

Pramada Vs. Vijaykumar

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Court : Karnataka

Decided On : Apr-22-2016

Judge : N.K. Patil & The Honourable Mrs. Justice Rathnakala

Appeal No. : Misc.First Appeal No. 10678 of 2012 (FC)

Appellant : Pramada

Respondent : Vijaykumar

Judgement :

(Prayer: This M.F.A. is filed under Section 19 (1) of the Family Courts Act and Section 28 of the Hindu Marriage Act, against the judgment and decree dated 13.09.2012 passed in M.C. No.665/2009 on the file of the V Additional Principal Judge, Family Court, Bangalore, allowing the petition filed U/s 13 (1) (ia) of the Hindu Marriage Act, for Divorce.)

1. The appellant/wife is aggrieved by the judgment and decree passed by the V Additional Principal Judge, Family Court, Bangalore, dated 13.9.2012 on his file in M.C.No.665/2009 whereby her marriage with the respondent/husband is dissolved by decree of divorce.

2. Succinctly stated, the respondent/husband filed a petition for divorce against the appellant herein on the ground of cruelty. His case was, the parties were married on 12.6.2006 as per Hindu rites. He is working in a private Company. He got a job to the wife at Hinduja Processing and Finishing Unit, which is the sister concern of

the Company where he was working. After joining service, the wife started showing her indifferent attitude towards him. She objected him for meeting his family members. At her instance, he arranged a separate house. Even thereafter also, she was not allowing him to meet his mother and sister. She used to abuse him and his family members in obscene language loudly to humiliate and put them in embarrassment before the neighbours. Once she brought rowdy elements to his house and threatened him of breaking his legs and hands, so that he would be dependent on her to be fed. She neglected the household responsibility. She threatened him to lodge a false complaint, implicate him, his mother and sister in the criminal case. She also threatened to commit suicide by leaving suicidal note so as to send him and his family members to the jail. It is impracticable for him to lead married life with the wife in view of physical and mental cruelty exerted on him.

3. The petition was contested. In her objection statement, the wife apart from denying the allegations leveled against her by the husband set up a defence that, she is a responsible housewife and loves her husband. She never thought of freedom from him. He demanded dowry of Rs.1,50,000/- from her. Her mother is a widow and could not satisfy his demand. She is doing job and living separately. The husband and his family members have created a false story against her with an intention to perform the marriage of the husband with another girl. Even today, she is ready to start matrimonial life with the husband.

4. An effort was made to settle the differences between the spouse before the Mediation Centre, but that did not work out. Parties entered into trial and examined themselves as PW-1 and RW-1; documents Ex.P1 and P2 from the husband's side and Ex.R1 from the wife's side were marked.

5. The Family Court on overall consideration of the matter allowed the petition and dissolved the marriage by a decree of divorce.

6. Smt.Maitreyi Krishnan for Smt.Clifton D' Rozario, learned Counsel appearing for the appellant/wife submits, the husband could not prove his allegation that he has been subjected to cruelty at the hands of the wife. Instead he engaged in wild-flinging, baseless and false allegations. His allegations are devoid of specificities

and not supported by evidence, direct or corroborative. The mother and sister, who are alleged to have been abused by the wife, are not examined as witnesses. He had admitted during cross-examination that, they lived cordially together for 2 years. The divorce petition was filed by two years nine months of their marriage. It was a love marriage; as admitted by him in his cross-examination, his family members were not visiting their house when they stayed together. The conduct complained of against the wife is not so grave and weighty so as to make their living together impossible. It is a fact that, the present divorce petition was filed while they were co-habiting together under the same roof. The divorce petition is filed with a malafide intention to marry some other girl of his mother's choice. Though she never admitted having lodged a complaint to the Police, the Family Court has inferred that there is admission from her side about lodging the complaint against the husband. What she admitted was, she went to the Police Station along with her husband. Without there being pleading from the husband, the Family Court has inferred that he was humiliated and was made to bow down his head before the neighbours and friends. There was no documentary proof about the allegation of suicidal note and the Police complaint. The allegation of threat of suicide is also vague, baseless and unsubstantiated. A threat extended would not automatically constitute cruelty unless it is established that, it was given without any provocation persistently and for the flimsiest of the reasons with or without the intention to harass or mentally torture the other party. Her explanation that she was compelled by the husband to write the suicidal note is disbelieved by the Family Court. The very continuation of the co-habitation of the husband with the wife under the same roof would establish that there was no threat by the wife as alleged by him. The approach of the Family Court to the materials placed before it is erroneous. The authorities cited by the appellant were either ignored or wrongly interpreted. Hence, the conclusion reached by the Family Court and the relief founded on such improper appreciation of evidence is contrary to established position of law and procedure and same is liable to be set aside.

7. In reply, Sri.H.Manjunath, learned Counsel appearing for the respondent/husband submits, the breach in the matrimonial life commenced when the wife started demanding to transfer the house standing in the name of his mother to her name. She admits during her evidence about writing suicidal note,

but further explanation offered by her that she wrote the said suicidal note at the instigation of her husband is an unbelievable story. This admission is sufficient to establish that she was unnecessarily threatening the husband of committing suicide, sending him and his family members to the jail. She made baseless allegation that her husband is making effort to go for a second marriage, which she failed to prove. During her cross-examination, she made a reckless allegation that twice he got her pregnancy aborted intentionally against medical advice, which again she could not prove. Likewise, without a pleading for the first time in her evidence she alleged that her husband demanded dowry of Rs.1,50,000/- and that her mother being a widow was unable to pay the dowry, which is a false and imaginary story. The acts of cruelty pleaded by husband brought in evidence stood the test of cross-examination; same was not effectively rebutted during the defence evidence. The Family Court has rightly appreciated his case while allowing the petition with its sound reasoning. There is no valid ground to interfere with the judgment of the court below and the appeal is liable to be rejected.

8. With the above rival submissions, on perusal of the impugned judgment and lower court records, the sole point that arises for our consideration is, Whether the husband has proved the allegation of cruelty against the wife?

9. The facts admitted between the parties is, subsequent to their marriage dated 12.6.2006, they started residing in a separate house. They have no issues from the wedlock. As on the date of filing the petition, the parties were residing in the very same house. The main allegation against the wife on which divorce was sought was, (a) threatening of committing suicide; (b) threatening to lodge Police complaint; (c) abusing him and his family members in obscene language. Though the wife had denied the said allegations, during her cross-examination, she came up with a version that she wrote Diary with suicide note on the instructions of husband and once she had gone to Police Station with the husband at his instance. With this piece of cross-examination evidence, the Trial Court was convinced to land up to the conclusion thus:

"In this case the court has to infer from the evidence of respondent that not only she was threatening the petitioner to commit suicide and went ahead to write

suicidal note in diary to implicate him, his mother and sister. The respondent has filed false complaint against the petitioner."

We are taken aback by the above finding, which was borrowed from outside, without there being any evidentiary material. Basically the allegations lacks material particulars of the place, date and time of alleged acts. Neither the suicidal note nor the complaint was placed in evidence.

10. More or less identical allegations came up for consideration before the Coordinate Bench of this Court in Smt.Nalini Sunder -vs- Sri.G.V.Sunder AIR 2003 KANT 86). We are prompted to reproduce the relevant paragraph:

"13. It is evident that the allegation is bereft of any particulars as regards the date on which the alleged incidents had taken place.

It is also evident that according to the case set up by the husband, the threatened suicide was with the show of a knife. The petition does not contain any averments to the effect that any attempt was made or any threat given by the wife to commit suicide by consuming pills. The husband's version as given in his deposition that the wife had threatened to commit suicide by, consuming sleeping pills is therefore beyond the pleading on that point. That apart while according to the petition the alleged threats to commit suicide were by the show of a knife the deposition of the husband suggests as though it was only on one occasion that the wife had picked up a knife to take her own life. The other threats were even according to the statement made by the husband without the show of any knife or other weapon. It is common ground that the wife had at no stage hurt herself in any manner whatsoever in the alleged attempt to take her own life. The pleadings on the contrary show that the alleged threat to take her own life was a part of a quarrel in which the parties may have been shouting at each other. Even according to the husband's own version, he used to out- shout the wife on such occasions. If that be so, it is difficult to see how anything said in the heat of the moment, when both the spouses are quarrelling with each other can possibly be relied upon by the husband to argue that the wife had crossed the limits of tolerable conduct by threatening to kill herself. The least that can be said is that unless the entire genesis of the quarrel in the course of which one of the spouses holds out a threat

to take his or her life is placed before the Court, the very fact that some threat in the course of a quarrel is held out cannot be viewed in isolation or construed as mental cruelty to the other spouse. It is not difficult to conceive of situations where the spouse which is at the receiving end of an intolerable, aggressive and obnoxious conduct of the other spouse threatens to commit suicide out of desperation. Any such threat in such cases would be the result of what the spouse suffers at the hands of the other party and not because the spouse intends to mentally agonize or torture the other party by extending such threats. Suffice it to say that a distinction shall have to be borne in mind between cases where a spouse without any provocation and for the flimsiest of reasons persistently keeps threatening the commission of suicide on the one hand and cases in which such threats represent the desperation of the suffering spouse who may find it difficult to bear any further torture at the hands of the offending spouse on the other. If threats to commit suicide given in the latter situations are also treated as constituting cruelty, it may tantamount to permitting the offending spouse to take the benefit of his/her own fault by subjecting the other spouse to physical or mental torture and misery and provoking a statement that he /she would prefer to die rather than to suffer any more. To state it differently unless the threats given by a spouse to take his/her life are shown to have been given without any provocation persistently and for the flimsiest of the reasons with or without the intention to harass or mentally torture the other party, the mere fact that a threat was extended would not in itself constitute cruelty. The Court shall have in each case to examine the incident in which the alleged threat to commit suicide was extended and determine whether or not it was provoked by the conduct of the spouse who seeks to make such threats a basis for getting relief from the Court. It is in that view difficult to state as a broad principle of law that wherever the spouse extends to threat his/her life the same would without any further proof constitute mental cruelty so as to entitle the other spouse to a decree for dissolution of marriage."

11. The elementary principle of the Evidence Act under Sections 101 and 102 is a party, who comes to the court asserting a fact, has to prove the said fact. The burden of proof of the fact asserted by him and denied by the opposite side is entirely on him. Here we have the judgment before us where without a corroborative piece of evidence, the vague allegation made by the husband are

held as proved on the basis of stray statement of the wife during the cross-examination which is not worth of 'Admission' of husband's case. The other family members, who are abused and humiliated by the wife, are not examined. Instead of examining whether the husband proved his case independently and further as to whether the acts alleged if held proved, amounts to cruelty in the eye of law forming a ground for divorce, the Trial Court adopts a novel method of probing into the truthfulness or otherwise of the counter allegation made by the wife. Very fact that he was residing with his wife under the same roof would speak for itself that there was no imminent danger to his life or limb. Since we notice that very approach of appreciation of evidence is against the established procedure, we do not feel it expedient to go to the veracity of allegations made by the wife.

12. It is writ large by judicial pronouncements commencing from N.G.Dastane (Dr.) -vs- Dastane [(1975) 2 SCC 326], that the alleged acts of cruelty in a matrimonial case to entitle a spouse for divorce must be of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. To come to conclusion that because of the mental cruelty inflicted on him/her, aggrieved party cannot be expected to pull on with the other, regard must be had to their social status, educational level, cultural background and their perceptions of values in life. Ordinary wear and tear of marital life must be distinguished culling out acts of cruelty. A culminative effect of facts and circumstances emerging from the entire evidence on record shall be the basis to draw inference whether the petitioner is subjected to cruelty by the other party.

13. The case made out by the husband fails to stand to the above requirements. Their marriage being love marriage, the allegation that the wife was demanding to transfer the house standing in the name of her mother-in-law to her name, appears to be tailor- made. Likewise the allegation that wife brings rowdy elements to the house and threatens him of dire consequence is another filament of imagination looking to his conduct that, though wife was very much residing with him in the same house, he showed some other address in the cause title perhaps with some hidden agenda. Thankfully there is no allegation that wife made attempt to suicide or exerted physical violence on him, or drove him to face criminal charges.

14. The conclusion reached by the Family Court Judge on improper approach of the matter and erroneous appreciation of evidence cannot be sustained.

The appeal is allowed. The judgment and decree dated 13.9.2012 passed by the V Additional Principal Judge, Family Court, Bangalore, in M.C.No.665/2009, is hereby set aside.

The cost of this litigation is fixed at Rs.10,000/-, which shall be paid by the respondent/husband to the appellant/wife within three weeks from the date of receipt of copy of this judgment.

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