

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF APRIL, 2024**

**PRESENT**

**THE HON'BLE MRS. JUSTICE ANU SIVARAMAN**

**AND**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**MISCELLANEOUS FIRST APPEAL NO.4677 OF 2016 (FC)**

**BETWEEN:**

MRS. L.S. JYOTHI PRIYA

... APPELLANT

(BY SHRI. P.B. AJIT, ADVOCATE)

**AND:**

1. LATE MR. K.L. SARAVANA

1(a). MR. S. GUHANESH

-(,). MRS. SHANTHI

... RESPONDENTS

(BY SHRI. SYED KHALEEL PASHA, ADVOCATE;  
SHRI. AMEYA FADNIS, ADVOCATE FOR R1(a);  
SMT. M. KAMALA KUMARI, ADVOCATE FOR R1(b))

THIS MFA IS FILED U/S 19(1) OF THE FAMILY COURT ACT AGAINST THE JUDGMENT AND DECREE DATED: 13.08.2015 PASSED IN M.C.NO.831/2010 ON THE FILE OF THE III ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, ALLOWING THE PETITION FILED U/SEC 13(1)(ia)(ib) OF THE HINDU MARRIAGE ACT.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.04.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

### **JUDGMENT**

This appeal is preferred by the respondent in M.C.No.831/2010 against the judgment of the III Additional Principal Judge, Family Court, Bengaluru, dated 13.08.2015.

2. It is submitted that the husband of the appellant, who has since passed away, had preferred the Matrimonial Case seeking dissolution of marriage under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). In the petition filed by the husband before the Family Court it was contended that the parties were married on 19.04.2002 at GRR Kalyana Mantapa, Narayana Pillai Street, Bengaluru. After the marriage, the

parties had lived happily for about ten months, after which it was alleged that the appellant - wife started abusing the husband's mother and assaulting his mother and sister. A child was born in the marriage. It is stated that on 18.03.2003, the appellant had left matrimonial home without any reason and had refused to rejoin the company of the husband. There were further allegations that criminal cases had been filed by the wife and she along with her father had gone to the office of the husband and abused him in front of his colleagues and insulted him. It is also contended that she had informed him that she was not interested in marrying him and that it was only due to pressure from her parents that she had agreed to the marriage. It was further contended that she used to weep at night, pick up quarrels with the husband without any reason and break household articles. He had therefore issued a legal notice requesting her to give consent for a mutual divorce but the same was not replied by her and he had no other alternative but to file a petition for divorce. It was further stated that an earlier petition for divorce had

been filed before the II Additional Family Court, Bengaluru, which was dismissed on 16.04.2007, since he could not pay the balance of interim maintenance and he paid the said amount on 27.06.2009.

3. The appellant - wife had filed the detailed objections denying the contents of the petition. She contended that she had gone to her parents' house during the month of March 2003, while she was pregnant at the insistence of husband's mother and sister and she had gone with her parents leaving all her belongings including her academic records, jewellery and other materials in the matrimonial house. It was stated that the respondent - husband did not take care of her and in April 2003, she went to the house of the husband along with her father but she was not allowed to go inside the house and her husband informed her that he can allow her inside the house only if his mother permits him to do so.

4. It was further stated that on 06.10.2003, she gave birth to a male child and the fact was informed to the husband but the husband or his family did not visit her or

enquire about the baby or the mother. She admitted the receipt of the legal notice issued by her husband seeking consent for mutual divorce. Since she wished to resume her life with the petitioner she did not agree for mutual divorce. However, she instituted a suit for maintenance before the Principal Family Court, Bengaluru in O.S.No.1/2005, which was decreed and the husband was ordered to pay a sum of Rs.3,000/- as maintenance to the wife and Rs.2,000/- for her son. However, the petitioner had not paid the maintenance. It was further contended that she was humiliated by the husband's family as she had no job and she prayed for dismissal of the application.

5. The respondent - husband was examined as PW.1 and the documents Exs.P1 to P7 were marked. The appellant - wife was examined as RW.1 and 17 documents - Exs.R1 to R17 were marked. The Family Court, after considering the contentions advanced held that the contentions raised by the appellant's husband that the wife had treated him with cruelty stood proved since the wife had filed several cases against the husband and since she had

never expressed any willingness to rejoin the husband even in the mediation proceedings. It was held that the filing of a Police Complaint and the Police registering a criminal case against the husband would go to show that the parties are at logger heads and cannot live together as husband and wife. It was found that the marriage had broken down irretrievably and the husband was granted a Decree of Divorce under Section 13 (1) (i-a) (i-b) of the Act.

6. The learned counsel appearing for the appellant contends that there was absolutely no material before the Family Court to hold that the appellant had treated her husband with cruelty. It is submitted that a Police Complaint had been preferred against the husband and his friends by the father of the appellant, who had been physically assaulted by them and that the filing of the said case cannot be treated as an act of cruelty on the part of the wife. It is further stated that the filing of O.S.No.1/2005 claiming maintenance for herself and her child cannot be taken as an act of cruelty under any circumstances. It is submitted that the very fact that the appellant had been forced to go out of

the matrimonial home when she was pregnant and that there was no effort taken by the husband or the other members of his family to make enquiries about her or her child or to bring her back to the matrimonial home, would itself show that the cruelty, if any, was on the part of the respondent - husband and not the appellant - wife. It is contended that the appellant was all along ready and willing to rejoin her husband but no efforts whatsoever was made for the resolution of the disputes between them by the husband or his family. It is submitted that it has come out in evidence that the husband never made any attempt to contact the wife or to see his son and this, by itself would show that the abandonment was by the husband.

7. It is submitted that during the pendency of the appeal, the husband passed away. The judgment and decree of the Family Court had been stayed by this Court in appeal. Though the appeal was initially dismissed as abated, since the respondent - husband was working as an Accountant in Accountant General's Office, Bengaluru, the matter had not abated since there was an issue of retirement benefits and

compassionate appointment available which was to be considered.

8. The learned counsel appearing for the appellant placed reliance on the following decisions:

- *Yallawwa v. Shantavva*<sup>1</sup>;
- *Ravinder Kaur v. Manjeet Singh*<sup>2</sup>; and
- *Rajni V. Naresh*<sup>3</sup>
- *H.V. Nagendra v. Smt. M.M.Sindhu*<sup>4</sup>;

It is contended, with the support of the said decisions that the wife's rights to the status of a widow and the resultant rights to property and retirement benefits would survive even if the husband passed away while pending the appeal. The judgment of co-equal bench of this Court is relied on to contend that in similar circumstances, this Court has categorically held that the allegations of cruelty and desertion would not stand proved where the husband made no efforts to bring back the wife to the matrimonial home and resume co-habitation.

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<sup>1</sup> (1997) 11 SCC 159

<sup>2</sup> (2019) 8 SCC 308

<sup>3</sup> Family Court Appeal No.56 of 2014 (Bombay High Court, Nagpur Bench)

<sup>4</sup> 2014 SCC Online Kar 2899



9. It is submitted that the mother of the husband is herself a retired Teacher and that she would not be entitled to family pension. It is therefore contended that since there was no material to hold that the wife had treated the husband with cruelty at any point in time, the judgment of the family Court is liable to be set-aside and the appellant is entitled to the legal status as 'widow' of the deceased and to all benefits thereof.

10. The legal heirs of respondent - husband are impleaded in this appeal. They have entered appearance and placed written arguments before this Court. It is submitted that an order of interim stay was passed by this Court on 09.10.2017. The appeal was belated and this Court had condoned the delay of 265 days in filing the appeal. The respondent-husband had filed I.A.No.1/2018 for vacating the interim order. However, the same was dismissed and the parties were directed to explore the possibility of settlement, if any. Thereafter, the respondent - husband passed away on 25.05.2022, the same was reported by the Counsel for the respondent vide memo

dated 05.07.2022. The appeal was dismissed as abated on 18.07.2022. However, thereafter IAs were filed to recall the order, to set aside the abatement and to bring the legal heirs on record. Though this was objected to, the IAs have been allowed. Further, it is stated that before the Family Court the respondent - husband had taken the stand as PW.1 and had specifically brought to the notice of the Court the several instances of cruelty meted out to him by the appellant. It is contended that the appellant was in love with one Prakash while studying final year B.A., and she was not interested in marriage and it was only due to force of her parents that she had married the respondent - husband against her wishes. It is stated that the husband, as PW.1 has spoken about the instances of unspeakable cruelty meted out to him, which was accepted by the Family Court on the basis of his testimony as well as the admissions made by the wife as RW.1 in cross-examination. It is therefore contended that the judgment of the Family Court is perfectly legal and valid and ought to be sustained. It is further stated that the respondent 1(b) is a dependant parent of the

deceased respondent and that she has no avocation or employment and is entitled to Family Pension under Rule 50(6) of CCS (Pension) Rules. It is contended that the appellant being a divorced wife is not entitled to family pension.

11. The learned counsel appearing for the respondents placed reliance on the following decisions:

- *Saraswathi Ammal v. Lakshmi*<sup>5</sup>;
- *Narendra v. K. Meena*<sup>6</sup>;
- *P. Lakshmi v. N. Nagarajan*<sup>7</sup>;
- *Yallawwa v. Shantavva*<sup>8</sup>;

It is contended that on the death of the husband, there is no marriage and the appeal stood abated. The appellant who was a divorced wife as on the date of death cannot thereafter prosecute an abated appeal.

12. Having heard the learned counsel appearing on either side at length and having considered the contentions advanced, we are of the opinion that the contentions raised

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<sup>5</sup> AIR 1989 Madras 216

<sup>6</sup> (2016) 9 SCC 455

<sup>7</sup> C.M.A (MD)No.910 of 2021 and C.M.P(MD)No.8563 of 2021

<sup>8</sup> (1997) 11 SCC 159

by the appellant that the allegations of cruelty has not been established by the petitioner before the Family Court are liable to be accepted. It is an admitted case of both the parties that the parties had lived together as husband and wife in the matrimonial home for the first ten months of the marriage. Thereafter, it is contended by the respondent - husband that the wife left him without any reasons and went away to her house. The wife specifically contended that she was thrown out of the house at the instance of the husband's mother and sister. It is an admitted case that she was never taken back to the matrimonial home by the husband and there was no enquiry made by the husband or his relatives either about her or her son. Later, it appears that when the husband's father passed away there were some altercations between the parties which led to a criminal complaint being filed by the father of the appellant against the respondent - husband. As a matter of fact, it is on record that there was never any attempt by the husband either to resume co-habitation or the request made by the husband to the wife to come back to the matrimonial home.

Even in the legal notice sent by the husband, the demand is that she should give him divorce by mutual consent and not that she should return to the matrimonial home.

13. The Apex Court in *Yallawwa's* case (supra), had specifically considered the question with regard to the abatement of an appeal in the matrimonial case on the death of one of the parties to the marriage. It was held that a decree granting Divorce under Section 13(1) of the Hindu Marriage Act, 1955 is appealable under Section 28 of the said Act. Even if the husband passes away during the pendency of the appeal there would be a direct legal consequences affecting the status of the parties as well as the proprietary rights of either of them which would flow from the Decree of the Family Court. It was therefore held that the appeal would not abate only because the partner who has obtained the decree dies after obtaining the decree. It was specifically held that in such appellate proceedings other heirs of the deceased spouse could be joined as opposite parties as they would be interested in urging that the surviving spouse against whom such decree is passed

remains a divorcee and is not treated to be a widow or widower of the deceased original petitioner, so that she or he may not share with other heirs the property of the deceased spouse. It was held that the appeal can be continued against the legal heirs of the deceased spouse and the appeal could not be said to have abated. The same position has been reiterated in *Ravinder Kaur v. Manjeet Singh's case* and *Rajni v. Naresh's case* (supra).

14. In *H.V. Nagendra's case* (supra), a co-equal bench of this Court was considering a case where the contentions are quite similar to the one raised in the instant case. It was held thus:

*"20. In the light of the aforesaid pronouncements of the Apex Court, when we look at the facts of this case, after marriage, after the wife conceived, there is no such untoward incident that has occurred for the wife to inflict an act of cruelty on the husband. The cruelty, if at all, as contended by the petitioner, is her refusal to come and join him, not informing the birth of the child, not inviting him for naming ceremony, then coming to the house and creating scene and spoiling the reputation of the family, insisting on a separate house, not showing respect to the petitioner's Parents, saying that as he did not demand dowry during marriage there must be some defect in him. Further, asserting that by the*

*qualification she possessed she would have got a better employment and earned more than what the husband was earning. As against this, the wife's grievance is the mother of the petitioner being too possessive for her son, is coming in the way of their happy married life and the son has no freedom in the house and is afraid of his Parents; he cannot spend privately some time with the wife; the wife is not getting an opportunity to show her love and affection to the husband. Unfortunately, both the husband and wife are coming from decent family, with good background and educational qualification but they are not properly tuned or educated to understand each other for adjustments and live happily. It is the ego which is coming in their way. Each one of them cannot assert their rights and contend what they say is correct and what the other is saying is wrong. There should be some give and take. This they have not learnt. Therefore, notwithstanding the fact that they come from a cultured family, they are unable to lead a happy married life. They lack proper atmosphere or proper guidance in this aspect. The husband seems to think now there are laws which give him a decree for divorce so that he can marry another girl. The provisions for divorce is not introduced and enacted by the Parliament for granting divorce in a case of this nature. Granting divorce should be under exceptional circumstances and the ground set-out in the Act has to be proved before the Court. Otherwise, the Courts also have no power to grant a decree for divorce.*

15. The respondent has also relied on the decision of the Apex Court in *Yellawwa's* case (supra), the judgment of

the Apex Court in *Amardeep Singh v. Harveen Kaur*<sup>9</sup>, on the grant of a Decree of Divorce on the irretrievably break down of the marriage is also relied on. The decision of Madras High Court in *Saraswathi Ammal v. Lakshmi* as well as the decision of Apex Court in *Narendra v. K. Meena* and the decision of the Madras High Court in *P. Lakshmi v. N. Nagarajan* have also been relied on.

16. Having considered the contentions advanced, we are of the opinion that the contention raised by the learned counsel for the appellant that the appeal stood abated cannot be accepted in view of the fact that there are proprietary rights surviving for consideration even on the death of the decree holder - husband.

17. In the facts and the circumstances of the instant case and in view of the averments of the parties and the evidence adduced, we are of the opinion that the findings of the Family Court that the wife has intentionally deserted the husband and that she had acted with such cruelty as to entitle him to a Divorce on the ground of cruelty were

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<sup>9</sup> (2017) 8 SCC 746



unfounded. We are of the opinion that the matrimonial cruelty necessary for grant of a Decree of Divorce or desertion with a clear intention to put an end to the marriage has not been proved in the instant case.

18. In the result, we pass the following:

ORDER

- (i) The appeal is ***allowed***.
- (ii) The judgment and decree dated 13.08.2015 passed in M.C.No.831/2010 on the file of III Additional Principal Judge, Family Court, Bengaluru, is set aside.
- (iii) The appellant is held to be entitled to the status of 'widow', of the petitioner before the Family Court and is thus entitled to all the consequential benefits of such status.

The parties shall suffer their respective costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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