining to STC No.365 of 1994.

None of them have any bearing upon the acts of desertion.

It is essential to refer to the evidence of the appellant.

She stated that when their son was about two years old, the respondent and his sister Narsamma, on one night, at about 8 'O' Clock, beat her and tried to kill her by throwing into the well, and to ensure that her voice is not heard, pieces of cloth were pushed into her mouth.

One Mr.Ramchandram is said to have intervened and took her to the house of the Sarpanch of the Village for protection.

On the next day, the elders of the Village are said to have met, and that her father-in-law, has executed a gift deed in favour of her son.

She stated that the execution of gift deed was not to the liking of the sister of the respondent, and she got filed a suit for setting aside the same.

She expressed her willingness to live with the respondent in a rented house.

An incident is said to have taken place when the appellant visited the hospital, where the respondent was undergoing treatment.

The cross- examination was mostly in relation to the filing of M.C.8 of 1992 .and about the involvement of her sister-in-law in the affairs of their family.

The fact that the Sarpanch of the Village who rescued her, won the election against her sister-in-law, was also suggested to the appellant.

Curiously enough, a suggestion was made to her that she did not file a petition for restitution of conjugal rights.

RW-2 is the husband of the sister of the appellant.

He stated that on receiving information about the attempt made by the respondent and his sister to kill the appellant, he came to the Village along with others and tried to settle the issue.

RW-3 is a resident of the native Village of the respondent.

She stated that she came to know about the incident, beating of the appellant and attempting to throw her into the well.

In the cross-examination, nothing substantial was elicited from her.

On the basis of the evidence discussed above, it is difficult to come to a conclusion that the appellant left the matrimonial home on her own accord.

The acrimony on the part of the respondent and his other family members towards the appellant and her son is evident from the fact that O.S No.2 of 1992 was filed with a prayer to set aside the gift deed executed by the father of the respondent, in favour of his grand-son.

The appeal arising out of the decree passed therein is heard along with this appeal.

At every place, the appellant emphasized that the disputes in the family arose on account of the presence of their sister-in-law in their house, deserting her husband.

Specific reference was made to the execution of the gift deed.

The record also discloses that the sister of the respondent was defeated in elections to the office of Sarpanch, by one Mr.Ramaswamy and the said gentleman was instrumental in arranging for execution of a gift deed by the father of the respondent, in favour of the son of the parties herein.

Though the respondent stated that he would examine his sister, as a witness, he did not do so.

The plea of the appellant that the respondent and her sister have beaten up her at 8:00 p.m. on a particular day and attempted to throw her into the well by pushing a piece of cloth in her mouth and that she was rescued by the Village Rs. can not at all be ignored .

It is under these circumstances that the appellant had to leave the house of the respondent.

All the same, she expressed her willingness to live with the respondent in a rented house, if there is no interference by her sister-in-law.

At more places than one, in his evidence, the respondent expressed his disinclination to live with the appellant under any circumstances.

We also made an attempt to bring about reconciliation.

Left to himself, he was prepared to live with the appellant and their son, who is now fairly grown up, and he is said to be a post-graduate.

The sister of the respondent also appeared.

She, however, insisted that the condition of the house, where they are living is not good, and the respondent can go and live in the house, where the appellant and her son are living, in the same place.

On the next day of hearing, it was informed that, even that did not happen.

Hardly any justification was coming forth from the respondent.

One of the tests to know the mind of a party, complaining of desertion of his or her spouse, is, to see whether he/she made an effort to join the company of the other spouse.

These steps may include issuance of notice, requiring the other spouse to come and join, or filing of OP under Section 9 of the Act.

The respondent did not take any such steps.

On the other hand, when a suggestion was made to him, that the appellant is prepared to live with him, he expressed his disinclination.

When this is the state of affairs, it is just impossible to assume that the respondent proved the ground of desertion on the part of the appellant.

The point is answered accordingly.

Coming to the second point, which relates to the ground of cruelty, neither in the petition filed by him, nor in his evidence, the respondent spelt out anything that would suggest cruelty on the part of the appellant.

If one analyses the pleadings and evidence, the allegations of cruelty are in fact by the appellant, against the respondent and his sister.

They were alleged to have beaten her and attempted to throw her into a well.

The fact that the appellant had to take shelter in the house of a Sarpanch in the Village and on the next day a panchayat was conducted, is borne out by record, and is proved beyond any pale of doubt.

One of the facts pleaded by the respondent in relation to the ground of cruelty is that the appellant used to hate him because he is deaf.

The latter is a deaf and his father is a leprosy patient.

If this is proved, there may be a possibility to accept the plea.

However, PWs 1 and 2 have admitted that the appellant knew about those two aspects, even before her marriage with the respondent.

They have also stated that, to a specific question as to whether she would marry respondent with the said background, she expressed her inclination.

The appellant did not allege anything against her father-in-law.

She stated that he was very much worried about the return of his daughter to his house; intervention of that woman in the family affairs and executed the gift deed in favour of his grand-son, to protect the family property.

There is not even an iota of evidence, to suggest that the appellant had expressed her dislike towards the respondent, or his father, at any point of time.

Hence, we find that the ground of cruelty was not proved by the respondent.

Once the OP for divorce is dismissed, it is axiomatic that the counter-claim for restitution of conjugal rights be allowed.

Point No.3 is answered accordingly.

When two separate and independent grounds were pleaded by the respondent for a decree of divorce, it was incumbent upon the trial Court to frame the points in relation to the respective grounds.

The pleadings and the purport of evidence in relation to each of the ground is separate, and one and the same set of facts cannot constitute the basis for both the grounds.

The trial Court committed a procedural error in clubbing both the issues in one and the same ground.

However, we make it clear that the reversal of the findings recorded by the trial Court is not on that ground.

We, therefore, allow the appeal and set aside the order and decree passed by the trial Court.

The counter-claim is allowed and there shall be decree for restitution of conjugal rights, in favour of the appellant.

The miscellaneous petition filed in this appeal shall also stand disposed of.

There shall be no order as to costs.

_____ L.

NARASIMHA REDDY, J.

_____ S.V.BHATT, J.

Dt.13-09-2013

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