

O.V. Jayakumar Vs. Rajeswari

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Court : Chennai

Decided On : Aug-19-1996

Reported in : II(1996)DMC536

Judge : A. Raman, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : C.M.S.A. No. 8 of 1988

Appellant : O.V. Jayakumar

Respondent : Rajeswari

Advocate for Def. : N. Varadarajan, Adv.

Advocate for Pet/Ap. : A.S. Vijayaraghavan, Adv.

Judgement :

A. Raman, J.

1. The husband is the appellant. The husband herein as the petitioner filed a application before the Sub Court, Coimbatore in O.P. No. 214 of 1982 for dissolution of the marriage. The petitioner/husband's case is as follows:

2. The marriage between the petitioner and the respondent took place on 14.9.1980. After the marriage the respondent lived with the petitioner in his house

only for three days and on 17.9.1980 she left the matrimonial home without any reason and without the consent of the petitioner. She also at that time took away the jewels. Since the respondent did not return to the matrimonial home, the petitioner sent a registered notice on 18.12.1980 requesting her to come and live with him. It was not complied with by the respondent. The petitioner personally visited the respondent's house and invited her to his house. But the respondent refused to come with the petitioner. The members of the respondent's family also abused the petitioner. On 4.3.1981 and 4.4.1981 the petitioner sent two letters to the respondent. The respondent has not replied nor returned to the petitioner's house. The petitioner also sent a letter on 25.6.1981 to the father of the respondent, and even that did not produce any result. Ultimately he sent a Lawyer's notice dated 12.10.1981. The petitioner belongs to a respectable family. The respondent is bound to live with the petitioner. The action of the respondent amounts to wilful desertion. Hence this application.

3. The respondent contended as follows :

The allegations made in the petition are not admitted. It is not true to say that the respondent left the petitioner's house of her own accord and without the consent of the petitioner and that she took away 6 sovereigns of gold jewels. After the marriage on 14.9.1980 the respondent stayed with the petitioner in her parents' house for three days and on 17.9.1980 they left for their honey-moon and stayed together as husband and wife in Hotel lodges and returned to Coimbatore on 30.9.1980. After return they stayed together in her parents' house from 1.10.1980 till 9.10.1980. Few days later her father was operated upon for cataract eye in a private nursing home. The petitioner at the instigation of his mother refused to allow the respondent to see her father in the Hospital. On 15.10.1980, after much begging the petitioner took the respondent in his scooter and left her at her elder sister Smt. Chandra Surendran's house at J-4 Flat, stating that he would come and pick her at her parents' house at 1p.m. But the petitioner did not turn up. After 15.10.1980, after the discharge of her father from the hospital the petitioner came to her parents' house twice but only to persuade her father to pay Rs. 2,000/- to Hotel Annapoorna for the reception expenses. The respondent was always prepared to go and live with the petitioner when the petitioner visited on these two

occasions. But the respondent promised to take her with him after a few days. But he did not turn up at all. When the respondent phoned the petitioner at his office he replied that she need not come and can live on her own. The respondent never deserted the petitioner. It is the petitioner who deserted the respondent. The respondent was always ready and willing to join with her husband. Even during the short period when she stayed with the petitioner the petitioner's mother ill-treated her. The clothes and articles and other things are still with the petitioner. Neither the petitioner nor his parents presented her any jewels. The allegation that she took away with her six sovereign of gold necklace is absolutely false. The respondent did not receive the two covers alleged to have been sent by the petitioner on 9.3.1981 and 4.4.1981. But these covers contained only the blank papers. Thinking that by oversight the petitioner has sent blank covers the respondent wrote to the petitioner. But there is no response. The petitioner again sent a cover under certificate of posting on 25.6.1981 to her father. The petitioner has been apparently manipulating to create evidence. The registered letter dated 12.12.1980 alleged to have been sent also contained only a blank paper. To the notice sent by the petitioner she has sent a suitable reply. The allegation that the respondent refused to go with the petitioner is absolutely false. The respondent was always prepared to live with the petitioner. The respondent therefore prays that the application may be dismissed with costs.

4. On the side of the petitioner Exs. A1 to A 9 were marked and the petitioner examined himself as PW 1. On the side of the wife Exs. B 2 to B 11 were marked. The respondent examined herself besides another witness. The learned Sub Judge held that the desertion was proved and therefore granted the decree for dissolution of marriage. Aggrieved by the judgment of the Trial Court the wife preferred an appeal to the District Court in CMA No. 75/88. The learned District Judge reversing the order of the Trial Court dismissed the petition of the husband. Therefore the husband has now filed this appeal.

5. The Civil Miscellaneous Second Appeal was admitted on the following substantial questions of law :

(1) Whether the Courts below had construed the provisions of Section 13(1)(b) of the Act correctly ?

(2) Whether the (sic) of documents, Exs. B 1, B 4, B 10 and B 11 is sustainable ?

(3) Whether the husband entitled to an order for dissolution of marriage ?

6. The point: The marriage between these parties took place on 14.9.1980. According to the husband she lived with him only for these days and that on 17.9.1980 she left the matrimonial home without any reason and without his consent. According to him he wrote letters and visited twice in person and requested her to come and that she refused. Then he sent a legal notice on 12.10.1981 and that there is thus desertion on the part of the wife. If the allegation made in the petition is true one would expect the petitioner/husband to take action immediately. There was absolutely no reason for him to wait till December 1982. For, the application was presented only on 22.12.1982. If really he was keen to get back the wife and live with her nothing prevented him from taking steps immediately through a Court of law or from issuing notice immediately. According to him his letters dated 12.12.1989, 9.3.1981 and 4.4.1981 did not produce any desired effect. Still he did not choose to take steps under law for restitution of conjugal rights. Even here he sent notice only in October 1981. That is replied to by the wife. Yet he does not take immediate steps. But filed this application nearly one year afterwards as though he was waiting for the two years period to be over so that he can straightaway ask for dissolution of the marriage. Therefore this circumstance would clearly prove that the case of the husband is not true. That the husband has been trying to create evidence is further proved by the fact that he chose to send letters to the respondent on 9.3.81, 4.4.1981 and 25.6.1981. These letters were sent containing blank papers. Thus he sent only blank papers in these covers addressed by him to the wife. The wife has produced them into Court. The lower Appellate Court has held that the case of the wife that only blank papers were, found enclosed in the covers written by the husband is true. I do not see any reason to differ from the finding of the lower Appellate Court in this regard. It is specifically stated in the petition that he twice went in person to the wife's house to request her to come. But she did not come. It is also stated by him that at that time

he was insulted by the parents of his wife. But in the letter dated 12.12.1980 he has stated that after the wedding he was treated badly by the wife's family and therefore he is prevented from going to the wife's house to bring her back and that he will never do the same. While that is his letter, in the petition he has stated that he has twice went in person. Thus he is (sic). This would again to show that he has chosen to sent covers addressed to the respondent by enclosing empty papers in the covers. Forgetting the allegations made in the petition he has chosen to create some letters now which ever at his case. The finding of the lower Appellate Court that these letters were concocted by the husband to create evidence is a finding well founded. Considering the nature of the petitioner's case and the circumstances to which I have referred to the finding of the lower Court on that aspect cannot be set aside.

7. The petitioner's clear case is that the wife lived with him only for three days. The specific case of the wife is that after marriage they went to honey-moon. Ex. B 1 establishes the case of the wife clearly. It is admitted to be in the signature of the husband. It is a form filled up by the husband seeking accommodation from Bangalore to Madras by Train No. 8 and the date of journey on 25.9.1980. The explanation of the husband is that this was filled up by him at Coimbatore. It is rather very curious explanation. If it was filled up by him at Coimbatore there is no reason as to why he should seek accommodation from Bangalore to Madras by filling up a form at Coimbatore Station. His case is that the wife lived with him only for three days after marriage. Therefore this form signed by him on 25.9.1980, whereas his case is that she left the matrimonial home on the third day of marriage. Exs. B 3 and B 4 are the tickets. Ex. B 3 is the Bus Reservation Ticket from Ooty to Mysore. The date of journey is given as 23.9.1980. One of the tickets bears the name of Jayakumar. The seat numbers are given as 10 and 11. Ex. B 4 is the ticket issued by Ranganathittu Birds Sanctuary, Karnataka Forest Department for hiring Rowing Boat. When such tickets are issued they do not write the name of a person in whose favour it is issued. It is not the practice whenever one visits a zoo or an amusement park or any picnic spot when such a levy is collected to issue tickets in the name of the individuals. Exhibits B 3 and B 4 thus establish the wife's case that after marriage viz., three days after the marriage they went on a honey- moon. The reason given by the Trial Court for ignoring those two

documents are thoroughly unacceptable. It is the case of the respondent wife that after marriage on 17.8.1980 they left for their honey-moon trip to Ooty, Mysore, Bangalore and Madras and stayed together as husband and wife in hotel lodges and returned to Coimbatore on 30.9.1980. The wife has set case on this aspect in her counter. That is not disputed by filing any rejoinder. The husband would say that he was attending office on those days and that he was on leave only for a week from the date of marriage. If what the husband states is true nothing prevented him from summoning the attendance register and records from his office to show that he was attending his office on 22nd, 23rd, 24th and 25th to 30.9.1980. In the absence of such documents from the husband it is clear that his case is devoid of merits.

8. In his evidence as PW 1, he has sated that he was on leave from 12.9.1980 for 15days and joined duty on 27.9.1980. As I pointed out already the documents, viz., Exs. B 1, 3 and 4 demonstrate clearly that the husband is uttering utter falsehood. In the petition it is very clearly stated by him that only for a period of three days after marriage they lived together as husband and wife. But in none of the letters written by him he has stated that there was no cohabitation between the spouses on those days. On the other hand the letter dated 9.3.1981 is to the effect that there is no difference of opinion between him and the wife. But if it is so it is rather strange that the wife has left him even on the third day after the marriage. In the cross-examination he admits that he was not present when the wife left the house after obtaining permission of the father. It is also stated that she went to see her father and left at about 12.00 noon and did not return home thereafter. But the case in the petition is quite different. It is admitted by him clearly that the belongings of his wife are still as this house. He states that he went to his wife's house on 21.9.1980 and 27.9.1980 to call her back. But from Exs. B1 to B 3 and 4 it is clear that both the spouses were on honey-moon on those days. Moreover his letter Ex. A1 is to the effect that he was insulted by the relations and the parents of the respondent and hence he would not go to the house of the respondent to call her back. But the evidence is to the effect that he went twice on 21.9.1980 and 27.9.1980. Again he states that he went on 26.9.1980 to his wife's house whereas according to records he has on honey-moon. It is stated by him that in the address given in Ex. B 1 his friend is residing. He states that he had written it only on

25.9.1980 and that his friend got him the form. But the friend is not examined. He also states that he handed over Ex. B 1 to his friend. If it is so it is not known how it came to be produced by the wife. It is also strangely stated by him that it is he who hand-over the same to his wife. It is not disputed by him that his brother is residing at Ooty. Therefore on an analysis of the evidence of the husband would go to show that his entire case is built on half truths and falsehood. On the other hand the circumstances would make it clear that he left his wife at her parents' house promising to take her back and did not choose to take her back and it is he who has abandoned his wife.

9. As regards the two points formulated for consideration I do not think that there is any merit in those contentions. The Court below has rightly construed the provisions of Section 13(1)(b) of the Act. It is not known on what ground it is stated that the lower Court has construed the provisions of the Act erroneously. The reception of the documents which have been marked as B 1, B 4, B 10 and B 11 cannot be held to be erroneous or opposed to law. Ex. 10 is the prescription copy noting the defect in the eye and the measurement of the glasses prescribed for the same. It is admitted by PW 1 that his wife left with the permission of his father stating that she wanted to see her father who had an eye operation. It is the case of the wife that her father had been taken for treatment and she was permitted by her husband and mother-in-law to see her father who had his eye operation and that the husband never chose to take her back and she was left at her father's house and that when she phoned up he replied that, she need not come back. That the father-in-law of the petitioner had undergone treatment for the eye is thus admitted by PW 1. It is further probablised by the relevant documents. Therefore the reception and marking of those documents cannot be said to be erroneous or illegal. They are admissible in evidence. Enough basis is laid for admitting the documents. They are relevant for the purpose of the case and especially in matrimonial matters the question of admissibility of the documents cannot loom large. Therefore on an analysis I am satisfied that the judgment and decree of the lower Appellate Court have to be confirmed and the Trial Court erred in allowing the application. In this view of the matter the three points are answered accordingly in favour of the respondent and further holding that the judgment and decree of the lower Appellate Court is not liable to be set aside.

10. In the result, this Civil Miscellaneous Second Appeal is dismissed with costs confirming the judgment and decree of the lower Appellate Court.

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