

Kuna Parvathi Vs. Kuna Yerrayya

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Court : Andhra Pradesh

Decided On : Jun-09-2005

Reported in : 2005(5)ALD600

Judge : L. Narasimha Reddy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 125; Hindu Adoptions and Maintenance Act

Appeal No. : SA No. 1582 of 2004

Appellant : Kuna Parvathi

Respondent : Kuna Yerrayya

Advocate for Def. : B.M. Patro, Adv.

Advocate for Pet/Ap. : T. Rajasekhara Rao, Adv.

Judgement :

L. Narasimha Reddy, J.

1. The second appeal is filed against the judgment of the learned Additional Senior Civil Judge, Srikakulam, dated 28-4-2004, in A.S.No. 221 of 2003, through which he reversed the judgment and decree, dated 18-8-1999 in O.S. No. 87 of 1997, on the file of the Court of Principal Junior Civil Judge, Srikakulam.

2. The appellant herein filed the suit against the respondent for maintenance. She pleaded that the respondent is her husband and that their marriage took place in the year 1962. According to her, the respondent married another woman in the year 1979 and started neglecting her. The appellant filed M.C.No. 17 of 1981, in the Court of the Judicial Magistrate of First Class, Srikakulam, under Section 125 Cr.P.C., claiming maintenance. The same is said to have been compromised between the parties, and the respondent agreed to pay maintenance at the rate of Rs. 130/-per month. The same is said to have been enhanced thereafter. She also pleaded that the amount awarded in the M.C. is not sufficient to maintain herself. She pleaded that the respondent is drawing salary at the rate of Rs. 5,000/- per month and having Ac.5-00 of wet land, apart from other movable properties. She ultimately claimed maintenance at the rate of Rs. 2,000/- per month.

3. In the written statement, the respondent pleaded that he did not marry the appellant at all. According to him, he did not marry any other lady except K. Veeramma. He stated that M.C. No. 17 of 1981, on the file of the Judicial Magistrate of First Class, Srikakulam, was compromised with a view to avoid complications, and the order passed therein is not binding upon him.

4. Before the trial Court, the appellant was examined as PW.1. She marked a petition in M.C. No. 17 of 1981 and copy of compromise petition therein, as Exs.A-1 and A-2 respectively. On behalf of the respondent, DWs.1 to 3 were examined as Exs.B-1 to B-3 were marked. The trial Court decreed the suit and awarded maintenance at the rate of Rs. 500/- per month.

5. The learned Counsel for the appellant submits that the lower appellate Court erred in reversing the judgment and decree of the trial Court. He submits that the very fact that the respondent compromised with the appellant in the proceedings under Section 125 Cr.P.C., and is continuing to pay the maintenance, is a clear proof of marriage between them. He submits that it is not at all open to the respondent to deny the marriage. He also submits that the Appellate Court had taken a perverse view of the matter in observing that Exs.A-1 and A-2 are of no evidentiary value.

6. The learned Counsel for the respondent, on the other hand, submits that the appellant failed to establish her marriage with the respondent. He contends that the compromise contained in Exs.A-1 and A-2 does not by itself establish such a relationship. Placing reliance upon the judgment of the Supreme Court in *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, 1999 (2) ALD (CrL.) 955 (SC) : 2000 CrL.J.1 (SC), he submits that a finding in criminal proceedings cannot be taken as a conclusive proof in civil proceedings.

7. The appellant claimed maintenance against the respondent in two sets of proceedings. In the year 1981, she filed M.C. No. 17 of 1981, in the Court of the Judicial Magistrate of First Class, Sirkakulam, under Section 125 Cr.P.C. The respondent compromised with the appellant and agreed to pay the maintenance at the rate of Rs. 130/- per month. It was enhanced subsequently to Rs. 250/- and thereafter to Rs. 350/-. The respondent did not deny that he is paying Rs. 350/- per month, by virtue of the orders in M.C. No. 17 of 1981. The appellant filed the present suit for maintenance obviously under the provisions of the Hindu Adoptions and Maintenance Act. The respondent flatly denied the very existence of martial relationship with the appellant.

8. It is true that the burden to prove the existence of marriage rests upon the party who claims the maintenance. In her deposition as PW.1, the appellant clearly stated that she married the respondent in the year 1962, and that she filed a maintenance case when the latter neglected to maintain her. In the cross-examination, nothing substantial was elicited through her.

9. The respondent as DW-1 stated that he did not marry the appellant. The evidence of DWs.2 and 3 is hardly of any use. When the evidence is in the form of oath against oath, the Court has to assess the same with reference to any other relevant material. The respondent did not dispute that he participated in proceedings in M.C. No. 17 of 1981, compromised with the appellant and agreed to pay the maintenance. If in fact, the appellant was a stranger to the respondent, there was no occasion for him, either to compromise, or to pay the maintenance. The lower appellate Court had made several observations to the effect that the maintenance under Section 125 Cr.P.C. can be claimed even by a concubine, on

the basis of cohabitation. There is neither legal nor factual basis for such observations. It was not even pleaded by the respondent that the appellant was his concubine. The observations of the lower appellate Court were totally unwarranted and are bereft of any context.

10. In *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*, (supra), it was held that the orders passed in the proceedings under Section 125 Cr.P.C. cannot be taken as conclusive proof, in civil proceedings. There is no quarrel with the said proposition. However, it is different from saying that an order passed under Section 125 Cr.P.C. that too not only with the participation, but also with the consent of the respondent, is of no evidentiary value. The respondent is under obligation to explain the circumstances under which he consented to pay maintenance under that order. Though the burden to prove the marriage rests with the appellant, the onus shifted to the respondent in view of Exs.A-1 and A-2. These documents, which are relevant pieces of evidence, though not conclusive by themselves, stood proved by the appellant. The inability of the respondent to explain as to how Exs.A-1 and A-2 are not binding upon him would certainly enable the Court to record a finding that there existed a marriage between the appellant and the respondent. Hence, the judgment of the lower appellate Court in A.S. No. 221 of 2003 is set aside.

11. The trial Court awarded maintenance at the rate of Rs. 500/- per month. The respondent is said to have retired from service. He has other members of the family to maintain. The appellant is already receiving a sum of Rs. 350/- per month as maintenance from the respondent. This Court is of the view that ends of justice would be met if the decree of the trial Court is modified, granting maintenance at the rate of Rs. 250/- per month.

12. Hence, the second appeal is allowed partly, and the decree in O.S. No. 87 of 1997 is sustained, subject to the modification that the maintenance payable to the appellant by the respondent shall be Rs. 250/- per month. There shall be no order as to costs.