

R.Raju Vs. B.Chithra

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Court : Chennai

Decided On : Mar-30-2012

Judge : R.Subbiah, J.

Appeal No. : Civil Miscellaneous Second Appeal (MD) No.1130 of 2006 and M.P.(MD) Nos.2 and 3 of 2010

Appellant : R.Raju.

Respondent : B.Chithra.

Advocate for Def. : Mr.M.Ashok Kumar, Adv.

Advocate for Pet/Ap. : Mr.R.Raju, Adv.

Judgement :

JUDGMENT

1. This appeal is filed as against the order dated 25.11.2005 passed in G.W.O.P.No.3 of 2004 by the learned Principal District Judge, Virudhunagar District at Srivilliputhur, dismissing the petition filed by the appellant herein to hand over the custody of the minor child to him.

2. It is the case of the appellant before the trial court that the marriage between him and the respondent took place on 07.12.2000. Immediately after the marriage, both of them were living along with the parents of the respondent and out of the

wedlock, a female child was born on 26.11.2001 at Rajapalayam. During the stay at the respondent's house, the appellant was ill-treated by the respondent and her parents. Hence the appellant returned to his parents' house. The respondent did not join with the appellant and she stayed with her parents for a month. Thereafter, the appellant and the respondent lead their matrimonial life in the appellant's house. It is the allegation of the appellant that the respondent had to go to her parents' house without his consent and knowledge. After the child birth, the respondent and her parents did not inform the birth of the child to the appellant and after knowing the delivery, the appellant went to the hospital and attempted to see his new born baby; but the respondent and her parents did not allow the appellant to see the child. The appellant and his parents without minding the ill-treatment of the respondent and his family members went to the respondent's house and brought the child and the respondent to the appellant's house. Even thereafter, the respondent used to ill-treat the appellant. The respondent used to take away the child from the matrimonial house to her parents' house without the knowledge of the appellant and his parents. When the same was questioned, the respondent has given an undertaking on 23.06.2003. While so, on 02.10.2003, when the father of the appellant came to the house of the appellant, he saw an unknown person coming out of the house of the appellant. When it was questioned, the respondent went to her parents' house along with the child as well as her belongings. Hence, the appellant sent a notice on 08.12.2003 seeking for divorce. Though the said notice was received by the respondent, she did not send any reply. During the second week of December, 2003, when the appellant went to the respondents' house to see the child, he was prevented to the same. Apart from that, the respondent gave a false complaint before the Rajapalayam North Police Station as if the appellant had beaten the respondent. The police made an enquiry with regard to the same and found that the complaint was false and the police had also advised the respondent, after enquiry. Though the respondent had agreed before the police to allow the appellant to see the child, she went against her words. Hence, the appellant filed the petition for custody of the child.

3. Per contra, it is the case of the respondent that though the appellant agreed to marry the respondent without any dowry, subsequently he started to demand dowry from the first day of the marriage. The appellant along with her parents used

to beaten the respondent after the marriage demanding dowry. It is the further case of the respondent that with great difficulty, the parents of the respondent had spent more than Rs.2 lakhs for performing the marriage. After marriage, the appellant made a frivolous allegations against the respondent stating that she is having an illicit intimacy with an unknown person. The appellant had gone to extent of pouring kerosene on her and it was prevented with the help of the sister of the respondent. The appellant never cared to maintain the respondent and her daughter. Thus, she prayed for the dismissal of the claim petition.

4. In order to prove his claim, the appellant examined himself as P.W.1 and marked 10 documents as Exs.P-1 to P-10 and on the side of the respondent, she examined herself as R.W.1 and marked three documents as Exs.R-1 to R-3. The court below, after considering the entire evidence, dismissed the petition filed by the appellant. Aggrieved over the same, the present appeal has been filed.

5. Heard the learned counsel for the parties.

6. After going through the materials available on record, I find that the court below, after analyzing the entire evidence, had come to the conclusion that the allegations made by the appellant as against the respondent that she was having illicit intimacy with one unknown person, was not established and as such, the case projected by the appellant cannot be accepted, which, in my view, is proper and correct. Further, the evidence on record would show that the appellant himself had admitted that he had not spent any money to maintain his daughter and he had also admitted in his evidence that the daughter has been maintained well by the respondent, the mother. Above all, even though the appeal was filed in the year 2006, all along the appellant has kept quiet and has not filed any application seeking visiting rights. The appellant was also not able to point out that the respondent is not a fit person to have the custody of the child.

7. Considering all these aspects, I am of the opinion that the respondent is the proper person to have the custody of the minor female child, being the mother. Taking into consideration the paramount interest of the child, it would be appropriate not to hand over the custody of the child to the appellant. Under such circumstances, since the appellant has not established a case that the respondent

is not a fit person to have the custody of the child, this appeal is liable to be dismissed. However, I am of the opinion that the appellant, being the father, is entitled to have the visitation rights. Considering the facts and circumstances of the case, the respondent can be directed to hand over the custody of the child once in a month i.e. last Saturday and Sunday of every month. Hence, the respondent is directed to hand over the custody of the child at 9.00 AM of every last Saturday of every month commencing from April, 2012 and the appellant is entitled to have the custody of the child on that Saturday and Sunday and the appellant shall restore the custody of the child to the respondent at 5.00 PM on Sunday.

With the above directions, the Civil Miscellaneous appeal is disposed of. No costs. Consequently, connected M.Ps. are closed.

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