

# ANDHRA PRADESH HIGH COURT

Geeta Lakshmi

Vs.

G.V.R K. Sarveswara Rao

A.A.O. No. 548 of 1980

(Jeevan Reddy and Mrs. Amareswari, JJ.)

20.08.1982

## JUDGMENT

### **Amareswari, J.**

1. This appeal arises out of the order of the Subordinate Judge, Rajahmundry made on 8-2-1979 in O.P. NO. 16 of 1976 granting a decree for divorce at the instance of the husband.
2. The wife is the appellant. The parties were married in 1960 and they lived happily for 6 Years. Trouble began when the third child was born in the mission Hospital at Rajahmundry. In view of the health of the wife, the Doctors advised that she should not have any more children and suggested in the circumstances that it is better for the husband to undergo vasectomy operation. The husband resented the idea and immediately left for his place Konthamuru leaving the wife and the new born in the Hospital. R.W.2 the father of the wife took her and the child to his place Vedisileru. Sometime thereafter the wife filed O.P. NO. 159 of 1967 for restitution of conjugal rights. The petition was allowed on merits on 27-10-1971. The order of the O.P. is Ex.A-2. According to the wife there were some attempts of mediation even during the pendency of the petition for restitution of conjugal rights, that she went to the husband's place Konthamuru and lived for 15 days after the decree in O.P. No. 159 of 1967, that during that period she was ill-treated by the husband and her mother-in-law, that she and her children were kept in a separate room and they were given some paddy for cooking their food separately and even that was discontinued after some time and she was finally driven out of the house and then she had no alternative but to go and live with her parents at Vadisileru. She filed O.S. No. 44 of 1972 for maintenance under Section 18 of the Hindu Adoptions and Maintenance Act alleging cruelty and desertion. The suit was decreed on 5-4-1974 under Ex.A-3 and a sum of Rs. 100 was awarded towards maintenance for the wife and three children.
3. Thereafter the husband filed the present petition O.P. No. 16 of 1976, out of which this appeal arises for divorce under Section 13(1A) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) claiming that the parties had not lived together for 2 years after the decree for restitution of conjugal rights, that there were no chances of reconciliation and that he was not guilty of any wrong acts disentitling him to the relief. He also alleged that the wife was guilty of

desertion.

4. The wife filed a written statement denying both the allegations. Among other issues, the trial court framed the following issues :-

- (1) Whether the parties lived together after the decree for restitution of conjugal rights and;
- (2) Whether the husband was taking advantage of his own wrong and whether the wife was guilty of desertion.

On both the issues, the trial court held in favor of the husband. The court found that the parties did not live together after the decree for restitution of conjugal rights, that the wife never joined the husband, that her story that she was driven out by the husband is not true and that the husband has committed no wrong disentitling him to the relief under Section 13 (1A) of the Act and that the wife was also guilty of desertion. On these findings, the court granted a decree for divorce.

5. On behalf of the appellant, it is mainly contended that the evidence on record clearly establishes that the husband made it impossible for the wife to live with him, that he and his mother were ill-treating her, that she was actually driven from the house by the husband within 15 days of her joining the husband subsequent to the decree for restitution of conjugal rights and that he cannot take advantage of his own wrong to claim dissolution of marriage. It is also urged that the decree in the maintenance suit which had become final is a complete answer to the allegation of desertion by the husband.

6. We will take up the allegation as to desertion first. The decree for restitution of conjugal rights was passed on 27-10-1976 as evidence from Ex. A-2. Shortly thereafter the wife filed O.S. No. 44 of 1972 for maintenance on the ground that she is entitled to live separately on account of the cruelty meted out to her by the husband. Obviously the suit was filed in 1972, and the allegations were that she was driven out of the house and that she was ill-treated by the husband. The suit was decreed on 5-4-1974 finding the allegations to be true. In these circumstances, there can be no question of any desertion on the part of the wife. The decree for maintenance had become final as there was no appeal against the decree. From the facts it is clear that the wife was living away from the husband from 1972 due to the ill-treatment of the husband and a competent court had held that she was entitled to live separately. In these circumstances we fail to see how the wife was guilty of desertion. The present petition for divorce was filed in 1976. In view of the maintenance decree in O.S. No. 44 of 1972 which had become final between the parties, the ground of desertion on the part of the wife stands disproved.

7. The more important question is whether a decree can be granted under Section 13 (1A) of the Act in the circumstances of the case. Admittedly the parties have not lived together for two years after the decree for restitution of conjugal rights. Therefore, the requirements of Section 13 (1A) are satisfied. But the question is whether he is entitled to the relief by virtue of this subsequent conduct in view of the provisions of Section 23 (1) (A) of the Hindu Marriage Act. It is contended on behalf of the respondent-husband that Section 23(1)(A) has no application to proceedings under Section 13 of the Act subsequent to the amendment of Section 13 by Act 44

of 1964 and Act 68 of 1976.

8. To appreciate this contention, it is necessary to refer to a few relevant sections of the Hindu Marriage Act.

9. Section 9 which deals with the restitution of conjugal rights is as follows :-

"9 (1). When either the husband or the wife, has without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the District Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

"9(2) xxxxxxxx" Section 13 prior to its amendment reads :-

"13(1) Any marriage solemnized whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife be dissolved by decree of divorce on the ground that other party :-

(i) to (vii) xx xx xx xx

(viii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for conjugal separation against that party;

(ix) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree."

10. In 1964 Section 13 was amended by Act 44 of 1964 and Clauses (viii) and (ix) of sub-section(1) of Section 13 were omitted and Section 13 (1A) was inserted:

"13(1A). Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground :-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties: or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

11. This section was further amended by Act No. 68 of 1976 by which the period of two years was altered as one year.

12. The only other relevant section is Section 23 which is as follows:

"23. (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that -

(a) any of the grounds for granting relief exists and the petitioner (except in cases where

the relief is sought by him on the ground specified in sub-Clause (a), sub-Clause (b) or sub-Clause (c) of Clause (ii) of Section 5) is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief and

(b) to (d) xx xx

(8) there is no other legal ground why relief should not be granted.

then and in such a case, but not otherwise the Court shall decree such relief accordingly."

13. It is clear from the various amendments made in the provisions of Section 13 that the Parliament thought it fit to liberalize the grounds for divorce. Under the unamended Section 13, Clause (ix) enabled only the party who obtained a decree for restitution of conjugal rights to apply for divorce on the ground that the other party has failed to comply with the decree for the period mentioned therein. The defaulting party against whom the decree for restitution of conjugal rights was passed would not move the Court for decree of divorce. Sub-section (ix) of Section 13 was omitted by the 1964 amendment and Section 13(1A) was introduced under which either party to the marriage has been given a right to present a petition for dissolution of marriage by decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties. By amending Act 68 of 1976 the period of 2 years was reduced to one year. A further Section 13 (B) was also introduced providing for dissolution of marriage by consent. Undoubtedly, the Parliament liberalized the grounds of divorce and provided for dissolving "dead marriage with the minimum of rancour and hostility and the maximum of humanity."

14. But then the question is how far have the amendments gone? Has Section 23 (1) (a) to be treated non-existent for the purpose of Section 13? It is the accepted rule of interpretation that two provisions of an enactment should be harmoniously construed to give meaning to both the provisions. Section 23 (1)(a) says that even if any of the grounds for granting the relief exists the Court should grant relief only and, not otherwise, when the petitioner is not taking advantage of his or her own wrong or disability for the purpose of such relief. The amendment to Section 13 must be limited to the extent to which the amendments have been made. They cannot be given an extended operation. Section 13 cannot be taken out of the limits of Section 23 (1) (a). If it were otherwise, the Parliament would have added the words "notwithstanding anything to the contrary" in Section 2(1) (a) (23 (1) (a)?) or would have been suitably amended Section 23 (1)(a) itself, as it was well aware of the provisions of Section 23 (1)(a) when Section 13 was amended. If the interpretation put by the learned counsel for the appellant is accepted, Section 23 (1)(a) would be rendered otiose and nugatory. We are of the view that before and after the amendment of the Hindu Marriage Act, the provisions of Section 13 are subject to provisions of Section 23 (1)(a) of the Act.

15. Presently, we are concerned with a case where a decree for restitution of conjugal rights was obtained by the appellant-wife under Section 9 of the Act on the ground that the husband had without reasonable cause withdrawn from her society. A decree for restitution of conjugal rights was granted to the wife. After the decree, the husband not only, not complied with the decree, but did positive acts by ill-treating her and finally drove her away from the house. It is not a case of mere non-compliance of the decree, but fresh positive acts of wrong. We, therefore, hold that the respondent is not entitled to the relief under Section 13 (1A) of the Act.

16. In *Dharmendra Kumar v. Usha Kumar*<sup>1</sup>, in considering the question whether the petitioner there was guilty of any wrong disentitling her to the relief under Section 13, the Supreme Court observed as follows (at p. 2219) :-

"The grounds for granting relief under Section 13 including sub-section(1A) however continue to be subject to the provisions of Section 23 of the Act."

It, was also held that "in order to be a 'wrong' within the meaning of Section 23 (1)(a) the conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion, it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled."

17. In *M. Someswara v. Leelavathi*<sup>2</sup>, the Mysore High Court refused to grant the relief in view of the provisions of Section 23 (1)(a) of the Act on the ground that apart from non-compliance of the decree, the petitioner therein was guilty of positive acts of ill-treatment and that the party cannot take advantage of his or her own wrong.

18. The learned counsel for the petitioner relied upon a decision of the Punjab High Court in *Bimla Devi v. Singh Raj*<sup>3</sup>, After an exhaustive discussion of all the provisions, the Punjab High Court has held that a mere non-compliance of the decree for restitution of conjugal rights cannot be said to be a wrong as to disentitle the parties for seeking a divorce under Section 13 (1A) because of the provisions of Section 23 (1)(a) of the Act and that it must be proved that the advantage of the wrong mentioned in Section 23 (1)(a) should be an advantage of their own wrong, foundation of which was laid after the decree for restitution of conjugal rights was passed. In effect what the Punjab High Court said was that there must be fresh acts of wrong or disability subsequent to the passing of the decree. This decision is easily distinguishable from the facts of the present case. In this case, the respondent had ill-treated the wife subsequent to the passing of the decree and drove her away from the house.

19. We are, therefore, of the view that the respondent is not entitled to the relief in view of his own conduct, and accordingly we decline to grant the relief in view of the provisions of Section 23 (1) (a) of the Act.

20. In the result, we allow the appeal and dismiss the application O.P. No. 16 of 1976 seeking divorce. No costs.

Appeal allowed.

<sup>1</sup> AIR 1977 SC 2218

<sup>3</sup> AIR 1977 Pun and Har 167

<sup>2</sup> AIR 1968 Mys 274