

Mallappa Gurulingappa Kameri Vs. Neelawwa Malappa Kameri

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Court : Karnataka

Decided On : Jul-21-1969

Reported in : AIR1970Kant59; AIR1970Mys59; (1969)2MysLJ332

Judge : A.R. Somnath Iyer, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 10 and 13(2); [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18(2); Mysore Civil Courts Act, 1964 - Sections 19(2); Mysore Civil Courts Act, 1964

Appeal No. : Misc. Second Appeal No. 51 of 1967

Appellant : Mallappa Gurulingappa Kameri

Respondent : Neelawwa Malappa Kameri

Advocate for Def. : K.S. Srinivasa Iyer, Adv.

Advocate for Pet/Ap. : A. Jagannatha Shetty, Adv. for B.V. Deshpande, Adv.

Judgement :

1. The appellant is the husband who presented a rolled up application for restitution of conjugal rights under Section 9 and for judicial separation under Section 10 of the [Hindu Marriage Act, 1955](#). The respondent who was accused of desertion is his second wife.

2. The Civil Judge dismissed the application on the ground that the appellant who had another wife living could not plead desertion.

3. The essence of desertion is the abandonment of one spouse by the other for no good cause, and so, there can be no desertion by a wife who lives separately from her husband if in law she is entitled to do so.

4. When respondent 2 began to live separately from her husband the appellant's first wife was alive, and, is still living. So, she became entitled to live separately from her husband without impairing her right to claim maintenance from him under Section 18(2)(d) of the [Hindu Adoptions and Maintenance Act, 1956](#) which reads:

'18. Maintenance of Wife:--

(1)

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,--

(d) if he has any other wife living;

The clear implication of this clause which entitles the wife to refuse to live with her husband who has another wife living is that it is not improper for a wife who is not willing to share her husband with another wife to refuse her company to her husband. By doing so, she does not put herself in the wrong since what is allowed by law cannot constitute a matrimonial offence and does not make her a deserter,

5. Section 18(2)(d) of the [Hindu Adoptions and Maintenance Act, 1956](#), is a corollary to Section 13(2)(i) of the [Hindu Marriage Act, 1955](#), which reads:

'13. Divorce.-

(1)

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,--

(i) in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:'*****

6. When the respondent was married in the year 1945, her husband's first wife was alive, and so, under this sub-section she could seek a divorce and also became entitled to live away from her husband when the Hindu Adoptions and Maintenance Act subsequently came into force. The exercise of that right is not desertion.

7. But Mr. Shetty contended that the order made in appeal by the District Judge to whom the husband himself preferred an appeal is without jurisdiction since an appeal from the order of the Civil Judge after the new Mysore Civil Courts Act, 1964, came into force, could be preferred only to this Court and not to the District Judge.

8. The fact that it is so can make no difference since the District Judge did not disturb the order of the Civil Judge, and so, even if his order is ignored, no results which can be useful to the appellant can ensue since he will be where he was when his application was dismissed by the Civil Judge.

9. So, I dismiss this appeal with costs.

10. Appeal dismissed.