

R. Sunitha Vs. R. Suresh

R. Sunitha Vs. R. Suresh

SooperKanoon Citation : sooperkanoon.com/435545

Court : Andhra Pradesh

Decided On : Jul-22-1996

Reported in : I(1997)DMC123

Judge : B. Subhashan Reddy and ;V. Bhaskar Rao, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9

Appeal No. : C.M.A. No. 301 of 1995

Appellant : R. Sunitha

Respondent : R. Suresh

Advocate for Def. : V. Narendranath, Adv.

Advocate for Pet/Ap. : C. Narender, Adv.

Disposition : Appeal dismissed

Judgement :

V. Bhaskar Rao, J.

1. This Civil Miscellaneous Appeal is directed against the Order dated 19.12.1994 in O.P. No. 58 of 1992 on the file of the learned III Additional Judge, City Civil Court, Secunderabad allowing the petition of the husband Under Section 9 of the Hindu Marriage Act granting a decree for restitution of conjugal rights against the

wife.

2. Few facts, which are necessary for disposal of the case, are that the marriage between the parties was solemnised on 11.6.1987 in Arya Samaj Mandir, Seethaphal mandi, Secunderabad as per Hindu rites and it was consummated on the same day. The parties belong to different communities, namely, the appellant belongs to Brahmin community, whereas the respondent belongs to Naidu community. After living for some time in a rented house near Housing Board Colony, Moula Ali, where both of them were happy for about 6 months, they shifted themselves to his parents house. In the interregnum, the appellant, who was already studying B.Com., 1st year, completed her graduation at the instance of the respondent. She has also appeared for Hindi examination and completed English Typewriting and got herself qualified in the typewriting examination. A male child was born on 5.12.1988 out of their lawful wedlock and thereafter their marriage was on rocks. The case of the respondent was that without any lawful excuse, the appellant has kept herself away from his company and she is now residing in her parents house, whereas the case of the appellant is that the respondent has meted-out cruel treatment towards her on some flimsy pretext or other, that he was suspecting her fidelity even on seeing her talking with elders and that her life became miserable and therefore, she was forced to go to her parents house and take shelter there. It is also her case that she filed M.C. No. 37 of 1992 in the Court of the X Metropolitan Magistrate, Secunderabad Under Section 125, Cr.P.C. alongwith her child and the child was granted maintenance at Rs. 250/-per month. She, therefore, resisted the above petition on the ground of cruelty and stated that there is every justification for her to live separately.

3. The parties went to trial on the above pleadings and the respondent herein examined himself as P.W.I and one A.P. Seshagiri Rao as P.W.2, while the appellant examined herself as R.W.I. Legal notices were exchanged and they are marked as Exs.A1 to A3 on behalf of the respondent. On a consideration of the above oral and documentary evidence, the learned III Additional Judge, came to the conclusion that the appellant could not establish that she was entitled to stay away from the respondent and hence, the petition was allowed and decree for restitution of conjugal rights has been granted. Aggrieved by the said order and

decree, this appeal is filed.

4. Mr. C. Narender, the learned Counsel for the appellant, strenuously contended by narrating various events that led the appellant to stay away from the respondent and argued that under those circumstances a wife is entitled to stay away from her husband. He cited the decision in *P. Radhakrishna Murthy v. P. Vijayalakshmi*, : AIR 1983 AP380 , in support of his contentions.

5. Mr. V. Narendranath, the learned Counsel for the respondent, has supported the order of the lower Court.

In the said decision, it is observed :

'In a suit for restitution of conjugal rights, the wife alleged that she was subjected to ill-treatment by her husband, mother-in-law and sister-in-law. She had stated in the evidence that her husband had placed ice slabs on her body holding her arms tight to maximize her suffering. She further stated that she was treated as a maid servant and was never given proper food or medical aid. The evidence of the wife was supported by her father and a local gentleman. She also alleged that her husband did not love her, but was interested only in getting more money from her father when her father had already given him a considerable amount. These very acts of cruelty were mentioned in the Lawyer's notice issued by the wife to her husband and they were not specifically denied by her husband.

Held, the husband had been treating the wife with cruelty within meaning of the Act and the wife was in such circumstances justified in keeping away from the society of her husband and hence restitution could not be granted'. '

6. We considered the contentions of both the Counsel and perused the judgment cited supra. The dicta laid down on this subject need not be restated for the simple reason that a wife is entitled to keep herself away from the company of a cruel husband under the circumstances that were considered in the above judgment. That is insofar as the legal aspect is concerned. We have to bear in mind that the above dicta can be applied only if the circumstances, which can be urged in defence Under Section 9 of the Hindu Marriage Act, are made out by legal and

satisfactory evidence.

7. Turning to the factual side, we perused the evidence on record and we are in agreement with the lower Court on factual aspect. The finding is that the appellant could not establish any of those circumstances which entitle her to kept herself away from the company of the husband. It is seen from the evidence that the respondent was keen on her continuing the education and it was at the instance of the respondent, that she completed her graduation and thereafter she has also completed her typewriting and appeared for Hindi examination. Having done so, he has also obliged her by shifting the residence from place to place and ultimately it is his evidence that she had deserted him and started living in her parents house without any lawful justification. That evidence is corroborated by the testimony of P.W. 2. Whereas, the appellant herein examined herself only and except her self-serving evidence, there is no material to corroborate her assertions. Having regard to the above circumstances, the learned Additional Judge, has rightly concluded that the appellant has not made out any of the circumstances. It is noteworthy that the burden to establish is heavy upon her. Therefore, we do not find any merit in this appeal.

8. In the result, the appeal is dismissed confirming the order of me Court below. No costs.

9. Before parting with this matter, we would like to make it clear that this judgment will not in any way affect the right of the child in drawing maintenance granted by the Family Court, Hyderabad in M.C. No. 326 of 1995.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com