

Murlidharan Vs. Sumangala

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Court : Delhi

Decided On : Feb-20-2007

Reported in : 2007(94)DRJ296

Judge : S. Muralidhar, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : F.A.O. 595/2001

Appellant : Murlidharan

Respondent : Sumangala

Advocate for Def. : Chandra Kumari and; Meenashi Mohan, Advs.

Advocate for Pet/Ap. : Puneet Bhatnagar, Adv

Disposition : Appeal Dismissed

Judgement :

S. Muralidahr, J.

1. This appeal is directed against the judgment dated 31.10.2001 of the learned Additional District Judge, Delhi in H.M.A. No 21/2001/92 whereby the Trial Court had dismissed the appellant's petition seeking dissolution of marriage under Section 13 of the [Hindu Marriage Act, 1955](#) ('Act') on the ground of cruelty.

2. In support of his petition for divorce, the appellant pleaded several instances of the alleged cruelty meted out by the respondent wife. It was first urged that the respondent had started misbehaving with the petitioner within a few months of the marriage. Second, that the respondent had developed illicit relationship with 'somebody'. Thirdly, that the respondent had told the appellant and his relatives that the child born to them on 28.8.1990 was in fact not of the appellant's but someone else's. Fourthly, that the respondent had not allowed the appellant to come near her and she had therefore failed to perform her marital obligation. Fifthly, that the respondent mixed some poisonous substance in the tea served to the appellant. Sixthly, that the respondent had started removing her belongings from the residence of the petitioner.

3. The appellant examined himself, his brother-in-law and his employer as his witnesses. The respondent has examined herself and her family friend as her witnesses.

4. The Trial Court framed the following issues:

(i) Whether the respondent has treated the petitioner with cruelty as alleged?

(ii) Whether the petitioner is taking the benefit of his own wrongs; as alleged in written statement?

(iii) Whether the petitioner has condoned the acts of cruelty of respondent as alleged?

(iv) Relief.

5. The Trial Court after examining the evidence on record, came to the following conclusions:

(i) The petitioner did not give any details of the alleged misbehaviour of the respondent soon after marriage. In particular, there was no mention of any date, time, month or any specific instance whatsoever.

(ii) Even the names of the relatives with whom the respondent is alleged to have misbehaved were not given.

(iii) The pleadings were absolutely silent on the issue as regards the respondent had developed illicit relationship with somebody.

(iv) The allegations that the respondent had told the appellant that the born child to the parties again absolutely vague and general in nature.

(v) At one place in this petition, it has been mentioned that the respondent did not allow the petitioner to perform his marital relations. In the same breath it was stated that he was living separately from the respondent six months prior to the filing of the petition. This was mutually contradictory.

(vi) The facts on record showed that the respondent had conceived twice; the first conception was got aborted and the second conception was delivered by the respondent. Therefore, there was no basis of the allegation that the parties did not have marital relations or that the respondent had denied access to the appellant.

(vii) As regards the allegation of mixing poisonous substance with the tea served, the appellant failed to disclose as to when he had been administered such poisonous tea and what treatment he had taken to save his life. Further, it was not clear from the evidence as to why and when the respondent had removed any articles from the residence of the appellant.

(viii) As regards the second issues, there was nothing to show that the petitioner had tried to take benefit of his own wrongs. On the third issue, it was held that the respondent had failed to prove that the parties lived together as husband and wife even after filing of the present petition.

(ix) Nevertheless, in view of the findings on issue No.(i), the petition was dismissed.

6. Learned Counsel for the appellant refers to the evidence of PW-1 before the Trial Court on Issue No. 1. The relevant portion of the said evidence of the appellant by way of examination-in-chief reads as under:

Respondent started misbehaving after few months of their marriage. She is employed in CDR in Medical Centre. She developed illicit relations with some

body. And she told me that the child is not from him and it is from somebody. The respondent told the above said thing in the presence of my relations. She/respondent did not allow the petitioner to come near her and was not to allow her to perform the marital relations. She did not allow for the last about one year from the date of the petition. Thereafter, she gave some poisonous substance in tea. After taking the tea I started vomiting which saved my life. She started removing the articles of the house to the relations and friends. I am living separately for six months prior to the filing of the petition. I told this thing to her brother but she did not accede to his request and she thrown me out of the house. I have not been living together or cohabiting with her since of the filing of the petition. After the filing of the petition she filed a complaint in a dowry cell against myself, my sister and my brother-in-law. She also made a complaint in the office of my brother-in-law. I can identify the signatures of respondent. I have seen her writing and signing.

7. A perusal of the above deposition of the appellant shows that it barely improves upon the pleadings on record inasmuch as, even in the examination-in-chief, the appellant has been unable to specify the name of the person with whom the respondent is alleged to have had an illicit relationship. He also has not given any details of any particular instance of cruel treatment of the appellant by the respondent. The evidence of the appellant inspires little confidence of any case having been made out by the 1 appellant against the respondent.

8. After examining the pleadings and the evidence on record, this Court is unable to come to any contrary conclusion than that arrived at by the trial Court in the matter that the petition as well as deposition of the appellant is vague and without basis. No infirmity can be found with the findings of the Trial Court.

9. For the above reasons, there is no merit in the appeal and it is dismissed with costs of Rs. 5,000/- which will be paid by the appellant to the respondent within a period of four weeks.