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Court : Andhra Pradesh

Decided On : Aug-05-1980

Reported in : AIR1981AP74

Judge : Madhava Rao and ;Amareswari, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 13(2) and 23(1); Marriage Laws (Amendment) Act, 1976 - Sections 7, 39(1) and 39(2)

Appeal No. : A.A.O. No. 180 of 1977

Appellant : Bathula Iylaiah

Respondent : Bathula Devamma

Advocate for Def. : G. Chandrasekhara Reddy, Adv.

Advocate for Pet/Ap. : G. Rajapu Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

Madhava Rao, J.

1. This appeal by the husband is directed .against the judgment and decree of the learned Subordinate Judge, Warangal, in O.P. No. 13 of 1676 allowing the petition and granting decree for divorce.

2. It is alleged in the petition filed by the wife, the respondent herein, that she was married to the appellant about, ten years ago at the house of her parents in Lingapur village of Narsampet taluk. At the time of the marriage she was aged about nine years while her husband was aged about thirteen years. Subsequent to the marriage, she occasionally lived in the house of the appellant for short periods. For the purpose of disposal of this appeal, it is not necessary for us to refer to the other facts except to state that she was not being treated well by the appellant and his family members, that the appellant deserted the respondent, that the attempts made by the parents of the respondent for reconciliation failed and that the respondent apprehended that it would be harmful and injurious for her to live with the appellant. Subsequent to the filing of the original petition, the respondent-wife filed and amended petition on 1-2-1977 in para 6 of which it was stated as under:

'Having regard to the above detailed facts the petitioner has repudiated the marriage tie between the parties about 21/2 years back and since thereafter no marriage tie exists between the parties. Under the circumstances the petitioner is certified for a decree of divorce dissolving the so-called marriage ie between the parties'.

3. The appellant-husband filed a counter resisting the petition on the grounds that their ages were wrongly mentioned in the petition. According to him, the age of the respondent-wife was twenty two while his age was twenty eight years. Their marriage was solemnized on 5-1-1971 and at that time the respondent was seventeen years old while he was twenty three years old. She was never ill-treated. But the parents of the respondent are mischievously trying to separate them. The marriage was performed at their proper age. It was further stated by him that as per the advice of the elders he sent the respondent to her parent's house for Ugadi festival on condition that she would be sent back after the festival but her parents did not send her back. On the other hand they tried to re-marry her illegally to one Induri Mallaiah. In the additional counter filed by the appellant after the amended petition was filed, it was stated that the marriage tie between them was not repudiated and that when the parents of respondent and the respondent came to know that there was no hope to succeed the case they got amended the original petition and prayed for divorce in the alternative.

4. On the basis of the above pleadings, the learned Subordinate Judge framed a point for consideration, viz., 'Whether the marriage of the petitioner was solemnized before be attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining the age of 18 years.'

5. On behalf of the respondent-wife two witnesses were examined including herself, P.W. 2 is her father. Four witnesses were examined on behalf of the respondent, including himself and Exs. B-1 to B-3 were marked.

6. On a careful consideration of the entire oral and documentary evidence, the learned Subordinate Judge found that the respondent-wife repudiated the marriage after attaining the age of fifteen years and before attaining the age of eighteen years. He also found that the evidence of P.Ws. 1 and 2 could he relied upon in that regard. Having come to the above conclusion, the learned Subordinate Judge dissolved the marriage and decreed the suit for divorce.

7. The learned counsel for the appellant mainly contended that the age of the respondent was not correctly mentioned and that the marriage was not repudiated by the respondent-wife after attaining the age of fifteen years and before attaining the age of eighteen years.

8. Even though the petition filed by the respondent was after the Marriage Laws (Amendment) Act, 1976 came into force, the plea of repudiation was not taken by her. But at later stage an amended petition was filed by the respondent taking the plea of repudiation. Therefore much weight cannot be given to the amendment. However it will be relevant to note that the Marriage Laws (Amendment) Act, 1976 received the assent of the President on 27th May, 1976 and published in the Gazette of India, (Extraordinary) Part II on 27-5-1976. As stated earlier, the respondent-wife filed the original petition on 10-6-1976 for declaration that the marriage between the appellant and the respondent is void ab initio and that there exists no marriage tie between them i a, alter the Marriage Laws (Amendment) Act, 1976 (Act 68 of 1976) came into force. However, it was filed within one month from the date of the publication at the Amendment Act. Perhaps, the amendment was not noted at the time of filing the petition.

9. It is evident from the record that the appellant and the respondent are not living together and the respondent refused to go to her husband, the appellant, which amounts to the repudiation of the marriage The same was incorporated in the Act. Section 39(2) of the Act 68 of 1976 provides that in cases that are pending before the courts at the time when this Act came into forte, an opportunity be given to amend the pleadings. Sub-section (17 of Section 39 runs as follows:

'(1) All petitions and proceedings in causes and matters matrimonial which are pending in any courts at the commencement of the Marriage Laws (Amendment) Act, shall be dealt with and decided by such court-

(i) if it is a petition or proceeding under the Hindu Marriage Act, then so far as may be, as if it had been originally instituted therein under the Hindu Marriage Act, as amended by this Act.'

9A. In the instant case the petition was filed just after the Amendment Act came into force without noticing the amendment. After the amendment was noticed the amended petition was filed 1 by the petitioner for dissolution of the marriage between the petitioner and the respondent by a decree of divorce.

10. Clause (iv) of Sub-section (2) of Section 13 of the: Hindu Marriage Act added by Section 7 of the Amendment Act, 1976 reads as under:

'A wife may also present a petition for dissolution of her marriage by a decree- on the- ground-

(i) to (iii) .....

(iv).....That her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years, and as she has repudiated the marriage after attaining that ago but before attaining the age of eighteen years.'

11. The learned counsel for the appellant stressed his argument much with reference to the evidence of the appellant that the respondent's age was fifteen years at the time of her marriage. On the contrary the evidence of P.W. 1, who ithe petitioner, and P.W. 2, the father of P.W. 1 clinchingly establishes that she was

only about eight or nine years old at the time of marriage. P.W. 1 who is the petitioner stated that she was married about twelve years ago, that she does not remember the marriage, that she went to her parents-in-law's house once, that she was ill-treated by her husband and his parents. That her husband once came and asked her to come to him but she refused to go with him and told that she was not a willing party to the marriage and that all this happened about 3 or 3/1/2 years ago. After filing the original petition, the appellant forced her with the help of others to join him and took her away. Her mother filed a criminal complaint and due to that she was produced in Court. Till she was produced in Court she was confined by the appellant. She was consistently telling everybody that she did not agree to the marriage and she repudiated the marriage. She stated in her cross-examination that she is aged about eighteen years old. Nothing special was elicited in the cross-examination to discredit her evidence.

12. P.W. 2 is the father of P.W. 1. He also stated that P.W. 1 was nineteen years old when she was giving the evidence, that P.W. 1 was married to the appellant ten years ago, that P.W. I was with him for the last three years and that she was not treated well by her husband and his parents. She refused to go to her husband and to live with him stating that she was married at an early age and she did not like the alliance. In his cross-examination he stated that he did not know the date of birth of P.W. 1. He could not say the exact age of P.W. 1. He denied the suggestion that she was seventeen years old at the time of marriage. Nothing was elicited from his cross-examination to discredit his evidence or to show that P.W. 1 had not repudiated her marriage with R.W. 1.

13. R.W. 1 is the husband of P.W. 1. His evidence is that he married P.W. 1 about five or six years ago. He admitted about the complaint given to police by the parents of P.W. 1 and the Sub-Inspector of Police took P.W. 1 to her parents' house. In the cross-examination he stated that he had no evidence to show that P.W. 1 was seventeen years old when she was married. R.W. 2 who belongs to the village of P.W. 1 stated that he attended the marriage of P.W. 1 with R.W. 1 and that P.W. 1 was sixteen or seventeen years old at the time of marriage. He did not speak about the repudiation of the marriage. He spoke to the fact that police came and took P.W. 1 when she was with R.W. 1. The evidence of R.W. 3 does

not throw much light on the matter. R.W. 4 stated that P.W. 1 was ten or sixteen years old at the time of marriage. The evidence of this witness also does not throw any light on the age of P.W. 1. The evidence of P.W. 1 and her father (P.W. 2) was accepted by the lower court and we see no reason to differ with that finding. So far as the repudiation of the marriage is concerned, P.W. 1 specifically stated that she has been consistently refusing to go to her husband and join him. There is no contra evidence on the record.

14. Under the Act she had the right to repudiate the marriage after attaining the age of fifteen years and before the expiry of eighteen years. The petition is filed when she is aged about nineteen years and her evidence discloses that she was not going to her husband for the last 3/1/2 years and consistently telling everbody that she did not agree to the marriage and thus she repudiated the marriage when she was about 15/1/2 years.

15. The learned counsel for the appellant next urged that she ought to have filed the petition before she completed eighteen years and that after the expiry of eighteen years she could not file the petition under Section 13(2) of the Act for dissolution of the marriage. The learned counsel could not place before us any authority in support of his proposition. He only read out Section 13 Sub-section (2) Clause (iv) and reiterated that it only means that the petition ought to have been filed before attaining the age of eighteen years. In our view this contention has no substance. Clause (iv) only gives a right to repudiate the marriage after attaining the age of fifteen years and before completing the age of eighteen years. Therefore, this contention has no substance.

16. The other provision referred to was Section 23(1)(d) of the Hindu Marriage Act. Sub-section (1) (d) of Section 23 states that the Court shall grant any relief under this Act, whether the proceeding is defended or not, if it is satisfied that there has not been any necessary or improper delay in instituting the proceeding.

17. In the instant case there is no delay at all. The respondent immediately after attaining the age of eighteen year's i. e., after becoming major filed the petition for the relief stated above. Therefore, there is no question of unnecessary or improper delay in instituting the proceedings. Accordingly, there is no substance in this

contention also. We, therefore, see no grounds to interfere with the order of the lower Court.

18. The appeal is accordingly dismissed. In the circumstances there will be no order as to costs.

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