

Babu Shirole Vs. Smt. Kshama Babu Shirole

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Court : Karnataka

Decided On : Nov-26-2004

Reported in : AIR2005Kant163

Judge : Ram Mohan Reddy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 13(1); Code of Civil Procedure (CPC) - Sections 10; [Constitution of India](#) - Article 226(1)

Appeal No. : W.P. No. 29915 of 2003

Appellant : Babu Shirole

Respondent : Smt. Kshama Babu Shirole

Advocate for Def. : K.V. Satyanarayana, Adv.

Advocate for Pet/Ap. : L.S. Venkat Krishna, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Ram Mohan Reddy, J.

1. The petitioner and respondent are husband and wife respectively. The petitioner filed M.C. No. 475/2000 on the file of the Prl. Judge, Family Court, Bangalore, for a

decree of divorce on the ground of desertion, mental cruelty etc., while the respondent filed a petition in HMR No. 100/ 2000 on the file of Civil Judge (Sr. Dn.), Sholapur, Maharashtra, for a decree of divorce.

2. This petition is by the husband seeking a direction to the Civil Judge (Sr. Dn.), 'Sholapur, Maharashtra, to stay all further proceedings in the matrimonial case in HMP. No. 100/2000 at Annexure-B.

3. The petitioner asserts that the matrimonial petitions filed by the husband and wife though in two separate places, one in the State of Karnataka and the other in the State of Maharashtra, are but matters involving issues which are directly and substantially the same. In view of Section 10 of CPC providing for a specific prohibition against institution of subsequent proceedings by the very same party, wherein the issues involved are directly and substantially the same as in the previous suit, it is contended that the matrimonial suit filed by the respondent-wife be stayed.

4. I have perused the pleadings of the parties and heard the learned counsel for the parties.

5. It is not in dispute that the parties, after marriage, developed certain differences resulting in a separation, by which the petitioner-husband stayed at Bagalore, while the respondent-wife returned to her parental home at Maharashtra. The petitioner instituted M.C. No. 475/2000 on the file of the Family Court, Bangalore, seeking dissolution of marriage on the ground of desertion, mental cruelty etc., while the respondent-wife instituted H.M.P. No. 100/ 2001 for dissolution of marriage on the ground of harassment mentally and physically and desertion for more than three years, as could be noticed from the translated copy of the petition at Annexure-B1.

6. In order to invoke Section 10 of the Civil Procedure Code, to prevent Court's concurrent jurisdiction of simultaneously entertaining and adjudicating two parallel litigations in respect of the same cause of action, the same subject matter and the same relief, it is necessary that the petitioner must establish certain condition precedent.

- i) There must be two suits. One instituted previously while the other subsequently.
- ii) The matter in issue must be substantially in issue in the subsequent suit.
- iii) Both the suits must be between the very same parties.
- iv) The previously instituted suit must be pending in the same Court in which the subsequent suit is brought or in any other Court in India or in any other Court beyond the limits of India shall be or continued by the Central Government or before the Supreme Court.
- v) The Court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.
- vi) The parties must litigate under the same title in both the suits.

7. Section 10 of the Code prohibits the Court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit, provided the other conditions mentioned therein are also satisfied.

8. The allegations as set out in M.C. No. 475/2000, filed by the petitioner-husband, is that the respondent-wife was very quarrelsome, overbearing, demanding and refusing to cook food, so also demonstrated non-co-operative attitude towards sex, having removed her mangalasuthra declared that she was no more the wife of the petitioner, when she left the matrimonial home on 27-5-1996. According to the petitioner the allegations tantamounted to cruelty within the meaning of Section 13(1)(1-a) and having not returned to the matrimonial home, as desertion under Section 13(1)(1-b) of the Hindu Marriage Act (for short 'Act'), entitling the petitioner for a decree of divorce.

9. The respondent in her petition under Section 13 of the Act, as noticed from Annexure-B1, an English translation of the petition in Marathi language Annexure-B, has grounded the reliefs of dissolution of marriage and recovery of marriage expenses, on allegations of dowry harassment, illicit relations, physical and mental abuse, as well as desertion.

10. From a perusal of the pleadings, it cannot be disputed that the issues that arise for consideration are not substantially the same in both the petitions although the parties are the same and the reliefs sought for are also identical. It is not as if the Courts at Bangalore and that at Sholapur do not have jurisdiction to try the petitions. It is true that the petition, filed by the petitioner, for divorce is earlier in point of time than the one filed by the respondent. I am of the considered opinion that there is no common issue directly or substantially in issue in both the petitions. The first contention is without merit and is rejected.

11. It is next contended that this Court has the territorial jurisdiction to issue an interim order of stay of the proceedings in the matrimonial case before the Civil Judge (Sr. Dn.), Sholapur, Maharashtra,

12. This contention prima facie, does not merit consideration. In Article 226(1) of the Constitution the term 'within the territory' is specifically used. The significance of the emphasis of the said expression is that the jurisdiction to issue writs is co-extensive with the territorial jurisdiction of the Court. The reference made is not to the nature or composition of the Court or Tribunal, but to the area within which the power could be exercised, as observed by the Supreme Court in the case of *Hari Vishnu Kamath v. Ahamed Ishaque*, : [1955]1SCR1104 .

13. In view of the provisions of Article 226(1) of the Constitution and the observations of the Supreme Court in the aforesaid decision coupled with the admitted fact that the proceedings initiated by the respondent-wife is in a Court at Sholapur, Maharashtra State, within the territorial jurisdiction of the High Court of Mumbai. Hence, this Court has no territorial jurisdiction over the said Court located at Sholapur, Maharashtra.

14. In the result, the writ petition is without merit and is rejected.