

U. Sree Vs. U. Srinivas

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Court : Andhra Pradesh

Decided On : Jun-17-2005

Reported in : 2005(5)ALD25; 2005(4)ALT724a; II(2005)DMC693

Judge : B. Prakash Rao and ;B. Seshasayana Reddy, JJ.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18(1) and 18(2); [Family Courts Act, 1984](#) - Sections 7; Code of Criminal Procedure (CrPC) - Sections 125; Code of Civil Procedure (CPC) - Sections 20

Appeal No. : C.M.A. No. 1932 of 2003

Appellant : U. Sree

Respondent : U. Srinivas

Advocate for Def. : M. Vidyavathi, Adv.

Advocate for Pet/Ap. : C. Jayasree Sarathy, Adv.

Disposition : Petition dismissed

Judgement :

B. Seshasayana Reddy, J.

1. This Civil Miscellaneous Appeal is directed against the order dated 7-4-2003 passed in O.P. No. 86 of 1998 on the file of Family Court, City Civil Court,

Hyderabad, whereby the learned Family Court Judge dismissed the O.P. filed by the petitioner-wife under Section 18(1) and (2) (a) and (g) of the [Hindu Adoptions and Maintenance Act, 1956](#), read with Section 7 of the [Family Courts Act, 1984](#) on the ground that the Family Court at Hyderabad has no jurisdiction to entertain the petition.

2. The appellant and the respondent are wife and husband. Their marriage was solemnized at Tirupathi on 27-5-1994. They lived together at Maruthi Nilayam, 12-A, Venkateswhara Street, Dhanalakshmi Colony, Vadapalani, Chennai. A male child was born to them on 30-3-95 out of the wedlock some disputes arose between them, the reasons are not much relevant for the disposal of this appeal, and their marital life ran in rough weather. Since 3-1-1996 they have been residing separately. The petitioner-wife has been residing at Hyderabad and whereas the respondent-husband has been residing at Chennai. The respondent-husband has filed O.P.No. 208 of 1997 on the file of Family Court at Chennai for judicial separation. Whereas the petitioner-wife filed O.P. 568 of 1997 on the file of the same court i.e. Family Court at Chennai for restitution of conjugal rights. Both the applications are stated to be pending disposal on the file of Family Court at Chennai.

3. While so, the petitioner-wife having made up her mind to stay at Hyderabad filed O.P.No. 86 of 1998 on the file of Family Court at Hyderabad claiming maintenance and separate residence. She claimed Rs. 15,000/- per month against the respondent/husband towards the maintenance for self and her child. The petitioner-wife filed I.A. 141 of 1998 on the file of Family Court at Hyderabad seeking interim maintenance for self and her child. The learned Family Court Judge allowed the application and awarded Rs.5,000/- towards interim maintenance. The respondent-husband filed C.R.P. No. 4045 of 1998 assailing the order passed in I.A. 141 of 1998. A Division Bench of this Court disposed of the revision directing the respondent-husband to pay a sum of Rs.2,500/- by way of demand draft in the name of the petitioner-wife. A further direction was given to the Family Court to dispose of the O.P. within three months from the date of receipt of a copy of the order either from the court or on production of the same by either parties, whichever is earlier. Subsequently, C.M.P. No. 20516 of 2002 came

to be filed by the respondent-husband seeking some clarification in the order passed by the Division Bench in C.R.P.No. 4045 of 1998 and C.R.P.No. 5143 of 2002. An order of clarification has been passed by this court whereunder the respondent-husband was permitted to deposit the entire arrears @ Rs. 3,000/- per month from the date of filing the petition i.e. 18-2-1998 by giving due credit to the amounts already paid in three equal instalments.

4. The learned Family Court Judge framed four issues for consideration. One of the issues relates to the maintainability of the O.P. in the court at Hyderabad, the respondent-husband took the plea that no cause of action arose within the jurisdiction of the Family Court at Hyderabad and therefore the Family Court at Hyderabad has no jurisdiction to entertain the petition. The learned Family Court Judge, on considering the material brought on record and on hearing both the parties, recorded a finding that no part of cause of action arose at Hyderabad and accordingly held issue No. 3 and dismissed the O.P. by an order-dated 7-4-2003. Hence, this appeal by the petitioner-wife.

5. Heard Smt. C. Jayashree Sarathy, learned counsel appearing for the petitioner-wife and Ms. Vidyavathi, learned counsel appearing for the respondent-husband.

6. Learned counsel appearing for the petitioner-wife submits that the place of residence of the petitioner-wife is the place where the petitioner-wife can pursue her remedy of maintenance for self and her child and since the petitioner-wife has been residing at Hyderabad, the Family Court at Hyderabad has jurisdiction to entertain the petition. She further submits that the Family Court has inherent powers of JFCM court and therefore the analogy as applicable to the petitions filed under Section 125 Cr.P.C. is to be applied to the applications filed before the Family Court claiming maintenance and in which case the Family Court at Hyderabad has jurisdiction to entertain the application filed by the petitioner-wife claiming maintenance for self and her child. It is also submitted by her that for deciding the issue of territorial jurisdiction of the court, the entire plaint has to be read and not merely the relief portion. In support of her submissions reliance has been placed on the decisions of the Supreme Court in Corporation of Bangalore City v. M. Papaiah, : AIR 1989 SC1809 , A.B.C. Laminart Pvt. Ltd. A.P. Agencies,

Salem, : [1989]2SCR1a , Ram Sarup Gupta v. Bishun Narain Inter College, 0043/1987 : [1987]2SCR805 and Bismillah v. Janeshwar Prasad, AIR 1990 SC 540.

7. In the first cited decision, the Supreme Court held that for deciding the nature of the suit the entire plaint has to be read and not merely the relief portion. In the second cited decision, the Supreme Court held that cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of a court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the rights suited on but to the material facts in which it is founded. In the third cited decision, the Supreme Court held that it is not desirable to place undue emphasis on form, instead substance of pleading should be considered. Whenever the question about lack of pleading is raised, the enquiry should not be so much about the form of pleadings, instead court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In the fourth cited decision, the Supreme Court held that exclusion of jurisdiction of civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

8. Learned counsel appearing for the respondent-husband submits that no part of cause of action arose at Hyderabad and therefore the impugned order does not call for interference. It is also submitted by her that the petitioner's own pleadings in the O.P. are manifest that the proceedings have been initiated by both the parties at Chennai and thus the order impugned holding that the Family Court at Hyderabad has no jurisdiction is legal and proper and the same is not required to be interfered with in this appeal.

9. The sole issue that survives for consideration is whether the family court at Hyderabad has jurisdiction to entertain the application filed by the petitioner-wife claiming maintenance for self and her child. The facts not in dispute are that their marriage was solemnized at Tirupathi on 27-5-1994 and they lived together at Maruthi Nilayam, 12-A, Venkateshwara Street, Dhanalakshmi Colony, Vadapalani, Chennai. A male child was born to them on 30-3-95 out of the wedlock. Some disputes arose between them. Their marital life ran in rough weather. Since 3-1-1996 they have been residing separately. Both the parties initiated proceedings at Chennai by filing applications before the Family Court. Even the pleadings of the petitioner-wife are manifest that they never resided at Hyderabad as wife and husband. Learned counsel for the petitioner-wife strenuously contended that since the petitioner-wife was brought on 3-1-96 to Hyderabad by the father of the respondent-husband and dropped there with a promise that she would be taken back to matrimonial home after pongal vacation, the family court at Hyderabad has jurisdiction to entertain the petition.

10. There is no provision in the Family Courts Act, which relates to place of suing. Therefore, we have to consider the provisions of CPC relating to the territorial jurisdiction. Under Section 20(c) of CPC subject to the limitation stated there to, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It is useful to refer Section 20 of CPC and it is thus:

'20. Other suits to be instituted where defendants reside or cause of action arises.
- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction.

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or

personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.'

11. It is no more in dispute that no part of the cause of action arose at Hyderabad. The petitioner-wife invokes the jurisdiction of the Family Court, Hyderabad on the ground that she intends to claim residence at Hyderabad for her safety, security and upbringing of the child. Her mere intention to settle at particular place cannot be construed as a fact, which is essential to confer territorial jurisdiction in the court.

12. A question came up for consideration before the Division Bench of Calcutta High Court in Arun Kumar v. Anjana⁵ as to whether place of residence of the wife has any relevance for maintainability of the suit at the place of her residence. It has been held therein that the suit for maintenance filed by the deserted Hindu wife in Calcutta where she was residing is not maintainable since no part of cause of action arose at Calcutta.

13. The mere intention of the petitioner-wife to settle at Hyderabad does not confer jurisdiction on the Family Court at Hyderabad to entertain an application claiming maintenance for self and her child. The learned Family Court Judge, Hyderabad considered the material brought on record in right perspective and held issue No. 3 in accordance with the provisions of law and therefore, the finding as to jurisdiction needs no interference.

14. In the result, this Civil Miscellaneous Appeal fails and it is hereby dismissed with costs confirming the order dated 7-4-2003 passed in O.P. No. 86 of 1998 on the file of Family Court, City Civil Court, Hyderabad.