

E. Thimmappa and Another Vs. Roopa Thimmappa and Another

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Court : Karnataka

Decided On : Mar-09-2016

Judge : A.V. Chandrashekhara

Appeal No. : Crl.R.P. Nos. 619, 625 of 2014

Appellant : E. Thimmappa and Another

Respondent : Roopa Thimmappa and Another

Judgement :

(Prayer: This CRL.RP filed U/S.397 R/W 401 CR.P.C by the Advocate for the Petitioner praying that this hon'ble Court may be pleased to modify the Judgment passed by the Crl.Misc.No.36/11 dated: 14.6.11 on the file of the MMTC-IV, Bangalore and in Crl.A.No.330/13 dated:15.6.13 on the file of the P.O., FTC-XII, Bangalore and consequently be pleased to allow the Petn. filed U/S 12 of Protection from Domestic Violence Act 2005 and Residency order to the petr. and her son.)

Common Order:

1. The petitioner in the main petition, i.e. Crl.R.P.619/14, Thimmappa is the legally wedded husband of Smt.Roopa, the petitioner in the connected petition. The first wife of the Thimmappa is dead, and Roopa is a divorced lady. The marital relation of Roopa was dissolved by means of a decree of divorce passed in M.C.1001/07 dated 13.3.2008. Thimmappa had married one Girija in the year 2002 and she

died because of certain ailments, leaving behind one child aged 1 years. Thereafter Thimmappa married Roopa and Roopa gave birth to a male child on 26.12.2009 and named him as Chiranjivi.

2. The allegation of Thimmappa in the main petition is that his wife-Roopa has deserted him without any lawful or justifiable cause. Therefore, he has filed a petition seeking divorce before the family Court at Mysuru. Smt.Roopa has filed a petition for transfer of the said case to Bangalore.

3. Roopa had filed a petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005, on 29.4.2011 seeking monthly maintenance of Rs.5,000/-and compensation of Rs.5,00,000/-.

4. The said petition was decided and ultimately allowed, granting a sum of Rs.10,000/-per month to the wife as maintenance and Rs.1,00,000/- as compensation, apart from directing Thimmappa to meet all the educational expenses of his son born to Roopa. Being aggrieved by the quantum of compensation as also maintenance granted by the court, she chose to file an appeal in Crl.A. No.330/13 under Section 29 of the D.V. Act. The husband-Thimmappa also filed an appeal under Section 29 of the same Act and it was numbered as Crl.A. No.341/13. Both the appeals have been disposed of by the presiding officer of Fast Track Court- XII by clubbing them. The appeal filed by Roopa is allowed in part, enhancing the amount from Rs.10,000/- to Rs.15,000/- and the other directions are affirmed. The appeal filed by Thimmappa is dismissed.

5. Roopa is very much aggrieved on the ground that no order is passed by the first appellate court in regard to her residence and therefore, she has approached this court. Thimmappa has approached this court on the ground that enhancement of maintenance from Rs.10,000 to Rs.15,000/- is incorrect and improper, and there could not have been any order of paying compensation of Rs.1,00,000/-.

6. Both the revision petitions are taken up together for common disposal.

7. What is argued before this court by the learned counsel for the revision petitioner, Mr.C.H.Jadhav representing Thimmappa is that Smt.Roopa has filed complaint before Jaylakshimipuram police station at Mysuru and it is registered in Crime No. 293/11 for the offences punishable under Sections 498A, I.P.C. and Sections 3 and 4 of the dowry Prohibition Act. Charge sheet is also filed and the matter is pending in CC 297/11. The case filed by the husband-Thimmappa seeking divorce from his wife-Smt.Roopa is numbered as M.C.200/14. In the meantime, Thimmappa chose to file an original suit in O.S.455/14, restraining his wife to approach the media and making false allegations. Roopa has filed a petition before the family Court in M.C.3323/14 seeking restitution of conjugal rights in terms of Section 9 of the Family Courts Act. Another suit filed by Thimmappa requesting the trial court to restrain his wife from meeting his family members and not to visit his place, is pending. An execution petition is also filed in E.P.78/14 before the MMTC-IV seeking recovery of maintenance which is due. As already stated, the petition filed under Section 24, C.P.C. before this court is numbered as C.P.111/05.

8. During the pendency of these revision petitions, an application is filed by the wife-Smt.Roopa on 11.6.2015 with a request to direct her husband to visit her child-Chiranjivi, atleast once in 15 days and to spend some time with him. The said application is supported by an affidavit of the mother. Objections have been filed to this application in detail, opposing the same.

9. Heard arguments on both sides in detail.

10. After going through the records and hearing the learned counsel for the parties, the following points arise for consideration of this court:

1) Whether there are any grounds made out to invoke the revisional jurisdiction of this court in regard to the orders passed by the Fast Track Court-XII in Crl.A.330/14 and Crl.A.341/14 relating to enhancement of maintenance and rejection of the plea for residence order?

2) Whether any direction is required by this court to the petitioner-Thimmappa to visit his child as sought for in I.A.2/15?

REASONS

11. Point no.(1): The petition filed under Section 12 of the D.V.Act by Smt.Roopa in Crl.Misc. 36/11 was before the MMTC-IV at Bangalore, and Smt.Roopa is examined as PW-1 and has got marked 54 exhibits on her behalf. Thimmappa is examined as RW-1. The fact that there exists relationship of husband and wife between the parties is not in dispute. The fact that Roopa gave birth to a male child from her marital relationship with Thimmappa is also not disputed.

Admittedly Thimmappa was working as an engineer in Mysuru City Corporation and his gross salary was Rs.38,000/-per month. He has admitted that he has a house of his own in Bogadi and dimension is 30 ft. x 40 ft. He has further admitted that he has put up a house on the ground floor as well as first and second floors. He had let out the same on a monthly rent of Rs.8000/-.

12. During December 2011, the gross salary of Thimmappa was Rs.31,358/-and his net salary was Rs.24,420/-. This is evident from Ex. P2 and P3, salary certificates of Thimmappa. Roopa has produced sufficient documents to show that she does not have good health and therefore she is taking treatment. She has also produced documents in respect of her son - Chiranjivi being shown to several doctors and being treated. Admittedly the said child is now studying at Bangalore.

13. Thimmappa has filed a petition seeking divorce and the same is pending before the family Court at Mysuru. After analyzing the entire evidence placed on record, the learned judge of the trial court has come to the conclusion that Thimmappa has committed violence in terms of the relevant provisions of the DV Act and therefore, he has to look after his wife and child. Four years have already passed after the institution of the petition under Section 12 of the D.V. Act. Admittedly she is residing in Bangalore and her son is admitted to a good school. She's expected to pay monthly tuition fee and has to get books for his education and also has to provide sufficient clothing and uniform.

14. The learned judge of the first appellate court has made a specific discussion in paragraphs 15 to 17 in regard to the minimum amount required for reasonable maintenance of Roopa and her son. Taking into consideration the increase in the

salary of Thimmappa and the minimum requirements of the mother and her child, a sum of Rs.15,000/- so awarded cannot be considered to be either exorbitant or excessive. In fact the trial court had ignored medical bills while considering the quantum of maintenance to be paid to her. In paragraph 17 of the judgment, the learned judge has held that being an engineer working in Mysuru City Corporation, there would be a good hike in the salary in the years to come and he was hardly aged 42 years and still has 18 years of service left. Taking into consideration that he has a residential house which is let out on rent and probable increase in salary, the learned judge of the first appellate court has rightly awarded monthly maintenance of Rs.15,000/-.

15. The learned judge has held that being the son of an engineer, Chiranjivi is expected to get good education and he has to be given all the encouragement. It is in this regard, Thimmappa is directed to look after the child's educational expenses.

16. Insofar as compensation is concerned, the learned judge of the trial court has awarded Rs.1,00,000/- and the same is affirmed by the first appellate court.

17. What is argued before this court is that no separate residence order is passed and therefore, some reasonable amount as to be awarded under this head. Anyhow a petition is filed for divorce by Thimmappa which is pending in the Family Court at Mysuru and necessary application is filed for getting it transferred to Bangalore, where Roopa and her son are residing. In the event of allowing the said petition for divorce, comprehensive permanent alimony could be awarded by the court under Section 25 of the Hindu Marriage Act. Admittedly Smt.Roopa and her son are residing with her mother at Bangalore. Her mother is also depending on her due to ailments and at present, she cannot think of having a separate house by deserting her mother. In this view of the matter, no separate residence order can be passed.

18. The first appellate court has adopted right approach to the real state of affairs by the assessing the entire evidence on record. No perversity or illegality is found in the approach adopted the first appellate court. Accordingly point no.(1) is answered in the negative.

19. Point no.(2): Insofar as the interlocutory application filed by Smt.Roopa requesting this court to direct her husband to visit the child is concerned, this court is expected to look into the same. There could be a divorce between husband and wife, but there cannot be divorce between parents and children. The views of a child will have to be respected. Pursuant to the filing of the application, the child-Chiranjivi was called to the chambers and he was gently enquired. The child wants to see his father since his friends ask many questions about his father. From the enquiry made with the child in the chambers, it is seen that the child is genuinely interested in seeing his father often. This enquiry was done in the absence of both parents, in the chambers. The child is capable of forming a view and he has the right to express himself freely in all matters affecting him, and therefore the child's views will have to be given due weightage in accordance with his/her age.

20. India is a signatory to the protection of rights of children and Article 12 of the Constitution of India provides for respecting the views of a child. In the connected affidavit in support of the application, Smt.Roopa has sworn to the fact that her son pesters her often to see his father and it is very difficult to console him by giving appropriate answers. Keeping in mind the interest of the child, some order is required to be made directing Thimmappa-father of the child to visit him at least once a month on a fixed date, to meet ends of justice.

21. In the result, the following order is passed:

ORDER Both the revision petitions are dismissed. Thimmappa-father of Chiranjivi and husband of Smt.Roopa is directed to visit the child once in a month on every third working Saturday in the children's play room of Bengaluru Mediation Centre, Siddaiah Road, Bengaluru, between 3.00 p.m. and 5.00 p.m., without fail. At the time when the child would meet the father, the mother is not expected to be there, in view of bitter feelings between the couple. After 5.00 p.m. the child shall be handed over to the mother.

This court hopes that Thimmappa would give credence to the sentiments of his own child - Chiranjivi. It is made clear that if there is any arrears of maintenance to be paid in accordance with the judgment of the first appellate court, he shall pay it without undue delay.

Nothing comes in the way of Smt.Roopa and her child in seeking revision of maintenance in case the income of the respondent has increased, after the petition was filed in 2011.

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