

Karnataka High Court
Smt R Bhagya vs Sri S A Gangadhar on 29 May, 2023
Bench: Alok Aradhe, Anant Ramanath Hegde

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF MAY, 2023
PRESENT
THE HON'BLE MR. JUSTICE ALOK ARADHE
AND
THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MFA NO.7124 OF 2016 (FC)
C/W
MFA NO.7637 OF 2016 (FC)

IN MFA NO.7124/2016:

BETWEEN:

SMT R BHAGYA,
W/O S A GANGADHAR,
D/O N RAMAIAH,
AGED ABOUT 31 YEARS
R/AT 1ST MAIN ROAD,
5TH "A"CROSS, HANUMANTHAPURA,
TUMAKURU TOWN-572 101. . . . APPELLANT

(BY SRI C.S.MADHU, ADVOCATE)

AND:

SRI S A GANGADHAR,
S/O LATE ANNEGOWDA,
AGED ABOUT 44 YEARS,
R/AT SURANAHALL VILLAGE,
MUGULUVALLI POST,
CHIKKAMAGALUR DISTRICT - 577101,

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NOW RESIDING BEHIND
VIDYAVAHINI COLLEGE,
13TH LINK ROAD, KRISHNA NAGAR,
SIT, TUMKUR CITY.

. . . RESPONDENT

(BY SRI PATEL D KAREGOWDA, ADVOCATE)

THIS MFA IS FILED U/S.19(1) OF THE FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 06.09.2016 PASSED ON MC NO.5/14 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, TUMAKURU, PARTLY ALLOWING THE PETITION FILED U/S.25 OF THE HINDU MARRIAGE ACT 1955.

IN MFA NO.7637/2016:

BETWEEN:

SMT R BHAGYA,
W/O S A GANGADHAR,
D/O N RAMAIAH,
AGED ABOUT 31 YEARS,
R/AT 1ST MAIN ROAD,
5TH "A"CROSS,
HANUMANTHAPURA,
TUMAKURU TOWN.

... APPELLANT

(BY SRI C.S.MADHU, ADVOCATE)

AND:

SRI S A GANGADHAR,
S/O LATE ANNEGOWDA,
AGED ABOUT 43 YEARS,
R/AT SURANAHALL VILLAGE,
MUGULUVALLI POST,

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CHIKKAMAGALUR DISTRICT - 577101,
NOW RESIDING BEHIND
VIDYAVAHINI COLLEGE,
13TH LINK ROAD, KRISHNA NAGAR,
SIT, TUMKUR CITY.

... RESPONDENT

(BY SRI PATEL D KAREGOWDA, ADVOCATE)

THIS MFA IS FILED U/S 19(1) OF THE FAMILY COURTS ACT, AGAINST THE JUDGMENT AND DECREE DATED 31.08.2016 PASSED IN M.C.NO.36/2013 (M.C.NO.135/2012) ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, TUMAKURU, DISMISSING THE PETITION FILED U/S 13(i-a) OF THE HINDU MARRIAGE AC`T FOR DISSOLUTION OF MARRIAGE.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.05.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ANANT RAMANATH HEGDE J., DELIVERED THE FOLLOWING:

JUDGMENT

MFA. No.7124/2016 is filed by the respondent/wife in M.C.No.5/2014 on the file of Family Court, Tumkur. In terms of the impugned judgment and decree dated 06.09.2016, the Family Court, allowed the petition filed by the husband in part and directed the wife to pay maintenance of Rs.3,000/- per month to the husband. Aggrieved by the said judgment and decree, the wife is in appeal in MFA No.7124/2016.

2. MFA No.7637/2016 is filed by wife challenging the judgment and decree dated 31.08.2016 in M.C. No.36/2013 on the file of the Family Court at Tumkur. In terms of the said judgment and decree, the petition filed by the wife seeking dissolution of marriage solemnized with the respondent is dismissed. Hence, the wife is in appeal seeking dissolution of marriage solemnized on 30.03.2000.

3. Since the parties in both the proceedings are the same, both the appeals are heard together and disposed of by this common judgment. For the sake of convenience, the parties are referred to as husband and wife in both appeals.

4. The brief facts of the case in M.C. No.5/2014 are: The marriage of the parties was solemnized on 30.03.2000. The husband filed a petition stating interalia that after the marriage the husband and wife lived together for three months in the husband's native place and thereafter the couple resided in Tumkur. A child was born one year after the marriage and the couple led happily married life for 9 years. It is further stated that the wife had studied only up to 10th standard and after the marriage, husband got her admitted to B.Com course. It is stated that, the husband suffered a gangrene attack to his left leg in the year 2009, treatment did not yield the desired result and his leg was amputated on 30 th December 2009. It is alleged that the wife left the company of the husband after the amputation. Since the husband's leg is amputated, he is not in a position to earn. Hence he has filed the petition seeking maintenance of Rs.10,000/- per month and it is contended by him that his wife is earning Rs.25,000/- per month from her avocation.

5. The wife contested the petition. She denied allegations leveled against her. It is her case that the petition seeking maintenance is filed as a counterblast to her petition in M.C. No. 36/2013 where she sought divorce on the ground of desertion and cruelty. The wife denied her husband's claim that he is not in a position to earn and also denied that she is earning Rs.25,000/- per month and prayed for the dismissal of the petition.

6. Facts in M.C. No. 36/2013.

This petition is by the wife for the dissolution of the marriage on the grounds of cruelty and desertion. The wife contended that the wife started residing with the husband after the marriage. Further, the wife's parents provided financial assistance to the husband to purchase a mini lorry and a ten-wheeler lorry. It is further stated that from the wedlock a child Jamuna was born. It is alleged that the respondent started ill-treating and harassing the wife, used to assault her and demanded dowry from her parents. It is further alleged that the husband was not discharging his marital obligation towards the wife and used to quarrel without any reason. It is further contended that the

efforts of the elders who advised the husband to lead normal happy marital life with the wife went in vain. Hence the petition is filed for dissolution of marriage.

7. The husband contested the petition. Admitted the relationship, however, disputed the contention relating to financial assistance said to have been provided by the wife's parents. The husband denied the allegations of cruelty and desertion. It is stated that his wife is the daughter of his maternal uncle and they knew each other even before the marriage. He contended that he and his wife led normal marital life for nine years and they have a daughter from the marriage. It is further contended that since the respondent suffered gangrene his left leg was amputated and when he was in the hospital the wife left his company and started living with her daughter in her parent's house. The husband contended that his parents are dead and the brothers are living separately and due to amputation, he is not able to earn, without there being any valid ground, the petition is filed seeking dissolution of marriage.

8. Before the Family Court, in M.C. No.36/2013 the wife is examined as PW1 and one more witness is examined as PW2 and the documents are marked on behalf of the wife at Ex.P.1 to P.11. The husband is examined as RW1 and got marked Ex.R.1.

9. In M.C.No.5/2014 the respondent/husband has sought maintenance of Rs.10,000/- per month from his wife on the premise that he is not able to work and earn after the amputation of his left leg. He contends that there is a permanent functional disability as he is not able to drive the vehicle.

10. Before the Family Court, in M.C. No.5/2014 the husband is examined as PW1 and got Ex.P.1 to P.4 marked. The respondent/wife is examined as RW1 and got Ex.R.1 to R.8 marked.

11. Heard the learned counsel for both husband and wife in both the appeals and perused the records. Discussion in MFA no. 7124/2016 (M.C. no. 5/2014)

12. The Counsel for the wife urged that the impugned judgment and decree awarding Rs.3000.00 per month in favour of the husband is unsustainable and liable to be set aside. It is urged that husband is still driving an auto and has income from family properties. It is also urged that the wife has no independent source of income. It is also urged that the Family court after having held that there are no material evidence to hold that the wife is having an independent source of income, could not have granted a decree for maintenance.

13. The learned Counsel of the husband defended the impugned judgment and award and submitted that on account of the amputation of the leg, he is not in a position to earn and the wife is under obligation to maintain the husband. It is also urged by him that the wife is having an independent source of income.

14. It is to be noticed that the husband has not produced any records to show that the wife is earning. The Family court has recorded a finding that the husband has not produced any evidence in this regard. However, the trial court has held that the wife has a moral obligation to maintain the husband. The cross-examination of the husband reveals that the husband purchased the auto-

rickshaw in 2012, i.e., 2 years after the amputation of his leg. This indicates that he is having an income. However, no evidence is led to show that the wife is capable of earning. This being the position this Court is unable to affirm the judgment and decree of the family court which has passed a decree for maintenance of Rs.3000/- per month against the wife and in favour of the husband. Hence the said judgment and decree have to be set aside.

Discussion relating to MFA 7637/2016 arising from M.C. No. 36/2013 seeking dissolution of marriage:

15. Learned counsel for the wife would contend that the petition seeking dissolution of marriage ought to have been allowed as the grounds urged by the petitioner/wife are proved by leading cogent evidence. Learned counsel urged that the entire approach of the Family Court in assessing the evidence is erroneous. Though the wife has proved the fact that the money was paid by her parents to purchase the vehicles in the name of the husband and the husband failed to prove that he purchased the vehicles from his funds the Family Court failed to draw the inference that the husband was insisting for dowry and thereby inflicted cruelty on her. It is also urged that the husband has lived separately from her and has deserted her for no reason.

16. The learned counsel for the husband contended that the grounds urged in the appeal memo are not the grounds in support of the alleged plea of cruelty and desertion. It is further contended that the learned counsel for the husband that the wife has left the company of the husband after his leg was amputated. It is contended that she left the company of her husband for no fault only to avoid the responsibility of taking care of her husband whose leg was amputated.

17. It is also urged that the husband and wife shared a cordial relationship till the husband's leg was amputated and since the wife has left the company of the husband without there being any cause, it cannot be held that the husband has deserted the wife.

18. This Court has considered the contentions raised at the bar and perused the records including the impugned judgment and decree.

19. The Family Court has dismissed the petition on the premise that there is no evidence relating to cruelty and there is no evidence to hold that the husband has deserted the wife. The Family Court has taken a view that the wife has left the company of the husband when his leg was amputated.

20. The point for consideration is, "Whether the finding of the Family Court is supported by the evidence?"

21. The evidence in the cross-examination of the wife would suggest that the relationship between the husband and wife was cordial till the husband's leg was amputated. A minor difference of opinion or disagreement between the husband and wife cannot be construed as an act of cruelty on the part of the spouse. The wife has alleged that she had filed a complaint against the husband on the ground of ill-treatment by the husband. However, no evidence is produced in this regard. The cross-examination of the wife also indicates that six years after the marriage a discussion was held

in the presence of elders to resolve the difference of opinion between the husband and wife. Till then there were no such instances where the alleged difference of opinion was brought to the knowledge of mediators/elders. The evidence would also reveal that the wife pursued her studies after the marriage staying with the husband. The evidence of the wife in the cross-examination further reveals after the discharge from the hospital, the husband went to the maternal home of the wife to meet her as she was staying there. It is also forthcoming that husband and wife were living together till 2010 and only in the year 2010 when the husband's leg was amputated, the wife left the company of the husband. The evidence on record does not indicate that after 2010 the husband has ill-treated the wife to attract the ground of cruelty to seek divorce. Though the wife by way of an amendment averred certain facts alleging unnatural sexual acts and assault by the husband, the allegations are not proved.

22. On overall appreciation of the materials on record, this Court is of the view that the wife has left the company of the husband without any reasonable cause and she was living with him till 2009. Only when his leg was amputated in December 2009, she left his company. Under the circumstances, the Family Court is justified in holding that plea of desertion is also not established.

23. It is also relevant to note that the petition averments are vague insofar as a plea relating to cruelty and desertion. The wife has not pleaded the specific instances of cruelty and has not provided the particulars. The pleading relating to desertion does not say that the husband is intentionally staying away from the company of the wife to put an end to the marital relationship.

24. For these reasons, this Court is of the view that the Family Court is justified in arriving at a finding that the plea of cruelty and desertion is not proved. This Court does not find any valid reasons or grounds to interfere with the judgment and decree passed by the Family Court. Hence, the following:

25. Hence the following:

ORDER

(i) MFA No. 7124/2016 is allowed.

(ii) The impugned judgment and decree dated 06.09.2016 in M.C.5/2014 on the file of the Family Court at Tumakuru are set-aside.

Consequently, M.C.5/2014 on the file of the Family Court at Tumakuru is dismissed.

(iii) MFA No.7637/2016 is dismissed. The impugned judgment and decree dated 31.08.2016 passed in M.C.No.36/2013 by the Principal Judge, Family Court at Tumakuru is confirmed.

(iv) No order as to cost.

Sd/-

JUDGE

Sd/ -
JUDGE

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