

Vojjala Jayamma Vs. Vojjala Pullaiah

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Court : Andhra Pradesh

Decided On : Aug-02-2007

Reported in : 2007(6)ALD213

Judge : Gopala Krishna Tamada, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 25, 25(1) and 25(2); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 - Order 6, Rule 17

Appeal No. : C.R.P. No. 4790 of 2006

Appellant : Vojjala Jayamma

Respondent : Vojjala Pullaiah

Advocate for Def. : K. Jagadishwar Reddy, Adv.

Advocate for Pet/Ap. : A. Suryanarayana, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Gopala Krishna Tamada, J.

1. Petitioner-wife instituted O.S. No. 47 of 2004 on the file of the Court of the Junior Civil Judge, Manthani, against respondent-husband seeking maintenance.

In the said suit, she filed I.A. No. 13 of 2005, under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') and as the said petition was dismissed by the trial Court by order dated 04.02.2005, she approached this Court and filed this revision.

2. Brief facts are that petitioner is the legally wedded wife of respondent-husband. As her husband deserted her, she instituted suit, O.S. No. 2 of 1983, on the file of the Court of the District Munsif, Manthani against her husband and the said suit was decreed awarding maintenance at the rate of Rs. 350/- per month. As the said decree was in 1993 and the amount of Rs. 350/- awarded towards maintenance is very meagre in the present day of living, and in view of the changed circumstances, as the said amount is not sufficient, she approached the Court below and filed the suit, O.S. No. 47 of 2004, seeking maintenance at the rate of Rs. 3,000/- per month. It appears, during the course of drafting the plaint by learned Counsel appearing for petitioner before the Court below or because of the wrong instructions given of Rs. 3,000/- claimed by her towards enhancement of maintenance, it is drafted as towards maintenance and thus it necessitated her to file the present application seeking amendment of the plaint from 'maintenance' to 'enhancement of maintenance'. The said petition was dismissed and hence, this revision.

3. Having heard both the learned Counsel, this Court is of the view that the Court below is not justified in rejecting the said amendment. Section 25 of the [Hindu Marriage Act, 1955](#) (for short, 'the Act') deals with permanent alimony and maintenance and according to the said provision of law, any Court exercising jurisdiction under the Act may at the time of passing of any decree or at any time subsequent thereto may award maintenance. Similarly under Sub-section (2) of Section 25 of the Act, if the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-section (1) of Section 25 of the Act, may at the instance of either party vary, modify or rescind any such order in such a manner as the Court may deem just.

4. From the above provision of law, it is clear that in fact, institution of a separate suit for maintenance is not required and in O.S. No. 2 of 1983, which was decreed,

petitioner should have filed an application under Section 25(2) of the Act. Instead of doing so, petitioner has chosen to file a separate suit, O.S. No. 47 of 2004, claiming maintenance at the rate of Rs. 3,000/- per month.

5. The contention of learned Counsel for respondent is that the suit, O.S. No. 47 of 2004, itself is not maintainable having regard to the fact that Section 11 of the Code clearly prohibits the institution of a second suit for the very same relief.

6. There is no dispute about the said submission that the second suit for the very same relief is prohibited. According to Section 11 of C.P.C., which deals with res judicata, no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. But, the said technical principle of res judicata would not be operative more so if substantive change in circumstances is averred and found prima facie justified. So, the aspect that has to be gone into in the present suit is as to whether the petitioner is entitled for enhancement of maintenance or not. The question of again awarding maintenance in this suit does not arise as rightly contended by the learned Counsel for the respondents. But; however, as I observed above, when there are varied or changed circumstances, it is always open for the Court to go into the said aspect as to whether there are changed circumstances and the petitioner is entitled for enhanced maintenance.

For this reason, this Court is of the view that the Court below, instead of rejecting the said application, ought to have entertained the same and allowed the said amendment in the plaint from maintenance to enhancement of maintenance.

7. The other contention of the learned Counsel for the respondent that as per the proviso to Order 6 Rule 17 C.P.C., when once the trial has begun, no amendment is permissible, and according to him, the chief affidavit on behalf of the petitioner was already filed and hence, the Court shall not allow the said amendment.

In this context, it is pertinent to refer to the judgment of the Apex Court in B.K. Narayana Pillai v. Parameshwaran Pillai : AIR 2000 SC614 , wherein, it was held as hereunder:

The purpose and object of Order 6, Rule 17, CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and, this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

8. As only the chief affidavit is filed, it cannot be said that the trial has commenced and hence, this Court is of the view that proviso to Order 6 Rule 17 C.P.C. has no application, and accordingly, the said objection also is rejected.

9. Accordingly, this Civil Revision Petition is allowed and the Court below is hereby permitted to make the required amendments in the plaint as prayed for by the petitioner and thereafter decide the matter in accordance with law.

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