January 2026

Current's

FAMILY LAW JUDGEMENTS

Mode of Citation : FLJ

CURRENT DIGITECH

Published and Printed by:
Amit Nanda
for CURRENT DIGITECH
Ground Floor, Karanjia Building, 651 J.S.S Road,
Marine Lines (E), Mumbai - 400 002
Tel.: 9323540291
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Yearly Subscription : Rs. 3600
Registered Post Charges : Rs. 240 (Optional)

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FAMILY LAW JUDGEMENTS

2026(1)FLJ1

IN THE SUPREME COURT OF INDIA

[From PUNJAB AND HARYANA HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Civil Appeal No. 14856 of 2024 **dated 05/12/2025**

Sonia Virk

Versus

Rohit Vats

DIVORCE AND ALIMONY

Hindu Marriage Act, 1955 Sec. 13 - Divorce and Alimony - Appeal from decree of divorce granted by High Court - Marriage solemnised in 2008 and parties living separately since long - Family Court dismissed divorce petition but High Court allowed same and granted permanent alimony - Court observed that parties separated for over thirteen years and reconciliation impossible - Found that continuation of marriage served no purpose - Affirmed divorce decree and enhanced permanent alimony to Rs. Fifty Lakhs ensuring financial security of wife and daughter - Directed husband to continue payment for daughter's welfare and education - Treated payment as full and final settlement of all claims - Appeal Partly Allowed

Law Point: Long period of separation with irretrievable breakdown justifies dissolution of marriage-Financial settlement must ensure dignity and stability of spouse and child.

Acts Referred:

Hindu Marriage Act, 1955 Sec. 13

Counsel:

Manoj Swarup (Senior Advocate), Amrendra Kumar Mehta, Yash Singhal, Pallavi Deam, Gunjan Kumari, Sidharth Luthra (Senior Advocate), Ankur Saigal, Anmol Kheta, Tanya Srivastava, Anushree Kapooria

JUDGEMENT

Vikram Nath, J.- [1] The present appeal arises from the judgment dated 28th August 2024 passed by the High Court of Punjab and Haryana at Chandigarh in FAO-3803-2023 (O&M), whereby the High Court set aside the judgment dated 11th April 2023 of the Family Court, granted a decree of divorce, and awarded a sum of

Rs.30,00,000/- (Rupees Thirty Lakhs only) as permanent alimony to the appellant-wife.

[2] The brief facts giving rise to the present proceedings are as follows:

2.1. The marriage between the appellant-wife and respondent-husband was solemnised on 6th December 2008 in accordance with Hindu rites and ceremonies. At the time, the respondent-husband was undergoing training as a judicial officer at the Judicial Academy, Chandigarh, and the appellantwife was practising as an Additional Advocate General.

2.2. Presently, the respondent-husband is posted as a Family Court Judge at Jamnagar, Haryana, and the appellant-wife is no longer practising as an advocate.

2.3. A daughter was born to the parties on 13th November 2009.

2.4. On 27th November 2018, the respondent-husband instituted a petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 [Hereinafter referred to as "HMA"], on the ground of cruelty. The petition was withdrawn on 4th January 2019 with liberty to file a fresh petition on the same cause of action.

2.5. On 8th March 2019, the respondent-husband filed a second petition on the same ground, which was returned for want of jurisdiction. Thereafter, on 5th October 2019, the respondent-husband instituted the present divorce petition before the Competent Court at SAS Nagar, Mohali.

2.6. Upon considering the pleadings and evidence, the Family Court, by order dated 11th April 2023, dismissed the petition holding that the allegation of cruelty was not proved and, in fact, it was the respondent-husband who had subjected the appellant-wife to acts of cruelty.

2.7. Aggrieved thereby, the respondent-husband preferred an appeal before the High Court.

2.8. The High Court, by the impugned judgment, allowed the appeal and granted a decree of divorce. It observed that it would not be in the interest of either spouse or their daughter to compel the parties to reside together. Based on the offer made by the respondent-husband, the High Court awarded Rs.30,00,000/- (Rupees Thirty Lakhs only) as permanent alimony to the appellant-wife. It further directed that on maturity of the LIC policy purchased by the respondent-husband, the amount of Rs.41,00,000/- (Rupees Forty One Lakhs only) shall be deposited in the account of the daughter; that a sum of Rs.30,000/- (Rupees Thirty Thousand only) per month shall be deposited by the respondent-husband in his daughter's account until she is able to maintain herself; that he shall bear all expenses towards her marriage; and that he shall not disinherit her from his estate.

2.9. Aggrieved, the appellant-wife has approached this Court.

[3] We have heard learned senior counsel for the parties and carefully perused the material on record.

[4] Regarding the challenge to the decree of divorce, we find that though the appellant-wife opposes the dissolution of marriage, it is in the best interest of both parties that they live apart. It is an admitted fact that the parties have been residing separately since 2012 which is more than thirteen years now, and no substantial or meaningful effort has been made in restoring their matrimonial relationship.

[5] The High Court noted that every endeavour was made to explore the possibility of reconciliation or, alternatively, an amicable separation; however, given the conduct and attitude of both parties, no viable solution could be reached. The High Court also interacted with the parties in person and found the marriage to have broken down irretrievably.

[6] Pursuant to our directions, both parties were present before this Court as well. From their submissions and the material placed on record, it is evident that the relationship has become deeply embittered and acrimonious over the years. They have a seventeen-yearold daughter whose wellbeing, care, and future stability must remain paramount.

[7] In these circumstances, we see no purpose in perpetuating a legal bond that has long ceased to have any substance. Continuing the marital tie would serve neither the spouses nor their child; rather, it would only prolong hostility and impede their ability to move forward with dignity. We therefore affirm the view that the marriage has broken down beyond repair, and that dissolution is in the interest of justice and in the welfare of all concerned.

[8] We now turn to the question of permanent alimony. The respondent-husband is a serving judicial officer holding a responsible public position and is, therefore, under a heightened obligation to ensure fair, adequate, and dignified financial security for his wife and daughter. The appellant-wife, who is presently not engaged in legal practice, is entitled to maintain a standard of living broadly commensurate with what she enjoyed during the subsistence of the marriage. The child, now seventeen years of age and soon to pursue higher education, will also require continued financial support and stability.

[9] Having regard to the income, status, and future prospects of the respondent-husband, and to ensure that the appellant-wife is placed in a position of reasonable financial independence, we are of the considered view that the amount of permanent alimony awarded by the High Court requires enhancement. Accordingly, the sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) awarded by the High Court is enhanced to Rs.50,00,000/- (Rupees Fifty Lakhs only) , which shall be paid by the respondenthusband to the appellant-wife within a period of three months from the date of this judgment.

[10] The remaining directions issued by the High Court, namely:

(i) deposit of the entire amount received on maturity of the LIC policy, approximately Rs.41,00,000/- (Rupees Forty One Lakhs only) in the daughter's account,

(ii) monthly deposit of Rs.30,000/- (Rupees Thirty Thousand only) until she is able to maintain herself,

(iii) bearing all expenses towards her marriage, and

(iv) the prohibition against disinheriting the daughter are upheld and shall continue to operate.

[11] The amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) awarded herein as permanent alimony shall be treated as full and final settlement of all monetary and other claims arising out of the marital relationship between the parties. All pending proceedings, whether civil or criminal, instituted by either party against the other and arising from the marriage shall stand closed in terms of this settlement.

[12] The appellant-wife shall furnish the requisite bank details to the respondent-husband to facilitate compliance with the above directions.

[13] In view of the above, the present appeal stands disposed of. The decree of divorce granted by the High Court is upheld, and the direction relating to permanent alimony stands modified in terms of this judgment.

[14] Pending applications, if any, stand disposed of

2026(1)FLJ4

IN THE SUPREME COURT OF INDIA

[From RAJASTHAN HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Civil Appeal No 13599 of 2025 **dated 13/11/2025**

Pankaj Shukla

Versus

Deepak Chaturvedi

DIVORCE AND ALIMONY

Hindu Marriage Act, 1955 Sec. 9, Sec. 13 - Divorce and Alimony - Appeal filed against concurrent findings granting divorce on grounds of cruelty and desertion - Marriage ended shortly after wedding and parties lived separately for long period - Wife's petition for restitution of conjugal rights dismissed - Husband remarried indicating complete breakdown of marriage - Both Family Court and High Court findings upheld - Supreme Court observed no subsisting matrimonial bond and declined interference with divorce decree - Directed husband to pay permanent alimony considering financial status and means of both parties - Fixed reasonable lump sum amount as permanent alimony payable within specified time - Appeals disposed upholding divorce decree with direction for payment of alimony - Pending applications disposed of - Appeals disposed

Law Point: When matrimonial ties irretrievably broken and parties living separately for long period, decree of divorce justified-Court may grant permanent alimony ensuring fairness and financial stability to spouse.

Acts Referred:

Hindu Marriage Act, 1955 Sec. 9, Sec. 13

Counsel:

Rajendra Singhvi, Arundhati Chakraborty, T R B Sivakumar, Dr Abhinav Sharma, Rk Singh, Neeraj Singh, Tom Joseph, Kumar Gaurav, Puja Sharma, B Ravindra Kumar

JUDGEMENT

Vikram Nath, J.- [1] Leave granted.

[2] The present appeals arise out of the impugned judgment and order dated 27th March 2023 in D.B. Civil Misc. Appeal Nos. 1605/2019 and 1604/2019 passed by the High Court of Rajasthan at Jodhpur. The appellant-wife is before us challenging the concurrent findings of the courts below, whereby the Family Court allowed the respondent-husband's petition for divorce, which the High Court has upheld by the impugned order.

[3] The facts giving rise to the present case, briefly, are as follows:

3.1. The parties were married on 18th April 2008 according to Hindu rites and rituals.

3.2. The respondent-husband alleges that the appellantwife left her matrimonial home on 22nd December 2008 as she wished to study for the judicial services examination but later started her practice as an advo cate.

3.3. On 21st December 2012, the respondent-husband filed a petition under Sections 13(1)(a) and 13(1)(b) of the Hindu Marriage Act, 1955 [Hereinafter, "HMA".] before the Family Court, seeking a decree of divorce on the grounds of cruelty and desertion. He pleaded that the marriage was never consummated and that the appellant-wife refused to join him at Pali as she wanted to prepare for the judicial services examination. Thereafter, she began her law practice and never returned. It was also alleged that she had concealed her actual date of birth before marriage, and that he came to know later that she was about two and a half years older than him.

3.4. In 2016, the appellant-wife filed a petition under Section 9 of the HMA, being Civil Misc. Case No.185/2016, seeking restitution of conjugal rights and pleading that she was ready and willing to cohabit with the respondent-husband.

3.5. The Family Court, vide its common order and decree dated 4th May 2019, allowed the husband's petition for divorce and dismissed the wife's petition for restitution of conjugal rights.

3.6. The appellant-wife thereafter preferred D.B. Civil Misc. Appeals Nos. 1605/2019 and 1604/2019 before the High Court of Rajasthan at Jodhpur.

3.7. The High Court, vide the impugned order, has observed that it is an admitted fact that the appellant-wife left her matrimonial home shortly after the wedding and moved to her paternal home in Chippa Barod, District Baran to prepare for the judicial services examination. Further, the appellant-wife failed to show any efforts to resume co-habitation. The fact that she filed a restitution of conjugal rights petition under Section 9 of the HMA, four years after the respondent-husband filed the divorce petition, lacked bona fides. The fact of separation was thus found to be proved. It was further noted that in pursuing her professional career, the appellant-wife even contested and won the elections for the Bar Council Association of Chippa Badod City. In view of these observations, the High Court dismissed both her appeals.

3.8. Aggrieved by the said order, the appellant-wife has approached this Court.

[4] We have heard learned counsel for both parties and perused the record.

[5] As far as the question of divorce is concerned, we find that both the Family Court and the High Court have rightly granted the decree upon a correct appreciation of the facts and evidence on record. The parties have admittedly been living separately since 22nd December 2008, nearly seventeen years now. The Family Court made efforts to bring about an amicable settlement between the parties, but the same did not succeed. It is therefore evident that no matrimonial bond remains between them and that neither party has any real intention to restore the relationship. The respondenthusband has, in fact, remarried on 3rd May 2023. In such circumstances, it would serve no purpose to perpetuate a legal relationship when the matrimonial ties have long ceased to exist in substance. We are, therefore, not inclined to interfere with the decree of divorce granted.

[6] At the same time, the respondent-husband continues to bear a duty to provide alimony to the appellant-wife so as to maintain her financial stability and reasonably secure her future. During the proceedings before the Family Court, the appellant-wife had moved an application under Section 24 of the HMA, seeking interim maintenance, which was not granted. Therefore, we find it appropriate to fix a reasonable amount as permanent alimony. In view of the same, the respondent-husband has filed an affidavit of income and assets before this Court.

[7] The respondent-husband claims to be self-employed and registered as a Class-C contractor with the Nagar Nigam, Pali, and is the sole proprietor of Khetlaji Constructions. The appellant-wife is a practicing advocate, as established from the record.

[8] Considering the financial standing of both parties, their respective means, the long period of separation, and the respondent-husband's capacity, we deem it appropriate that a one-time lump-sum payment be made to the appellant-wife by way of permanent alimony. Having regard to the standard of living of the parties and other attendant circumstances, we find the amount of Rs 50,00,000/- (Rupees Fifty Lakhs only) to be just, fair, and reasonable as a one-time settlement.

[9] The respondent-husband is directed to pay the aforesaid amount of Rs 50,00,000/- (Rupees Fifty Lakhs only) to the appellant-wife within three months from the date of this order.

[10] The appellant-wife shall furnish her bank details to enable the transfer of the said amount.

[11] The appeals are accordingly disposed of in the above terms. The decree of divorce granted by the Family Court and affirmed by the High Court is upheld. It is, however, directed that the respondent-husband shall pay the amount of permanent alimony as directed above.

[12] Pending applications, if any, stand disposed of.

2026(1)FLJ7

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: R I Chagla; Farhan P Dubash)

Writ Petition (L) No 31614 of 2025 **dated 08/12/2025**

Jitendra Gorakh Megh S/o Gorakh Govind Megh

Versus

Additional Collecter & Appellate Tribunal, Mumbai Suburban District; Gorakh Govind Megh S/o Govind Megh

SENIOR CITIZEN EVICTION

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 Sec. 5, Sec. 4 - Senior Citizen Eviction - Son challenged eviction order passed under Senior Citizens Act claiming father sought no maintenance - Court examined object of Act and held that protection of senior citizen's life and property includes right to evict abusive or harassing children even without monetary claim - Father proved ownership and ill-treatment - Pendency of partition suit no bar to eviction - Held that authorities justified in granting possession to senior citizen - Petition Dismissed

Law Point: Tribunal under Senior Citizens Act empowered to order eviction of child from property of senior citizen for ensuring safety and welfare even without maintenance claim

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 Sec. 5, Sec. 4

Counsel:

Jitendra Gorakh Megh, Suraj Gupte, Kapil Moye, Eesha Jaifalkar, S R Page

JUDGEMENT

Farhan P. Dubash J.- [1] A short but interesting question has posed itself for consideration in this matter - Whether an eviction order can be passed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 without any claim towards maintenance being made by the senior citizen?

[2] The present Writ Petition challenges the order dated 1st October 2025 **(appellate order)** passed by the Additional District Collector - Mumbai exercising power as the Appellate Tribunal **(Appellate Tribunal)** under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 **(Act)**. By the appellate order, the Appellate Tribunal dismissed the appeal preferred by the Petitioner challenging the order dated 26th August 2025 passed by the Sub-Divisional Officer - Andheri exercising power as the Presiding Officer - Parents and Citizens Maintenance Tribunal **(Tribunal)** under the Act which inter alia allowed the application preferred by his father, Respondent No.2 herein **(senior citizen)** directing the Petitioner to vacate Bungalow No. 30 of ground plus one upper floor situated at Four Bungalows, MHADA, S.V.P. Nagar, Mumbai 400053 **(subject premises)** and handover vacant and peaceful possession thereof to him.

[3] Since the dispute involves a father and his son, we personally met both the parties in chambers and tried our level best to see that an amicable resolution is reached. However, despite our best efforts, we were unable to succeed in our endeavors. Hence, we then placed the matter on board and heard the arguments of both parties in open court.

BRIEF BACKGROUND

The facts relevant for adjudication of the present proceedings are set out hereunder:

[4] The senior citizen is the 75 year old father of the Petitioner, who is a retired IAS Officer. On 26th March 2024, the senior citizen filed an application under Section 5 of the Act **(said application)** before the Tribunal seeking an order evicting the Petitioner from the subject premises and to also restrain him from causing any mental harassment to the senior citizen. The said application also seeks monies stated to have been earned by the Petitioner from using the subject premises.

[5] In the said application, the senior citizen has pleaded that:

5(a) he is the owner of the subject premises which is stated to have been purchased by him, from his own income.

5(b) he does not reside in the subject premises but instead, resides in Flat No. 502, Amaltas Co-operative Housing Society Limited, Juhu Versova Link Road, Andheri (W), Azad Nagar, Mumbai together with his wife, the stepmother of the Petitioner.

5(c) he permitted the Petitioner to live in the subject premises on the ground of humanity, love and affection but the Petitioner illegally encroached upon the entire subject premises, by purportedly taking advantage of his illness and age.

5(d) he is bearing all the expenses of the subject premises including for its maintenance, electricity bills, water bills, repairs etc. even though the Petitioner exclusively resides therein.

5(e) the Petitioner is unemployed since several years and living in the subject premises free of charge despite illegally exploiting the subject premises for commercial purposes by renting out a portion thereof (on the ground floor) for the shooting of tv serials without the permission of the senior citizen.

5(f) the Petitioner has filed various false cases against him including inter alia a suit, in this Court, and as a result, he did not want to allow the Petitioner to continue to stay in the subject premises any longer.

5(g) he is suffering from diabetes, arthritis, leg pain and in lieu thereof, is stated to have difficulty in walking. On account of these ailments, he needs medical assistance on a daily basis. On this ground, he asserts that it would be convenient for him to stay on the ground floor of the subject premises.

[6] The Petitioner defended the said application and in his reply, he has pointed out that:

6(a) the senior citizen was previously residing in Government residence at Yashodhan, Opposite C.C.I., Churchgate, Mumbai 400 020 before shifting to Flat No. 502 in Amaltas Co-operative Housing Society Ltd., which is stated to be a luxurious 1600 sq. feet flat comprising of 4 bedrooms, hall, kitchen on the 5th Floor of the building having 2 lifts.

6(b) in addition to this flat, the senior citizen also owns about 9 other properties which includes a bungalow and 7 other residential properties and commercial units.

6(c) the senior citizen is financially well off and has employed a maid, a nurse, a driver and other staff to look after his daily needs.

6(d) the subject premises is not the self-acquired property of the senior citizen but instead, purchased by him from the funds received from the yield from the crop of ancestral property, in which, the Petitioner also has a share.

6(e) he has already filed a suit in this Court being Suit No. 1215 of 2019 seeking partition of all the properties owned by the senior citizen in his capacity as the Karta of his HUF, which includes the subject premises.

6(f) the senior citizen earns upwards of Rs. 10,00,000/- on a monthly basis from letting out the said properties.

6(g) the senior citizen has not stayed in the subject premises for even a single day and only he and his wife (post their marriage) have been exclusively residing and occupying the subject premises.

6(h) all the expenses including inter alia towards its maintenance, property tax, water, electricity, etc., are paid solely by him and not by the senior citizen.

6(i) a written declaration dated 2nd January 2013 has been given by the senior citizen expressly permitting the Petitioner and his wife, not only to reside in the subject premises but also to conduct their business therefrom, for as long as they want and without having to pay any monies to the senior citizen, in lieu thereof.

[7] By an order dated 26th August 2025 **(eviction order)**, the said application came to be allowed by the Tribunal and the Petitioner was directed to vacate the subject premises within 30 days and handover vacant and peaceful possession thereof to the senior citizen. The Petitioner was also prohibited from doing any act that may harm the senior citizen's physical and mental health or in any way affect his social standing or disturb the peace of the senior citizen's home.

[8] A perusal of the eviction order reveals that after noting all the contentions of the senior citizen and the Petitioner, and which are also noted hereinabove, a finding is given in favour of the senior citizen that he is entitled to maintain the said complaint. The eviction order then holds that since the senior citizen is suffering from arthritis and diabetes and needs to travel frequently for medical treatment, it would be proper that the Petitioner be evicted from the subject premises and accordingly, ordered eviction of the Petitioner from the subject premises.

[9] The eviction order also expressly records that since the senior citizen has not made any claim or demand for maintenance, there is no need to go into or comment on that point. There is also a finding that the pendency of the partition suit by the Petitioner would not have any bearing on the said application and prevent the passing of the eviction order.

[10] Being aggrieved by the eviction order, the Petitioner approached the Appellate Tribunal and filed Appeal No. 75 of 2025 under Section 16 of the Act. However, the Appellate Tribunal found favour with and affirmed the eviction order and the said appeal came to be dismissed by the appellate order dated 1st October 2025, which is challenged in the present Writ Petition.

SUBMISSIONS OF THE PARTIES

[11] Mr. Jitendra Megh, the Petitioner herein, appears in person. He has taken us through the previous litigation between himself and the senior citizen under the Act and also the partition suit filed by him. He has reiterated the grounds already taken by him in his reply to the said complaint. He reiterates that the senior citizen has never resided in the subject premises. He also submits that the senior citizen is financially very well off and does not seek any maintenance from him. To corroborate this position, he also relies on the written statement filed by the senior citizen in the partition suit where the senior citizen has admitted to owning the nine immovable properties. Our attention is invited to an order dated 18th April 2019 passed by this Court in the said partition suit in which, the statement was recorded by the advocate who appeared on behalf of the senior citizen therein, that pending the hearing and final disposal of the said partition suit, the senior citizen did not intend to deal with, dispose

of, alienate and/or part with possession of the said immovable properties that are situated in Maharashtra which included the subject premises. By relying on this statement, the Petitioner contends that the appellate order amounts to a breach of the said statement/order.

[12] Our attention is also invited to several documents including inter alia letters addressed by the senior citizen to various authorities including MHADA and the MCGM and by relying on such correspondence that has been addressed during the period 2022-2023, it is contended that the senior citizen has dishonestly taken the plea and contended that he is bearing all the expenses towards the subject premises. In fact, on perusal of such correspondence addressed by the senior citizen, prima facie it is revealed that in fact, the Petitioner is bearing all the expenses. Lastly, the Petitioner submits that since the subject premises of a bungalow which comprises of ground plus one upper floor, he has no objection to senior citizen occupying the ground floor, as sought by him and he would occupy only the 1st floor of the subject premises. He also undertook to conduct himself in a manner not to harass the senior citizen.

[13] Per contra, Mr. Kapil Moye, learned counsel who appears on behalf of the senior citizen defends the appellate order and submits that such an order is wholly justified under the provisions of the Act. He submits that the subject premises belongs to the senior citizen and merely because the Petitioner makes a claim to the title by filing a suit, its pendency would not prevent the senior citizen from invoking the provisions of the Act and approaching the Tribunal for an order of eviction. On instructions, Mr. Moye admits that the senior citizen has never resided in the subject premises. He further submits that the senior citizen owns the various immovable properties that are alleged by the Petitioner, who, he contends, the Petitioner has no share therein. He also submits that the senior citizen does not need any financial assistance and therefore, he did not seek any maintenance from the Petitioner. He therefore prays that the eviction order ought not to be disturbed and the present Writ Petition, instead, ought to be dismissed. He has also relied on the decisions of this Court in Shweta Shetty v. State of Maharashtra and Anr.,2021 SCCOnlineBom 4575 and that of the Delhi High Court in Nasir v. Govt. of NCT of Delhi & Ors.,2015 SCCOnlineDel 13060 to buttress his submissions.

ANALYSIS & FINDINGS

[14] In this background, we are required to consider whether the senior citizen was entitled to invoke the summary provisions of the Act, only to evict the Petitioner from the subject premises and without seeking any relief of maintenance from him.

[15] At this juncture, it would be apposite to refer to the statement of objects and reasons of the Act, which are set out hereunder:

"Statement of Objects and Reasons:

1. Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number

of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

2. The Bill proposes to cast an obligation on the persons who inherit the property of their aged relatives to maintain such aged relatives and also proposes to make provisions for setting-up old age homes for providing maintenance to the indigent older persons.

The Bill further proposes to provide better medical facilities to the senior citizens and provisions for protection of their life and property.

3. The Bill, therefore, proposes to provide for:-

(a) appropriate mechanism to be set-up to provide need-based maintenance to the parents and senior citizens;

(b) providing better medical facilities to senior citizens;

(c) for institutionalisation of a suitable mechanism for protection of life and property of older persons;

(d) setting-up of old age homes in every district.

4. The Bill seeks to achieve the above objectives."

[16] Next, it would be beneficial to note a few relevant provisions of the Act, which are extracted hereunder:

"Section 4 - Maintenance of parents and senior citizens.

(1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section 5 in case of-

(i) parent or grand-parent, against one or more of his children not being a minor;

(ii) a childless senior citizen, against such of his relative referred to in clause (g) of section 2.

(2) The obligation of the children or relative, as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen: Provided that where more than one relatives are entitled to inherit the property of a senior citizen, the maintenance shall be payable by such relative in the proportion in which they would inherit his property.

Section 5 - Application for maintenance

(1) An application for maintenance under section 4, may be made -

a. by a senior citizen or a parent, as the case may be;

or

b. if he is incapable, by any other person or organisation authorised by him;

or

c. the Tribunal may take cognizance suo motu.

Explanation: For the purposes of this section "organisation" means any voluntary association registered under the Societies Registration Act, 1860, or any other law for the time being in force.

(2) The Tribunal may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this section, order such children or relative to make a monthly allowance for the interim maintenance of such senior citizen including parent and to pay the same to such senior citizen including parent as the Tribunal may from time to time direct.

(3) On receipt of an application for maintenance under sub-section(I), after giving notice of the application to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance.

(4) An application filed under sub-section (2) for the monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of the service of notice of the application to such person:

Provided that the Tribunal may extend the said period, once for a maximum period of thirty days in exceptional circumstances for reasons to be recorded in writing.

(5) An application for maintenance under sub-section (I) may be filed against one or more persons: Provided that such children or relative may implead the other person liable to maintain parent in the application for maintenance.

(6) Where a maintenance order was made against more than one person, the death of one of them does not affect the liability of others to continue paying maintenance.

(7) Any such allowance for the maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or expenses of proceeding, as the case may be.

(8) If, children or relative so ordered fail, without sufficient cause to comply with the order, any such Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person for the whole, or any part of each month's allowance for the maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made whichever is earlier:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Tribunal to levy such amount within a period of three months from the date on which it became due."

"Section 9 - Order for maintenance.

(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month."

"Section 23 - Transfer of property to be void in certain circumstances.

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."

[17] We have considered some past judicial precedents that have examined and interpreted the power of the Tribunal to pass an order of eviction under the Act in favour of the senior citizen. These are as under:

17(a) **Smt. S. Vanitha v. Deputy Commissioner, Bangalore Urban District**, 2021 AIR(SC) 177 was one of the earliest decisions of the Supreme Court which held that the Tribunal may have the authority to order eviction, if it is necessary and expedient to ensure maintenance and protection of the senior citizen.

17(b) In **Ranjana Rajkumar Makharia v. Mayadevi Subhkaran Makharia**, 2020 3 MhLJ 587 this Court has expressly held that the provisions of the Act, in particular Sections 4 and 5 thereof, cannot be used by a senior citizen to recover property from any person, whether it be a child or a relative of such senior citizen. This Court further clarified that in a given case, it could however be possible for a senior citizen to seek recovery of possession or prohibit someone from taking or continuing to be in possession of immovable property, as a measure of maintenance, and not otherwise.

17(c) In Ritika Prashant Jasani v. Anjana Niranjan Jasani,2021 SCCOnLineBom 1802 the Tribunal had passed an order of eviction against the son and daughter-in-law of the senior citizen without any order of maintenance. This Court, whilst setting aside the said order of eviction and remanding the matter back to the Tribunal for a fresh decision, recorded a finding that in terms of Section 9 of the Act, the Tribunal was required to be satisfied that the senior citizen had suffered neglect at the hands of the children or relatives or that they have refused to maintain the senior citizen. This Court further held that though the procedure contemplated under the Act was summary in nature, none-the-less, the Tribunal is required to find out as to whether, the flat in question belongs exclusively to the senior citizen or is ancestral property where the children may have a right in its ownership and/or residence. 17(d) In Nitin Rajendra Gupta Vs. Collector,2024 SCCOnLineBom 1031 this Court, whilst interpreting the provisions of Section 23 of the Act has cautioned against using the machinery available under the Act for settling property disputes.

[18] In this backdrop, it is relevant to note the following admitted factual position/events in the present case:

18(a) Despite filing the said application under Section 5(1) of the Act, the senior citizen has neither made any claim nor sought any maintenance from the Petitioner.

18(b) The senior citizen does not reside in the subject premises with the Petitioner. In fact, the senior citizen has never resided in the subject premises.

18(c) The senior citizen resides in a separate residential flat in Amaltas Co-operative Housing Society Ltd with his wife. There is no pleading in the said application to suggest that this residential flat is not suitable to the senior citizen to reside in.

18(d) The senior citizen does not seek any financial assistance from the Petitioner.

18(e) The subject premises stand in the name of the senior citizen and there is no transfer thereof to the Petitioner. However, a written declaration dated 2nd January 2013 has been made by the senior citizen expressly permitting the Petitioner and his

wife, to reside in the subject premises and to conduct their business therefrom, for as long as they want and without having to pay any monies to him.

18(f) No allegations of harassment and/or cruelty are made by the senior citizen against the Petitioner. The only assertion made in the said application is that of mental pressure stated to have been caused to the senior citizen on account of the Petitioner having filed false case against him.

18(g) In fact, the said complaint proceeds on the basis that since the Petitioner has filed false case against the senior citizen in this Court, he does not want the Petitioner to reside in the subject premises any more.

18(h) The said complaint also contains a bare averment that due to the various ailments that the senior citizen is stated to be suffering from, it would be 'convenient' for him to stay in the ground floor of the subject premises, which is his own property.

[19] Thus, it is clear that the eviction order has not been passed in furtherance of any claim for maintenance made by the senior citizen. This position is also borne out from paragraph 10 of the eviction order which expressly records that the senior citizen has not demanded any money for maintenance and therefore, there is no need to comment on the same.

[20] Section 4 of the Act contains provisions dealing with the maintenance of parents and senior citizens. It prescribes that a senior citizen who is unable to maintain himself from his own earnings or from property owned by him, is entitled to make an application for maintenance under Section 5 of the Act. The said section further prescribes that the obligation of children to maintain the senior citizen extends to the needs of such senior citizen so that he may lead a normal life. Section 5 contains provisions relating to the application which the senior citizen can make for maintenance. Sub-section (2) enables the Tribunal to order monthly allowance to be paid to the senior citizen towards interim maintenance. In these circumstances, when the senior citizen has made no claim for maintenance, we fail to see how the said application which has been filed by the senior citizen under section 5(2) of the Act, is maintainable, in the first place. This position appears to have been completely overlooked, both in the eviction order and also in the appellate order.

[21] Moreover, neither of the two authorities viz. the Tribunal and the Appellate Tribunal have considered and/or applied their mind to the averments made in the said application. Admittedly, the senior citizen does not reside in the subject premises which is occupied solely by the Petitioner (and his wife). In fact, the senior citizen has never even resided in the subject premises. Instead, he resides in a separate residential premises situated in Amaltas Co-operative Housing Society Limited (as is also evident from the address mentioned in the cause-title) together with his wife, the step-mother of the Petitioner. The only averment made in said application (justifying the requirement and need of the subject premises by the senior citizen) is that the senior citizen is suffering from diabetes, arthritis, leg pain and has difficulty in walking and

needs medical assistance on a daily basis and therefore, it would be convenient for him to stay on the ground floor of the subject premises. In our opinion, this is a vague assertion and one, which is completely bereft of any details and/or particulars. There is no explanation whatsoever as to why the senior citizen is desirous of leaving his own residential premises (which is stated to be a 1600 sq. ft. apartment comprising of four bedrooms) and move to the subject premises which is a bungalow comprising ground plus one upper floor, especially when he has difficulty in walking and as a result, would not be in a position to conveniently enjoy the entire subject premises. Moreover, since the senior citizen has never resided in the subject premises, this is not a case where there is any sentiment attachment of the senior citizen to occupying it.

[22] On the other hand, there appears to be some merit to the case of the Petitioner. Admittedly, a written declaration dated 2nd January 2013 was previously given by the senior citizen permitting the Petitioner (and his wife), not only to reside in the subject premises but also to conduct their business therefrom, for as long as they want and without having to pay any monies to the senior citizen, in lieu thereof. Moreover, there is also corre spondence addressed by the senior citizen himself which would reveal that it is the Petitioner who is incurring expenditure for the subject premises including inter alia towards its maintenance, property tax, water, electricity which is contrary to the case pleaded by the senior citizen in the said application.

[23] The Tribunal and the Appellate Tribunal have also failed to appreciate that (much prior to the said application) the Petitioner had made a claim on the title to the subject premises and had already filed a suit in this Court being Suit No. 1215 of 2019 seeking partition of various properties owned by the senior citizen, in his capacity as the Karta of his HUF, which included the subject premises. In fact, this appears to be the main reason which has prompted the senior citizen to file the said application. This fact is clearly borne out from paragraphs 6 and 9 of the said application in which the senior citizen states that since the Petitioner has filed a false case in the Bombay High Court against him, he does not want the Petitioner to reside in the subject premises any more, and hence, he is desirous of evicting him therefrom. It is therefore quite evident that the said application is nothing but a counter blast by the senior citizen to the partition suit instituted by the Petitioner (which is still pending in this Court). The provisions of the Act cannot be employed as a means to secure the Respondent's summary eviction from the subject premises while the parties' proprietary rights remain sub-judice before the competent civil court. This is reiterated in **Ranjana Rajkumar Makharia** (supra) and also in **Nitin Rajendra Gupta** (supra).

[24] The Act is a beneficial statute intended to safeguard the vulnerable (senior citizen), but it cannot be (mis) used by the senior citizen as a tool for summary eviction without the fulfilment of statutory requirements. In the present case, we find that the said application does not satisfy the requirements of Sections 4 and 5 of the Act and is therefore not maintainable. Accordingly, the eviction order could not have been passed by the Tribunal and upheld by the Appellate Tribunal, vide the appellate order. The

senior citizen has not claimed any maintenance from the Petitioner and the order of eviction is not in furtherance thereof. Eviction, as also held in **S. Vanitha** (supra) would be an incident of the enforcement of the right to maintenance and protection which should be granted only after adverting to the competing claims of both parties in dispute. This has admittedly not been done in the appellate order or in eviction order (which it confirms).

[25] In fact, the senior citizen is financially well-to-do and owns several other immovable properties, both residential and commercial and instead, the record reveals that the Petitioner (if evicted from the subject premises) would not have any other roof over his head. This is not disputed by the senior citizen in the said application who in-fact asserts that the Petitioner has been unemployed for several years. In such circumstances, it was incumbent on the Tribunal and the Appellate Tribunal to have considered these material factors before passing the eviction and appellate orders. This has admittedly not been done. Instead, the eviction order accepts all the averments made in the said application and proceeds to hold that since the subject premises belong to the senior citizen and he needs to reside therein since he travels frequently for medical treatment, the Petitioner is required to be evicted therefrom.

[26] The eviction order is thus clearly contrary to the scheme of the Act. In fact, the Tribunal and the Appellate Tribunal have both also lost sight of the fact that the said application is bereft of any allegations of harassment and/or cruelty by the Petitioner, which has not been considered whilst passing the eviction order and the appellate order. There is no finding, let alone any discussion in terms of Section 9 of the Act, that the senior citizen had suffered neglect at the hands of the Petitioner, which was required as per the decision in **Ritika Prashant Jasani** (supra). Hence, both the appellate order as also the eviction order, cannot be sustained.

[27] The decision in **Shweta Shetty** (supra) is of no assistance to the senior citizen and is easily distinguishable on its facts. In that case, the daughter who was initially residing in Germany, returned to India and began residing with the senior citizen and refused to vacate his premises, unless she was given 'her share'. **Nasir** (supra) was a case where the Tribunal permitted the senior citizen, who was admittedly the owner of the property, to occupy one floor and give out the other two floors on rent and recover the income therefrom. This is also distinguishable on facts. Hence, neither decision is of any assistance to the senior citizen.

[28] Before concluding, we would like to mention that prior to the commencement of arguments in the matter, we had suggested a workable arrangement to both parties - Since there were no allegations of cruelty and/or harassment against the Petitioner, whether the senior citizen would be agreeable to occupy the ground floor of the subject premises (as he had sought, in the said application) whilst the Petitioner (and his wife) would occupy only the first floor thereof. However, though the Petitioner was open to such an arrangement, the senior citizen was not agreeable to the same.

OPERATIVE ORDER

[29] In the premises, the present Writ Petition is disposed of in terms of the following order:

ORDER

(a) The appellate order dated 1st October 2025 passed by the Additional District Collector - Mumbai exercising power as the Appellate Tribunal and the eviction order dated 26th August 2025 passed by the Sub-Divisional Officer - Andheri exercising power as the Presiding Officer - Parents and Citizens Maintenance Tribunal are both, hereby quashed and set aside.

(b) There shall be no order as to costs

2026(1)FLJ19

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

(Hon'ble Judge: Battu Devanand; A Hari Haranadha Sarma)

Family Court Appeal (Fca) No 113 of 2008 **dated 05/12/2025**

K Saritha, W/o K Harinath

Versus

K Harinath, S/o Late Venkatamuni Employee

MATRIMONIAL SEPARATION

Code of Criminal Procedure, 1973 Sec. 125 - Hindu Marriage Act, 1955 Sec. 13 - Matrimonial Separation - Appellant and respondent are wife and husband - Marriage performed as per Hindu customs - Respondent filed petition seeking dissolution of marriage alleging cruelty and desertion - Appellant alleged that respondent was habituated to drinking and harassed her for money - Evidence showed appellant left matrimonial home without cause and refused to rejoin respondent despite repeated requests - Family Court held that wife voluntarily deserted husband and granted divorce - Appeal filed by wife examined evidence and held that material proved frequent desertion and denial of conjugal rights - Non-response to legal notices and long separation indicated absence of affection - Family relationship strained beyond reconciliation - Court held decree of divorce by Family Court proper - Marriage dissolved accordingly - Appeal Dismissed

Law Point: Voluntary desertion by one spouse without reasonable cause and failure to resume cohabitation despite reconciliation attempts constitutes cruelty under Hindu Marriage Act and entitles other spouse to decree of divorce.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 125

Hindu Marriage Act, 1955 Sec. 13

Counsel:
T Balaji

JUDGEMENT

A. Hari Haranadha Sarma, J.- [1] The appellant and the respondent herein are wife and husband.

[2] The respondent herein filed H.M.O.P. No.85 of 2000 on the file of the Family Court-cum-V Additional District and Sessions Court, Tirupati, seeking relief of dissolution of marriage between the parties dated 12.04.1998 in terms of Section 13(1)(ia) (ib) of Hindu Marriage Act. The same was allowed under the impugned orders and decree dated 15.09.2006. Questioning the same present appeal is filed.

[3] For the sake of convenience, parties will be herein after referred to as the petitioner (husband) and the respondent (wife), as and how they are referred in the impugned orders.

Case of the Petitioner/husband:-

[4] [I] Marriage between the petitioner and the respondent was performed on 12.04.1998 at Tirupathi as per Hindu rights and customs. During the wed lock they are blessed with a male child; the respondent ill-treated the petitioner without providing basic amenities and she never treated him with love and affection, used to leave the petitioner's house without any intimation and mediation through elders failed.

[ii] The respondent continued to leave the house of the petitioner and on 17.02.1999, she voluntarily left the house of the petitioner without any intimation, when she was carrying 4th month of pregnancy. On 13.07.1999, the respondent gave birth to a male child. When the petitioner went to the house of the respondent, he was not allowed, family members of the respondent used to beat him and he was asked by his mother-in-law to resign his job and to do coolie work and also to send out his mother from his house.

[iii] On 10.12.1999 the petitioner gave legal notice calling the respondent to join his society, thereafter she joined with him but lived for only 20 days and went to her parents house without any intimation. On 20.07.2000 the respondent refused to cohabit with him and left his society voluntarily and she has voluntarily deserted him, denying conjugal bliss and parental joy in respect of the child. His legal notices dated 10.12.1999 and 25.09.2000 were not replied and there was no reunion. Hence, the petitioner constrained to move the application for divorce.

Case of the respondent/wife:-

[5] [I] Marriage was followed by presentation of gold and money. The petitioner is habituated to drinking and debauchery, used to come home in drunken state and used to scold the respondent and her parents in filthy language, asked her to get Rs.20,000/- for his vices.

[ii] When she was 4 months pregnant, the petitioner has taken way her jewels forcibly from her and necked out her from the matrimonial home, asking her to come back with Rs.20,000/-.

[iii] After birth of the child, the petitioner did not come to see the child nor attended the ceremonies following the birth of the boy.

[iv] The petitioner got issued the legal notice with false allegations.

[v] On mediation and undertaking that the petitioner should not demand any money, the respondent was taken to his house but again he has demanded dowry and the petitioner himself necked out her from his house, having no other go she went to her parents house with child. Therefore, the petitioner is not entitled for the relief of divorce.

EVIDENCE:-

[6] During the enquiry, three witnesses were examined on behalf of the petitioner, and only the respondent was examined on the other side. The petitioner relied on Ex.A1 to Ex.A5 i.e., wedding card, two legal notices dated 10.12.1999 and 25.09.2000, and the postal covers in respect of legal notices.

Finding of Family Court:-

[7] Learned Judge, Family Court allowed the application dissolving the marriage, assigning the reasons as follows:-

[i] In view of the observations made in **Smt.Parimi Mehar Seshu Vs. Parimi Nageswara Sastry**, 1994 AIR(AP) 92 [1993 SCC Online AP 95] and in **Chiranjeevi Vs. Smt.Lavanya**, 1999 AIR(AP) 316 [1999 SCC Online AP 58] that frequent desertions is sufficient cruelty, the petitioner has a case.

[ii] The only ground for the wife is that the respondent consumes liquor and abuses her and her parents in filthy language.

[iii] The respondent did not take steps to join her husband from 2000 for a period of six years, till the date of judgment. Therefore, the respondent has no love and affection towards the petitioner.

[iv] Even if reunion is ordered, there is no guarantee that the petitioner and the respondent will continue as wife and husband.

[v] The marriage is fit to be dissolved as the respondent voluntarily deserted the petitioner.

Hearing:-

[8] Heard learned counsel for the appellant/petitioner. No representation for the respondent, in spite of giving sufficient opportunity. This Court has provided sufficient opportunity by adjourning the matter and ordering notice to the respondent. Notice was dispatched to and the same was delivered at the admitted address, which is a deemed service. This Court made specific observations on 08.10.2025 as to inclination to

proceed on merits thereafter there is no representation for the respondent. Hence, this Court is constrained to proceed on merits.

Points:-

[9] On perusal of the material available on record, now the points that arise for determination in this appeal are:

1) Whether the petitioner is able to prove the desertion and cruelty on the part of the respondent against the petitioner to dissolve the marriage dated 12.04.1998 between the petitioner and the respondent and whether the order and decree passed by the learned Judge, Family Court, dated 15.09.2006 are sustainable in law and on facts Or requires any interference? If so, on what grounds?

2) What is the result of the appeal?

Discussion, Reasoning and Findings:-

Point No.1:-

[10] Facts not in dispute:-

1) Marriage

2) Separate living

3) Legal notice got issued by the petitioner/husband.

4) Birth of male child during the wed lock.

[11] The allegations of the petitioner against the respondent are thata) She used to frequently go to her parents house, without informing.

b) She is adamant.

c) The petitioner was not allowed to see the child.

[12] The allegations of the respondent against the petitioner are that

1) He is habituated to drinking and debauchery

2) He used to scold the respondent and her parents in filthy language

3) Demanded the respondent to get Rs.20,000/- from her parents

4) When she was four months pregnant, she was necked out.

5) The petitioner did not go to see the child after birth.

6) The allegations in the legal notice dated 10.12.1999 are false.

7) The petitioner was threatening the respondent that he will made second marriage, if he demanded money is not complied.

8) The respondent was always willing to live with the petitioner and in fact he has deserted her.

9) The respondent has filed a petition before the Court under Section 125 Cr.P.C. vide M.C.No.03 of 2001.

10) The respondent is not willing to give divorce.

Evidence:-

[13] The petitioner as PW.1 reiterated his stand, as to desertion and cruelty in the form of not allowing him to see the child and repeated leaving of matrimonial society by the respondent and that the respondent acting under the guidance of her mother. During the cross-examination, the petitioner/PW.1 stated that he did not give legal notice demanding divorce. Marriage was an arranged one. He do not know whether the father of the respondent died. He was residing in Poola Street where the respondent joined with him. He stated that brother of the respondent taken her without consent of the petitioner. Advice of the neighbours and elders is not honoured. By the time, the respondent went to her parents house, she was 4 months pregnant. He has denied the suggestion that he was informed about the birth of child and refused to go to hospital. He was unable to say the correct name of his son. He is not willing to take the respondent even if she is ready to join with him. He has added that he has no security with the respondent. He has admitted that no report is given to Police about the respondent and her relatives beat him.

[14] Pw.2, P.Savithramma states that she has acquaintance with the petitioner from the childhood. During the cross-examination, she has stated that both the parties lived in Poola street, she has no house in Poola street, mediation held at the house of the respondent. She does not know who are such mediators. The respondent is residing with her parents. She do not know the house address of the parents of the respondent. It was suggested to PW.2 that the respondent is ready to join with her husband. PW.2 went to an extent of stating that the respondent alleged the son was not born to the petitioner and that the petitioner is impotent. This is not the case of the petitioner. So the loyalty of the PW.2, for the cause of the petitioner is more than the petitioner and the same is sufficient to discard her evidence. But the said aspect is not considered by the Family Court.

[15] Pw.3, P.Prameela said to be another mediator. Her evidence is in the same lines of PW.2.

[16] The respondent as RW1 reiterated the stand taken in her counter. During the cross-examination of RW.1, she has stated that she has not received any notice nor filed any petition for maintenance. She has issued reply to the notice of her husband, after notices she joined the petitioner and again she was sent back to her parents house. It was suggested to her that she was threatening the petitioner to set up separate family from his mother, otherwise she will foist a criminal case against him, she will also opt to commit suicide sending note to the to police. Her father informed about the delivery of a male child. It was suggested to her she herself deserted the petitioner. From the crossexamination of RW.1, it can be understood that there is a maintenance case and there is an issue about the payment of maintenance also.

[17] The theory of the petitioner being impotent and the issue that the respondent claiming that his son was not born to the petitioner, are not even suggested to the respondent, when she was in witness box. Legal notice- Ex.A4, dated 25.09.2000 is

indicating that without permission of the petitioner she left the house of the petitioner and even after joining on legal notice, the respondent used to frequently visit her parents house. There was reluctance on the part of the respondent to join him. Ex.A4 is issued asking for restitution of conjugal right. Ex.A2-legal notice is also indicating about the asking the respondent to join with the petitioner.

Desertion:-

[18] As per the legal notice-Ex.A2 or even Ex.A4, the respondent left the society of the petitioner, on 17.02.1999 firstly and thereafter in July 2000. The proceedings for divorce are initiated in the year 2000 and the application was filed on 11.10.2000. When the law contemplates minimum two years voluntary desertion, vide Section 13(1) (ib) it is not known how the petitioner can claim that he is entitled for divorce on the ground of desertion. Going for delivery is in the month of February 1999 and thereafter matrimonial home was resumed and again second time leaving of matrimonial home is in the year 2000 and the application is filed in the month of October 2000, how the requirement of two years period contemplated under law gets fulfilled is a simple logic, which the petitioner missed. Therefore, the ground of desertion is not available to the petitioner.

Cruelty:-

[19] Admittedly, the respondent went to parental home during the pregnancy and mind set of the petitioner appears to be that his permission is necessary for his wife to go to her parents house and that appears to be the cause for the gap. When parental home is situated in the same town, going to the parents house that too when there was pregnancy etc., is natural and emotional phenomenon. When that aspect is also found fault and pressed into service as cruelty, such exercise cannot be appreciated. The witnesses examined on behalf of the petitioner sated whatever they want, attributing indirectly unchastity to the respondent/wife, very loosely which is not even the case of the petitioner. If at all one has to visualise any cruelty it is there on the part of the petitioner but it is not on the part of the respondent, particularly when seen from the scenario in which wild allegations are made. Maintenance case was pending and maintenance is not paid, is what the wife claims. The reasoning of the learned Judge, Family Court that even if the parties are asked to live, there will not be any happy matrimonial home is purely imaginary. Contextual similarity is missing as to the facts in the cases/citations referred by the Judge, Family Court and the context the present case. Surprisingly, the learned Judge Family Court observed that "wife's only ground is that the respondent consumes liquor and abuses her and her parents in filthy language". This observation suggests that such kind of behaviour is as if tolerable. The further observations of the learned Judge, Family Court are that the respondent did not take any steps to join her husband from 2000 till the date of the judgment. When the litigation is pending before the Court from 2001 to 2006, what steps wife can take to join except asserting that she is ready to join in the form of evidence contesting the case, is a serious aspect requires consideration. This aspect lost the sight of the learned

Judge, Family Court. The findings of the learned Judge, Family Court are found not proper in the factual and evidential context of the case. Empathetical concern is found completely missing on the part of Trial Judge.

[20] Further even the evidence on record is not indicating either the ground of desertion or ground of cruelty, sufficient to grant divorce. The allegations that the husband was beaten by one Balaji, is not forfeited with any evidence and the same was not followed by any complaint. Further, the same is not even specifically pleaded, therefore, we are unable to accept that there is evidence indicating the cruelty on the part of the respondent/wife to dissolve the marriage between the petitioner and the respondent.

[21] For the reasons stated above, the point No.1 framed is answered concluding that there are no grounds and sufficient evidence to accept either desertion or cruelty on the part of the responded/wife to grant dissolution of marriage, therefore, the findings and conclusions drawn by the learned Judge, Family Court deserves to be set aside.

Point No.2:-

[22] In the result, the appeal is allowed and the impugned orders and decree dated 15.09.2006 in H.M.O.P. No.85 of 2000 on the file of the Family Court-cumV Additional District and Sessions Court, Tirupati, dissolving the marriage between the petitioner and the respondent are set aside. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed

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2026(1)FLJ25

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

(Hon'ble Judge: Battu Devanand; A Hari Haranadha Sarma)

Family Court Appeal (Fca) No 148 of 2006 **dated 05/12/2025**

Surapaneni Girija, W/o Surapaneni Laxmi Narayana

Versus

Surapaneni Laxmi Narayana, S/o Abhimanyudu

MARITAL CRUELTY

Code of Civil Procedure, 1908 Or. 41R. 17 - Hindu Marriage Act, 1955 Sec. 13 - Marital Cruelty - Parties married and lived together for long period with two children - Petitioner alleged husband addicted to vices, abusive and violent causing physical and mental cruelty - Respondent denied allegations claiming petitioner arrogant and hostile - Family Court dismissed petition for divorce - In appeal, evidence considered showing long separation, repeated harassment, neglect and violence - Court held petitioner subjected to continuous cruelty making cohabitation impossible - Marriage irretrievably broken - Decree of divorce justified considering prolonged discord and

absence of reconciliation - Family Court order set aside and marriage dissolved accordingly - Appeal Allowed

Law Point: Continuous mental and physical cruelty coupled with long separation and absence of possibility of reunion entitles spouse to dissolution of marriage under Section 13 of Hindu Marriage Act.

Acts Referred:

Code of Civil Procedure, 1908 Or. 41R. 17

Hindu Marriage Act, 1955 Sec. 13

Counsel:

P Aravinda, Y V Kishore

JUDGEMENT

A. Hari Haranadha Sarma, J.- [1] Introductory:-

The petitioner in OP No.26 of 2001 on the file of the Family Court-cum-IV Additional District and Sessions Judge, Vijayawada, feeling aggrieved by the dismissal of her application filed in terms of Section 13(1) (ia) Hindu Marriage Act, 1955 for dissolution of her marriage dated 23.02.1975 with the respondent, filed the present appeal questioning the proprietary and sustainability of the decree and judgment dated 29.03.2006.

[2] The appellant/ petitioner is the wife and the respondent is her husband.

[3] For the sake of convenience, parties will be herein after referred to as the petitioner and the respondent, as and how they are referred in the impugned orders.

Case of the Petitioner:-

[4] [I] Marriage between the petitioner and the respondent was performed on 23.02.1975 at Tirupathi. Since the respondent was working as Telephone Operator in Indian Air-Force at Srinagar, the petitioner joined the respondent at Sringar but in no time she could find that the respondent is addicted to all vices, like drinking, gambling, mutka, betting and lottery etc.. He started bringing pressure on the petitioner demanding money, used to come late and neglected her several ways and several occasions. Request of the petitioner and the elders did not yield any result but resulted in subjecting her to physical cruelty of strangulating her with a saree and her life could be saved due to the intervention of house owner.

[ii] The petitioner lived in helpless condition for about 4 months at Sringar and suffered manhandling and the same was ended in throwing out her from the house. She came back to her mother's house.

[iii] Intervention of elders and negotiations of relatives has restored the stay of the petitioner with the respondent for some time, but driving her to go back to her parental home became routine for number of times. During wed lock, the petitioner and the respondents were blessed with the children by name Manoj and Vinod.

[iv] Respondent persisted in his adamance and harassment against the petitioner and he has resigned to his service in 1998; spent all the retirement benefits for his vices. The petitioner and the respondent stayed at Visakhapatnam for 6 years, there was attack even with acid to deface the petitioner and then she had to shift her residence to Vijayawada. Whenever the respondent visits the home, he was repeating the harassment.

[v] Having decided that it is not safe for her to live together, she is constrained to resort to legal process.

[vi] The petitioner in her plea further added about the demands for property and selling of her properties given by her parents, attack on the children, demand for handing over jewellery, hurting the children even physically and forcing the children to sign on some stamped papers etc. Thus, she claimed that 26 years of her matrimonial journey proved to be a misery and having found absolutely no chances for living together, she is constrained to pray for dissolution of marriage and decree for divorce.

Case of the respondent:-

[5] [I] Petition allegations are false. Petitioner is none other than the daughter of his paternal aunt, there were no means for family of the petitioner to pay anything. Hence, all the allegations as to presentations, demands for money etc., are all false.

[ii] The respondent worked in defence department and it is mandatory for the wives of defence personnel to be members of wives welfare association. Had there been ill treatment, there should have been some complaints, therefore, the version of the petitioner is a creation.

[iii] The humble means of the respondent was the cause for the displeasure of the petitioner. After his discharge from the defence department, the respondent purchased a lorry in the name of the petitioner out of the retirement benefits and started transportation business. But the same was not profitable. Hence, he sold away the lorry in 1991.

[iv] Thereafter, he joined in private firms and worked for M/s.Varn Motors from 1.11.1994 to 31.07.1997.

[v] He got educated the children with the limited resources available.

[vi] While referring to his contribution made for the upliftment of the family, the respondent asserted that he has been dutiful, whereas the petitioner/wife was always against the respondent and his parents and the humiliation faced by his parents in the hands of the petitioner has exposed his father to mentally breakdown. The petitioner developed a phobia towards the financial status of the respondent and developed a feeling of insult to be the wife of the ex-service man. She is fond to lead lavish life with modern facilities. Their elder son Manoj, began an earning member and sending moneys, the petitioner developed antipathy and superiority complex over the respondent and developed ill-will towards the respondent, even tutored the children

against the respondent with an intent isolate the respondent from the rest of the Family to have the entire financial benefits of his sons, she has poisoned and spoiled the minds of the children, telling bad about the respondent. Elder sister of the petitioner, one Savithri has managed the innocence of the sons of the respondent adding lies. The respondent was an excellent employee and award winner. The allegations contra as to drunken nature etc., are all invented. He has no adverse interest against the petitioner. At any point of time, during 26years of marital journey, there are no merits in the petition and petition is liable to be dismissed.

Evidence:-

[6] During the enquiry, the petitioner has taken witness stand as PW.1 and got one Vallabhaneni Bapaiah said to be resident of Ballary, examined as PW.2, whose evidence is subsequently given up. Further, one of the relatives of the petitioner, one S.Ramakrishna was examined as PW.3. No documents got marked on behalf of the petitioner.

[7] For the respondent, he has taken witness stand as RW.1. S.Venkata Narayana, cousin of the respondent was examined as RW.2. A villager of Lankelapalem, one S.Srinivasa Rao was examined as RW.3. Family friend of both the parties, one K.Rajeswari was examined as RW.4. Colleague of respondent in defence service, one Siva Venkata Ramakrishna Rao was examined as RW.5. One K.Venkata Ratnam was examined as RW.6 and one J.Siva Nageswari, another family friend at Delhi was examined as RW.7. Respondent was got marked Ex.B1 to Ex.B26, documents.

Order of Family Court:-

[8] After addressing the points as to entitlement of the petitioner for dissolution of marriage and decree of divorce, learned Family Court dismissed the application.

Arguments in the Appeal:-

[9] Heard learned counsel for the appellant/petitioner and the respondent did not choose to appear despite giving sufficient opportunity.

[10] Learned counsel for the appellant/petitioner continuously reported ready on 30.04.2020, 14.05.2020, 28.08.2023, 10.09.2025 and finally on 08.10.2025, but there is no representation for the respondent. Although Vakalath was filed for the respondent, none chose to advance the arguments for respondent despite specific directions by this Court. Hence, this Court constrained to proceed with the reference to the material available, particularly the observations in the impugned orders and their proprietary and sustainability thereof taking aid of Order 41 Rule 17 (2) of C.P.C.

[11] On perusal of the material available on record, the points that arise for determination in this appeal are:

1) Whether the decree and judgment dated 29.03.2006 passed by the learned Family Court-cum-IV Additional and District Judge, Vijayawada, dismissing the application filed for dissolution of marriage is proper or whether requires any

interference. If so, on what grounds? And whether the appellant/petitioner-wife is entitled for decree of dissolution of marriage/divorce?

2) What is the result of the appeal?

Point No.1:-

[12] Facts not in dispute:-

1) Marriage performed on 22.3.1975 between the parties.

2) There was around 26 years of marital journey, with wear and tear.

3) Parties are blessed with two children.

4) Parties are living separately for quite a long time.

[13] Whether the petitioner was subjected to cruelty driving her to opt for dissolution of marriage:-

[i] In the pleadings the petitioner has asserted about the cruelty suffered by her both physically and mentally, in evidence she has reiterated the same. The respondent in his pleadings denied the allegations levelled against him and asserted about his good behaviour.

[ii] The incidents narrated by the petitioner are matters of personal knowledge alone and might have happened between the petitioner and the respondent alone substantially if not all. Circumstances and the evidence relating to the conduct of the parties all through will drive one to infer the probabilities of truth in the allegations.

[iii] The evidence of third parties, on behalf of the petitioner is that of the PW.3 and on behalf of the respondent is that of RW.2 to RW.6.

[iv] The evidence of respondent and the petitioner as RW.1 and PW.1, being the parties, may be self serving one. But the evidence of RW.2 to 6 and PW.3 is third party evidence, the same would throw a reasonable light to assess the credibility and probability of truth in the stand of both the parties.

[v] PW.3 is one Rama Krishna Rao, said to be the husband of elder sister of the petitioner. He has stated about the petitioner complaining about the erratic conduct of the respondent in taking drinks, playing cards, mukta, purchasing lottery tickets etc., and harassing her demanding for dowry and continuing his harassment wherever they stayed. Further, the respondent used to canvass with the relatives that the petitioner is a lady without conduct and not properly brought up, damaging the reputation of the family etc.; the respondent using filthy and unprintable language. During the cross-examination of PW.3, it is elicited that he got acquaintance with the respondent prior to the marriage for some time, during that time, there were no bad habits to the respondent. It is also elicited that they are relatives by the time of marriage and no dowry was paid; PW.3 did not meet the respondent at his place after the respondent securing job. He did not go to Visakhapatnam after the respondent setting up his residence, after leaving his job. He does not know whether the respondent did any job at Visakhapatnam. PW.3 does not know about the personal life of the petitioner and

the respondent, he used to reside at various places. He does not know whether the petitioner had got Martuhti Car. He has denied the suggestion that he and his wife are behind the petitioner filing the case. He does not know whether the respondent purchased the property and lorry in the name of the petitioner.

[vi] RW.2 is one Surapaneni Venakta Narayana said to be a third party. He has stated that both the parties are acquainted with each other prior to the marriage; the respondent purchased some property in the name of the petitioner about six years after the marriage. The respondent is honest, humble and simple and he has no vices. During the cross-examination of RW.2, it is elicited that he/ [RW.2] contacted second marriage; he did not take legal divorce from his first wife. It was suggested to RW.2 that brother of the petitioner supported his first wife in respect of the disputes between him and his first wife, hence, he is speaking against the petitioner. He did not attend the marriage of first son of the petitioner and the respondent. He did not attend house warming function of the petitioner. He do not know the street name where the house of the petitioner is situated. He came to know about the disputes when the petitioner and the respondent were residing in Rajahmundry; the petitioner used to complain that the respondent was wasting money and to the best of his knowledge that there are no disputes between the petitioner and the respondent. He did not participate in the marriage negotiations between the petitioner and the respondent.

[vii] His evidence is substantially hearsay in nature. Even the evidence of RW.3 is in the same lines and his evidence is also hearsay as to the disputes between the petitioner and the respondent. He has stated in his crossexamination that he did not enquire the petitioner as to what is the reason for the disputes between the petitioner and the respondent. He enquired the persons, whose name he do not know, about the disputes between the petitioners. His knowledge about the disputes between the petitioner and the respondent is vague and hearsay.

[viii] The evidence of RW.4 also in similar lines, except stating certain details where the petitioner and the respondent have stayed.

[ix] RW.5 evidence is that there is no proper understanding between the petitioner and the respondent, beyond that he do not know anything about the contentions of the parties.

[x] RW.6 evidence is also hearsay that the respondent informed him that the respondent lost some money in the shares business. He has stated that he do not know about exchanges taken place at the time of marriage between the petitioner and the respondent. He does not know how long the petitioner and the respondent stayed together. 12

[xi] RW.7 is also stated that he do not know anything about the affairs of the petitioner and the respondent between 1981 and 2001 and he did never talk to the respondent nor visited his house. He did not visit house of the petitioner also. Evidence of RW.7 is of no help and substantially the same is hearsay.

[xii] The evidence of RW.2 to RW.7 stated good about the respondent due to their acquaintance with him. They are not the witnesses for anything that happened between the petitioner and the respondent.

[xiii] Now the evidence of the petitioner and the respondent and the admissions if any during their cross-examination require appreciation.

[14] Petitioner as PW.1 stated about her sufferance including spending of all retirement benefits by the respondent/husband for his vices etc., and that the respondent took voluntary retirement, ignoring the advice of the elders and the petitioner, as to family needs etc., and that respondent caused hurt to the children. During the cross-examination of PW.1, it is elicited that their marriage was love marriage; the petitioner and the respondent are relatives prior to marriage. She was asserted during the cross-examination that the respondent addicted to vices like drinking, gambling and he was not attending duties regularly. Both the petitioner and the respondent lived for 9 years at Visakhapatnam; after retirement of the respondent, the respondent purchased lorry in her name and he sold the lorry and purchased a site in her name at Rajahmundry. She has denied the suggestion that the O.P. was filed without jurisdiction at Vijayawada. It was suggested to her since she has no necessity with the respondent as their son is sending amounts, and that the respondent used to suggest her that not to live luxurious manner, for that reason she left the respondent, which she has denied. She has admitted that all the assets of her family are standing in her name. The respondent did shares business also in her name. It was specifically suggested to her that she want to go to foreign, for that reason she filed the divorce O.P., as there will be no objection from her husband if she get divorce.

[15] [I] The respondent as RW.1 reiterated his stand in his counter as to want of jurisdiction to the Court at Vijayawada and that one Savithri, elder sister of the petitioner has instigated the petitioner to file the case. The divorce petition is not preceded by any notice. The petitioner has taken away all her belongings without the knowledge of the respondent. Son of the parties is earning dollars and he is sending amounts to the petitioner and the allegations as to the respondent addiction to vices etc., are all false. He is disciplined soldier. During the cross-examination of the respondent, it is elicited that the daughter of his paternal aunt marriage is arranged one. He has denied the suggestion that the petitioner was advising him not to indulge in vices and he has stated that after completing 15years of regular service, he has discharged from service covered by the bond and the contract was for 15 years only.

[ii] He has denied the suggestion that the amount received on retirement are spent for vices. It was even suggested to the respondent during the cross-examination that during 1978, when the petitioner was pregnant he used to kick on her abdomen, which he has denied. It is pertinent to note that two children are born and the petitioner and respondent lived jointly even after 1978 episode, for a very good number of years. The specific suggestion was given to the respondent that after petitioner starting to live separately, the respondent did not initiate any legal proceedings, for which he has

added that he demanded for restitution of conjugal rights through elders and also wrote letters. This aspect is denied by the petitioner/wife. Further it was also suggested to the respondent that his opinion about the reason for seeking divorce is that the petitioner need not have his consent for going abroad and that the respondent did not consent for the marriage of their first son with the daughter of brother of the petitioner are all false. It was also suggested to him that he has no real intention to have the conjugal society and that he did not initiate proceedings for restitution of conjugal rights, which was denied by him.

[16] Learned Judge, Family Court has elaborately considered the evidence on both sides, and found that there are no bonafides in the petition filed by the petitioner for dissolution of marriage as there is no corroboration for her allegations against the respondent and that the petition is dismissed.

[17] Relevant facts that contribute for answering the point framed are:

(i) The parties acquainted with each other prior to marriage and that they are close relatives.

(ii) The petitioner appears to be aged about just 18 by the time of marriage.

(iii) The respondent was working at Srinagar thereafter shifted to Delhi, and worked at several places.

(iv) In all places where the respondent worked, the petitioner appears to have accompanied him.

(v) After discharge or retirement of respondent from the service, both the parties admittedly lived for more than 6 years at Visakhapatnam.

(vi) The petitioner admitted that all the properties were standing in her name.

(vii) The lorry purchased out of the retirement benefits, was in her name only.

(viii) Shares business was also in the name of the petitioner.

(ix) From the cross-examination of the respondent, it is understood that the respondent did not initiate legal proceedings for restitution of conjugal rights.

(x) It is not the case of the petitioner that there was any prior legal notice demanding restitution of conjugal rights or that the disputes between the parties went to an extent of some legal process in the form of complaint etc., to Police.

(xi) Allegations as to vices and addiction of respondent to vices like drinking, gambling are vague and they are not corroborated with any evidence.

(xii) The differences and disturbances between the parties appear to be nothing more than ordinary wear and tear of matrimonial life.

(xiii) Marriage is dated 23.02.1975. The application for divorce was filed in the month of January 2001 and roughly after completion of silver jubilee of their marriage.

(xiv) Petitioner living at Vijayawada by the time of present case.

[18] The 25 years of matrimonial journey is not with any specific complaint etc., by the wife to any authorities. The present litigation between the parties is also aged about

two and a half decades. Sufficiency of evidence indicating the cruelty under which dissolution of marriage is sought, is found missing. Even to invoke the ground for desertion, it is not the case of the petitioner that she has been deserted, and the provision of law invoked is Section 13(1)(ia) of Hindu Marriage Act, which requires that, after solemnisation of marriage, the petitioner should have been treated with cruelty. The petitioner failed to show any convincing evidence that she was subjected to cruelty, sufficient to dissolve the marriage between the petitioner and the respondent. Therefore, the findings of the learned Judge, Family Court-cum-IV Additional District and Sessions Judge, Vijayawada, does not warrant any interference and fit to be confirmed. Point framed is accordingly answered against the appellant/ petitioner.

Point No.2:-

[19] In the result, the appeal is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed

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2026(1)FLJ33

DELHI HIGH COURT

(Hon'ble Judge: Chandrasekharan Sudha)

F A O (First Appeal From Order); C M Appl (Civil Miscellaneous Application) No 206 of 2004; 34048 of 2023 **dated 05/12/2025**

Nirmal Bhatla & Ors

Versus

State & Ors

PROBATE OF WILL

Code of Civil Procedure, 1908 Or. 11R. 12, Or. 11R. 14, Or. 43R. 1 - Evidence Act, 1872 Sec. 68 - Indian Succession Act, 1925 Sec. 299, Sec. 63, Sec. 276 - Probate of Will - Appeal filed against grant of probate of Will executed by deceased father in favour of son - Objectors alleged Will forged and testator lacked testamentary capacity due to illness and paralysis - Evidence showed Will duly attested and executed in presence of witnesses including attending doctor who confirmed mental fitness - Objectors failed to produce earlier Will or medical proof of incapacity - Trial court found Will proved in accordance with law and suspicious circumstances not established - Appellate Court held burden of proof discharged by propounder and no illegality in findings - Probate rightly granted - Appeal Dismissed

Law Point: Propounder of Will must prove due execution and testamentary capacity as per Section 63 of Indian Succession Act and Section 68 of Evidence Act - Once attestation proved and suspicious circumstances removed, grant of probate cannot be interfered with

Acts Referred:

Code of Civil Procedure, 1908 Or. 11R. 12, Or. 11R. 14, Or. 43R. 1

Evidence Act, 1872 Sec. 68

Indian Succession Act, 1925 Sec. 299, Sec. 63, Sec. 276

Counsel:

Sudhanshu Batra (Senior Advocate), Bhuvan Gugnani, Rupender Sharma, B K Sood, Manik Sood, Jyotsna Bhardwaj

JUDGEMENT

Chandrasekharan Sudha, J.- [1] The present appeal under Order XLIII Rule 1 of the Civil Procedure Code, 1908, (the CPC) read with Section 299 of the Indian Succession Act, 1952, (the ISA) assails the judgment dated 25.05.2004 passed by the learned Additional District Judge, Delhi in PP no. 339/85 granting probate of a Will dated 23.04.1984 alleged to have been executed by late Dr. A.N. Khosla (the testator), who passed away shortly thereafter on 29.05.1984.

[2] In this appeal, for convenience and clarity, the parties are being referred to in the same rank as they appeared in the original probate proceedings.

[3] The essential facts emerging from the records necessary for the adjudication of the matter are:- The testator is survived by one son, i.e., the petitioner and six daughters, the respondents/objectors. The Will propounded by the petitioner pertains principally to the residential property situated at Japura-B, New Delhi, along with certain movable assets. It is an admitted position between the parties that another immovable property situated at Sunder Nagar, New Delhi, had already been transferred in favour of the petitioner during the lifetime of the testator.

3.1 The petitioner's case is that his father owned the following properties at the time of his death-

i.) Plot Nos. 4, 5 and 6 at 15-15A, Dhobalwalla (Now Kalidass) Road, Dehradun;

ii) Plot and building thereupon at 15 Jangpura-B, New Delhi;

iii) 1/6th share in a plot of land owned jointly with other at Solan, H.P.

His father executed a Will dated 23rd April, 1984 whereby the petitioner was named as executor of the Will. Plot No.4 at Dehradun was left to Smt. Dyamanti Chadha and Smt. Urmila Kumara, being his daughters jointly and in equal shares; plot No.5 jointly and in equal share to his two other daughters, namely, Smt. Kamla Ahuja and Smt. Nirmal Bhatla and plot No.6 again jointly and in equal shares to his other two daughters, namely, Smt. Sudershan Lal and Smt. Veena Madhok. The plot and the building at 15 Jangpura-B, as also the land at Solan, were bequeathed to the petitioner as also all other movable or assets that were left at the time of his death. The Will was signed by his father in the presence of witnesses, namely, Mr. Chandra Prakash and Mr. R.D. Khanna besides Dr. Rajiv Handa. Mr. Chander Prakash thereafter passed

away. The petitioner being the executor of the Will desires to obtain probate to implement the last wish of his father. Hence, the petition under Section 276 of the ISA.

3.2 Objection was filed on behalf of four daughters of the testator, namely, Urmila Kumra, Kamla Ahuja, Nirmala Bhatla, and Veena Madhok. They contended that the Will dated 23.4.1984 relied on by the petitioner is a forged and fabricated document and that it had never been executed by their father. On the date of execution of the alleged will, their father was incapable of understanding the nature of his acts and was not in a sound disposing state of mind and had no testamentary capacity.The deceased suffered paralytic attacks in the year 1972 and thereafter suffered seven more attacks due to which his mental faculties had been impaired. As degeneration had set in, the deceased was not in a sound disposing state of mind in April1984 when the Will is alleged to have been executed. He thereafter passed away in May 1984.Theobjectors have obtained information that earlier a Will had been executed by their father, which was either registered or lodged with the State Bank of India. The petitioner is in possession of the copy of the same and has concealed the same with ulterior motives. The objectors are trying to trace out the same and they reserve their right to amend, alter and vary pleadings, if the same is traced out.The Court has no jurisdiction to try the petition as the deceased had left properties of the value of more than Rs. 10,000/- in other States. On these grounds they prayed for a dismissal of the petition.

3.3 The parties went to trial based on the aforesaid pleadings. The petitioner examined himself as PW1, the attesting witness PW2 and the attending doctor PW3 were also examined. Exhibits PW1/1 and PW1/2 were marked. The objectors were examined as RW-1 to RW-4.

3.4 On consideration of the materials placed on record and the evidence led by the parties, the trial court found that the Will dated 23.04.1984 had been duly proved in accordance with law and that the objections raised by the objectors did not merit acceptance. Probate was accordingly granted.

[4] Aggrieved, the present appeal has been preferred by the three daughters of the testators namely, Nirmal Bhatla, Veena Madhok and Sudershan lal, the first two had filed objection before the trial court but the third one never filed any objection.

[5] The learned senior counsel appearing for the objectors, opposing the grant of probate, submitted that the petition as framed was wholly misconceived and not maintainable in law. It was urged that the petitioner sought probate only in respect of the property situated in Delhi, though Exhibit PW1/2, the alleged Will dated 23.04.1984 dealt with various assets situated outside the territorial jurisdiction of the Court and valued far more than Rs.10,000/ . Reliance was placed on Section 273 of the ISA to contend that probate must be of the entire Will and not of a part thereof, and that the petition deserved dismissal for want of territorial jurisdiction. It was urged that the trial court had erroneously applied the ratio of the decision in Mary A. Trinidade v. Cincent Trinidade,1976 RLR 212, which was confined to a petition for letters of

administration and had no application where an executor is named and probate of the entire Will is sought.

5.1 It was further submitted that the deceased, who was 92 years of age at the time of the execution of the alleged Will, was not in a sound and disposing state of mind. To augment his contention, the learned senior counsel drew the attention of this court to the admitted fact that the testator had suffered two paralytic attacks, the latter 11/2 years prior to his death, resulting in paralysis of the right side of his body and consequent damage to the left portion of the brain. Reliance was placed on Ex. PW-1/RX- 3, an application for transfer of National Savings Certificates dated 05.01.1983, wherein the deceased recorded that owing to "cerebral vascular disease and residual weakness" he was "not in a position to write but can only put his thumb impression." This document, according to the objectors, raised a serious doubt regarding his mental and physical capacity to execute a Will in April 1984.

5.2 The learned senior counsel stressed that despite the admitted medical deterioration, no medical record(s) whatsoever was produced by the petitioner propounder, nor was any doctor treating the deceased for neurological ailments examined. PW-3was admittedly a general physician who merely attended to bedsores and routine ailments and was neither a neurologist nor aware of the treatment administered to the deceased during 1983 84. It was argued that the absence of medical evidence constituted a grave suspicious circumstance, reliance being placed on the dictum in **Yashoda Gupta v. Suniti Goyal**, 2001 6 AD(Del) 415, where the failure to produce medical records of an ailing testator was held to cast serious doubt on the testamentary capacity. The objectors further cited the principles laid down in **H. Venkatachala Iyengar v. B.N. Thimmajamma**, 1959 AIR(SC) 443, **Rani Purnima Debi v. Kumar Khagendra Narayan Deb**, 1962 AIR(SC) 567, and **Jaswant Kaur v. Amrit Kaur**, 1977 AIR(SC) 74, to reiterate that the propounder carries a heavy and solemn burden to remove all genuine suspicions before a Will can be accepted as valid.

5.3 The learned senior counsel would further submit that the execution of the Will was surrounded by several suspicious circumstances which the petitioner failed to explain. It was contended that the Will, though purported to have been executed by a highly educated and distinguished individual a former Vice- Chancellor, Member of Parliament and Governor of Orissa, was unregistered and bore only a left thumb impression, despite the left hand being admittedly unimpaired. PW-3's assertion that he "lifted the hand" of the deceased to obtain the thumb impression was highlighted as wholly inexplicable if the unaffected left hand was being used. It was urged that the beneficiary (petitioner) was present throughout and was the principal legatee under the Will a circumstance treated as inherently suspicious in **Raja Ram Singh Vs. Arjun Singh**, 2002 AIR(Del) 338, Brahmapal Singh v. Ram Dulari, 1981 AIR NOC 32, and Harbans Singh v. Hardayal Singh,1996 2 HLR 252. The learned senior counsel also referred toExhibits **PW1/RX2** and **PW1/RX3** to demonstrate that the petitioner had

begun transferring assets of the deceased into his own name even during the latter's lifetime, further deepening doubts as to undue influence.

5.4 It was further urged that PW-1 to PW-3 have given mutually contradictory testimonies on material aspects. PW-1 stated in cross-examination that the Will took one hour to write and execute yet elsewhere deposed that it had been prepared two years earlier and merely thumb-marked on 23.04.1984. PW-2 and PW-3 expressly stated that no discussion regarding the Will or its contents took place in their presence, contradicting PW-1's version. Their testimony regarding the physical condition of the deceased was also inconsistent inter se. These contradictions demonstrated that the attesting witnesses were interested, unreliable and tutored, especially since PW-3 was related to the wife of the petitioner. It was further submitted that the petitioner concealed the true assets of the deceased. Though Annexure-A to the petition declared that the testator left "NIL" assets, the evidence disclosed joint bank accounts and other properties reflected in PW-1/RX-1 to PW-1/RX-3. The unnatural disposition in favour of the son who had already been gifted a valuable house in Sunder Nagar was stressed as incompatible with the known wishes of the deceased and as an additional suspicious circumstance within the meaning of **Harbans Singh** (supra) and **Venkatachala Iyengar** (supra).

5.5 It was lastly contended that the trial court adopted a prejudiced and erroneous approach, misconstruing the testimony of RW-3, ignoring the admitted medical condition of the deceased, and placing undue reliance on documents of 1982 although the second paralytic attack occurred subsequently. It was urged that the cumulative effect of all these circumstances made it impossible for the judicial conscience to be satisfied that the alleged Will represented the free, conscious and voluntary act of the deceased, and that the petitioner propounder had "miserably failed" to discharge the burden cast upon him under the law. Reliance was again placed on **Venkatachala Iyengar** (supra) to contend that unless all legitimate suspicions are removed, probate cannot be granted.

[6] Per contra, the learned counsel for the petitioner supported the impugned judgment and submitted that the present appeal was wholly incompetent. It was urged that two of the appellants herein had never filed objections to the probate petition. Objections were filed by respondent Nos. 2, 3, 4 and 6 in the petition, i.e. Urmila Kumra, Kamla Ahuja, Nirmal Bhatla and Veena Madhok respectively, even though it had been only signed by respondent Nos. 2 and 3. However, Respondent Nos. 2 and 3 neither entered the witness box nor adduced any evidence, and significantly had not even chosen to contest or support the present appeal. The appellants, despite not being objectors before the trial court, appeared as witnesses and now seek to challenge a judgment to which they were never parties in objection. The appeal, therefore, it was contended, is liable to be dismissed on this short ground alone.

6.1 The learned counsel next submitted that the objectors' evidence was wholly unreliable and contradictory. Objector no. 1, examined as RW-3, had filed no objections, volunteered statements before the trial court and then resiled from them on the next date.

Her testimony was duly disbelieved by the trial court. Although RW-3 has a case that the deceased was "a vegetable," she admitted that she never got him treated for any ailment. Her statements stood contradicted by the documents on record as well as by objector no. 2 (RW-2). RW-2 admitted that she was residing in Bombay at the time of her father's death, remained outside Delhi for a long period, and was not attending to his medical or personal needs. She further acknowledged that the testator continued to manage his own affairs till the middle of 1982 and identified his signatures and photographs (Ex. RW1/P1 to P6). Neither of the objectors could name any doctor who is contended to have treated their father for the ailments asserted by them.

6.2 The learned counsel for the petitioner would further argue that the objectors' evidence did not support the objections originally taken by respondent nos. 4 and 5. On the contrary, it stood established on record that the Will was duly executed in the presence of the attesting witnesses. One of the attesting witnesses died when evidence commenced, but the surviving attesting witness was examined and nothing adverse emerged in his cross- examination. PW-3, the doctor who attended to the testator in his last days was also examined, and he conclusively proved both the mental fitness of the testator and the due execution of the Will, including attestation of the thumb impression.

6.3 It was further urged that the plea of an earlier registered Will of the deceased was raised by the objectors themselves as well as by respondent nos. 4 and 5. However, none of them produced the said Will despite ample opportunity being given. The petitioner, during his own evidence, produced a certified copy of a registered Will executed in the year 1958 at Saharanpur, at which time, the testator was Vice-Chancellor of Roorkee University. This Will bequeathed the entire estate to the testator's wife, and in her absence to the petitioner as the sole executor and beneficiary. The objectors and respondents 4 & 5 opposed even the placing of its certified copy on record on the ground of lack of pleadings, despite the petitioner moving an appropriate application under Sections 63 and 65 of the Evidence Act as well as Section 90 seeking its acceptance. The trial court rightly allowed the application by order dated 05.03.2002.

6.4 The learned counsel further submitted that an attempt was made at the final stage of the proceedings to delay the conclusion of the trial. Objector no. 1, who had never filed objection, moved an application under Order XI Rules 12 and 14 CPC seeking production of medical records of the deceased. The trial court rejected the application by a detailed order dated 13.02.2004. The objectors neither challenged that order nor have they questioned it in the present appeal. It was submitted that no grievance can survive regarding absence of medical records when the objectors abandoned all legal remedies against the rejection of their application.

6.5 The learned counsel further submitted that the findings of the trial court are based on sound appreciation of evidence and required no interference. The attesting witnesses have duly proved the Will in accordance with Section 63 of the ISA and

Section 68 of the Evidence Act. The doctor had spoken to the lucidity, awareness and mental capacity of the testator at the time of execution. The testator, a distinguished person, had executed earlier Wills making similar dispositions. The present Will, therefore, represented a consistent pattern of testamentary intention. The alleged suspicious circumstances were argued to be imaginary, unsupported by evidence, and contradicted by the objectors' own admissions.

6.6 In support of his submissions, the learned counsel for the petitioner placed reliance on the decision in **Savithri v. Karthyayani Amma**, 2008 AIR(SC) 300, wherein it was held that mere allegations of undue influence or deprivation of certain natural heirs do not, by themselves, constitute suspicious circumstances when the Will is otherwise natural in its disposition, properly attested, and its execution duly proved in accordance with law. It was submitted that the ratio of the said judgment squarely applies to the present case, as the statutory requirements of execution and attestation stand fully satisfied and the evidence of the attesting witness as well as the attending doctor inspires complete confidence.

[7] Heard both sides and perused the records.

[8] The central issue that falls for consideration is whether Exhibit PW1/1, the Will dated 23.04.1984, propounded by the petitioner, stands proved in accordance with Sections 63 of the ISA and 68 of the Evidence Act, and more importantly, whether the circumstances surrounding its execution inspire the confidence of the Court as required by the settled principles governing proof of Wills.

[9] At this stage, it is also necessary to clarify the distinction between the burden of proof and the onus of proof. The burden of proving due execution of a Will in terms of Section 63 of the ISA and Section 68 of the Evidence Act, rests squarely and throughout upon the propounder and does not shift. The onus of proof, however, being evidentiary in nature, shifts during the course of the trial; once the propounder establishes the foundational elements of execution and attestation, the onus moves to the objector to substantiate the allegations of undue influence, coercion, fraud or suspicious circumstances. If such circumstances are established, the onus may again shift back to the propounder to remove them. This shifting onus does not, however, alter the constant legal burden which remains with the propounder.

[10] At the outset, certain foundational and undisputed facts need to be noticed. It is not in controversy that the testator, was of advanced age and was physically infirm in the period preceding his demise. It is also not disputed that he was largely bedridden in the last months of his life and was residing with the petitioner at property No. 15, Jangpura-B, New Delhi. It further stands out from the evidence of RW-1 to RW-4 that none of the daughters resided with or continuously attended to the testator during this final period; most of them admittedly met him occasionally or intermittently. The petitioner was therefore the person who was in regular proximity with the testator in his last years. These facts, which emerge clearly from both sides of the record, form the background against which the controversy must be evaluated.

[11] Before I proceed to analyse whether due execution and testamentary capacity stand proved, it is necessary to briefly notice the testimony of the material witnesses.

[12] Pw-1, the petitioner, when examined deposed that when his father died on 29.5.84, the latter was 92 years; that the death certificate is Ex.PW 1/1; that his father was Vice Chancellor, Roorki University, then member of planning Commission, and thereafter retired as Governor of Orissa; at the time of his death he was living with PW1; that the deceased left a Will dated 23.4.84; that the testator was mentally alert and in his senses at the time of his death; that after retirement as Governor of Orissa, the deceased was living with him all along till death at 15, Jangpura B, Mathura Road, New Delhi; that his father suffered paralytic attack about a year before his death; that even after the attack his father was mentally active and was attending to his affairs; that his mother predeceased his father; that his father's right hand was weak after the paralytic attack and so he could not sign with his right hand and hence used to put his thumb impression; that his father had executed the will in his presence, at which time Chander Prakash and Dr. Rajeev Handa were present; that the will had already been prepared by his father about 2 years before its execution and after preparing it, his father had kept it in his bag but it was thumb marked by him on 23.04.1984 in the presence of the aforesaid persons; that his father had thumb marked on the will after reading and understanding the contents thereof by himself; that it was first signed by Chander Prakash, then by R.D. Khanna and lastly by Dr. Rajeev Handa. R.D. Khanna and Chander Prakash signed on the will as attesting witnesses. PW1 identified the thumb mark of his father as well as his will and the signatures of the attesting witnesses in the will, which was marked as Ex-PW1/2. He further deposed that in 1993; he came to know that his father had executed a will in 1958 which was registered at Saharanpur. When he came to know of the same, he obtained a certified copy of the said registered will from the office of Sub Registrar at Saharanpur.

12.1 In the cross examination PW-1 deposed that his father had suffered a paralytic attack in 1970; that he does not remember the hospital where his father had been treated for the paralytic attack; that his father used to visit hospitals for check-up frequently after his 2nd attack; his father used to be escorted on wheel chair from the house to the car during his visits to the hospital. PW1 admitted that his father could not walk without support after his 2nd attack and that he needed support for even going to the toilet. He also admitted that his father was virtually bedridden after his 2nd attack. PW1 further admitted that after the second paralytic attack his father was incapable of handling routine office work or paper work by himself. His father suffered a paralytic attack for the second time about an year before his death due to which his right side was effected. According to PW1, it took about an hour for the preparation and execution of the Will. The discussion on the will and the process of signature was completed during the said one hour time. He knows Chander Parkash as he is the son of his father's colleague. Dr. Rajeev Handa, their family doctor, had been treating his father for the paralytic attack besides his other ailments. He denied the suggestion that

his father was incapable of recognising any of his children for two years prior to his death. He also denied the suggestion that after the second paralytic attack his father's whole body as well as brain had been affected. He denied the suggestion that his father wanted his house at Jangpura to be distributed equally amongst all his children after his death.

[13] Pw2 deposed that he knew the testator as the petitioner was his colleague; that he is one of the attesting witnesses in Ex.PW1/2; that the mental condition of Dr. A.N. Khosla was alright; that the testator could speak but slowly; that his right hand had some problem; that at the time of execution apart from him there were the testator, Chander Prakash, the petitioner and a doctor. On the request of the testator, he agreed to be an attesting witness. The testator put his thumb impression. Chander Prakash signed as the first witness. Thereafter he signed and lastly, the doctor also signed. The testator could understand his affairs and was of sound disposing state of mind at the time of the execution of the will.

13.1. In the cross examination PW2 deposed that he does not know the ailment of the testator; that he does not know whether the testator had a paralytic attack; that he does not know what was wrong with the right arm of the testator, but he had difficulty moving his right arm; that the testator could get out of the bed with support; that the will had already been written; that he had not read the contents of the will. He denied the suggestion that the testator was unable to speak on the day of execution of the Will. He also denied the suggestion that the testator was unable to recognise his family members when the Will was executed. PW2 also denied the suggestion that the testator had no control over his body and that he was mentally unstable and indisposed.

[14] Pw3, Dr. Rajiv Handa deposed that he was attending on the testator; that he used to visit the testator almost daily; that he had gone for a routine check-up at which time he was asked to witness the execution of the will. When the will was executed, the testator had normal mental faculty and was of sound disposing mind. Due to paralytic attack, the testator could not hold a pen in his right hand and requested his help to affix the thumb impression of the latter on the will. There were two other persons who were already there when he arrived, and they had attested the will.

14.1. In the cross examination PW3 deposed that he is a general physician and that he does not treat people for neurological problem, but he does follow up of such patients, that is, nursing them. PW3 deposed that he does not know who had been attending to the testator earlier. But after he started attending on the testator, there was nobody else. PW3 was unable to recall the time when the will was executed and attested. But he said it was in the evening. He does not know the person who wrote the will. There was no discussion on the will at the time when it was executed. The testator was in such a state that he required only nursing at home. Nothing further could be done. The testator's speech was affected but it could be comprehended. He denied the suggestion the testator had become incoherent in his speech during the period 1983 to 1984, which continued till his death. PW3 denied the suggestion that

the testator was unable to recognize his family and children. PW3 admitted that the right upper limb and lower limb of the testator had been affected due to paralysis. He admitted that due to paralysis when a patient's right side is affected, the left portion of his brain would be affected. He denied the suggestion that on 23.4.84 the testator was not in a sound disposing state of mind. PW3 further deposed that he had not carried out any tests to find out whether any portion of the testator's brain had been damaged. He denied that he was in any relation to the petitioner's wife.

[15] Rw 1 Sudershan Lal, one of the daughters is seen to have filed a statement supporting the case of the daughters. However, RW1 is not seen cross examined. Hence her statement cannot be looked into.

[16] Rw2 - another daughter, has filed statement supporting the case of the objectors. RW2 in the cross examination deposed that at the time of her father's death, in the year 1984, she was in Bombay. She admitted that during the last days of her father, she was not attending to his medical needs as her husband was posted outside Delhi. Till the middle of 1982, her father could manage his own affairs. She denied the suggestion that the mental faculties of her father were normal till his death. She admitted that she had not seen the registered Will, purported to have been executed by her father, while he was Governor of Orissa. But she has heard about it.

[17] Rw3 - Nirmal Bhatala, another daughter deposed that two years, prior to her father's deathhis mental faculties were not working. He could not recognise anyone; he could not speak even a word; he could not recognize his children; he was not aware, as to what was happening around him, or what was being done to him. He could not eat by himself; he could not move his hands or arms. Everything was being administered to him. He was completely bedridden for two years, prior to his death. He could not even change his side. They had put a hole in his bed so that he could ease himself on the bed by himself. Ex.PW1/2 was not executed by her father. Her father had executed a Will, while he was Governor of Orissa during which time her mother was alive. They have been unable to trace that Will. No other will was executed by her father, during his lifetime. The Will propounded by the petitioner is forged one.

17.1. In the cross examination RW3 deposed that the factum of illness of her father was known to all the sisters. In May 1982, she realised that her father had lost his mental and physical faculties. He was in a vegetative state. She cannot name the doctor, who was treating her father. However, one Dr. Saneh Ghadoke, a Neurosurgeon used to visit her father. Dr. Birmani and Dr. D.R. Khurana were also treating her father. Dr. Khurana is still available, but she does not know about Dr. Birmani. Dr. Sneh Ghadhok suffered a paralytic attack. The cross examination of RW3 was deferred and later when it was resumed, she inter alia deposed that she does not have any record to show that her father suffered heart attacks / paralytic attacks. She denied having earlier deposed to having put a hole in bed of her father so that he could ease himself on the bed itself.

[18] Rw4 - Sonia Kapre, daughter of Nirmal Bhatla, another daughter of the testator, denied that the testator was in perfect health and sound disposing mind in the year 1982. She supports the case of the objectors.

[19] What can be discerned from the aforesaid evidence is that the testator was physically infirm and largely bedridden in the last months of his life. The testator of a will does not have to be found in a perfect state of health or in the "pink of health" to have his will declared valid. The relevant question is whether he possessed a sound disposing mind capable of understanding the nature of the act and the disposition he was making. It is sufficient to prove that he was able to give the outline of the manner in which his estate was to be disposed of. (See **Gordhandas Nathlal Patel vs. Bai Suraj & Ors.**, 1921 AIR(Bom) 193 and **Chhanga Singh vs.Dharam Singh & Ors.**, 1965 AIR(P&H) 204). As explained in Har Narain v. Budhram,1991 SCCOnLineDel 351, while referring to the principle in **Kishan Singh v. Nichhattar Singh**, 1983 AIR(P&H) 373, even a testator who is deaf, dumb or suffering from serious physical conditions may execute a valid Will so long as he comprehends the contents and implications of the document.

[20] Applying the aforesaid settled position of law, the testator's physical weakness or paralysis in the present case need not detract from his testamentary capacity if it is shown that he was, at the relevant moment, capable of understanding the instrument propounded. The materials on record does show that the testator was bedridden due to a paralytic stroke suffered by him but this does not seem to have affected his mental faculties as deposed by PW2 and PW3. On going through the testimonies, I find no reason to disbelieve them as nothing was brought out to discredit their testimony. No reasons have been shown as to why PW2 and PW3 should depose falsehood in order to help the petitioner. Though, PW3 was stated to be related to the petitioner, the objectors were not even able to specify the alleged relationship. Therefore, the testimonies of PW2 and PW3 does support and prove the case of the petitioner that the testator though bedridden due to stroke and not in perfect health, was in a sound disposing state of mind.

[21] Considerable emphasis was placed by the objectors on the alleged absence of medical records relating to the testator's condition in 1983 84. However, the record demonstrates that the objectors had ample opportunity during the course of the trial to pursue this aspect. They cross-examined PW-1 at length as far back as on 12.05.1997 and thereafter examined their own witnesses as RW-1 to RW-4, yet no suggestion was put to any of the witnesses that relevant medical papers existed but were being withheld by the petitioner, nor was any contemporaneous medical witness summoned. It was only at the stage when the matter had progressed to final arguments that the objectors moved an application under Order XI Rules 12 14 CPC seeking production of medical records. The trial court, by order dated 23.02.2004, rightly held the application to be belated and vague, and dismissed it. In these circumstances, the plea of suppression or non- production of medical documents cannot be accepted as a

suspicious circumstance, particularly when the objectors themselves neither produced the alleged records nor pursued their own remedies against the rejection of their application. Further, RW-3 in her cross examination referred to the names of three doctors who had treated her father. She admitted that one of the doctors was still available. If that be so, she could have taken steps to examine the said doctor to substantiate her case that her father was in a vegetative state. However, for reasons best known to the objectors, no such attempt was made by them.

[22] Much emphasis was placed by the objectors on the existence of an "earlier Will," repeatedly invoked in their evidence and submissions. The record, however, indicates that while the objectors asserted the existence of such a Will, but they did not produce it at any stage. It was, instead, the petitioner who placed on record a certified copy of a registered Will executed and registered by the testator in 1958 at Saharanpur, U.P. That document showed that, at the time, the testator's wife was alive and that he had devised his entire real and personal estate in her favour, and, in the event of her death, in favour of his son, Shri Sushil Nath Khosla (the petitioner herein). Rather than permitting the petitioner to prove the said certified copy, the objectors objected to its production on the ground that it was beyond the scope of the pleadings. The reiterated reference to the "earlier Will," unsupported by production of the document relied on by the objectors themselves, appears more directed at creating a smoke screen of doubt than at demonstrating any inconsistency in the testamentary intention of the testator.

[23] The inconsistencies pointed out by the objectors in the testimony of PW-1, PW-2 and PW-3 such as the precise time taken in preparation of the Will, or whether the Will was prepared earlier and kept in a bag do not, in the view of this Court, touch the core requirement prescribed under Section 63 of the ISA. Minor divergences in peripheral details are not uncommon in human recollection and do not by themselves shake the foundational elements of execution and attestation when these stand proved through the testimony of PW2, the attesting witness whose presence has not been discredited. The other attesting witness was no more and hence could not be examined. The inconsistencies pointed out do not affect the essential facts proved by the attesting witness and the attending doctor and therefore do not negate the finding that the testator possessed a sound disposing mind when the Will was executed.

[24] On the question of suspicious circumstances, the objectors relied principally on the testator's advanced age, physical incapacity, the active involvement of the petitioner, and the alleged unnatural exclusion of the daughters from the Jangpura property. Evaluating these aspects together, this Court is unable to recognise any circumstance of such gravity as would either shake the core of the case propounded by the petitioner or require rejection of the Will. As emphasised in **Har Narain** (supra), the mere fact that the propounder was present at the time of execution is not, by itself, sufficient to cast doubt on the genuineness of a Will. The Apex Court has similarly reiterated in Pentakota Satyanarayana v. Pentakota Seetharatnam,2005 SCCOnLineSC 1412, that every circumstance is not a suspicious circumstance, and even active

participation by a beneficiary in the execution process does not, without more, undermine the testamentary capacity or the genuineness of the Will; mere presence does not amount to "taking a prominent part" in execution nor does it shift the burden unless undue influence, fraud or coercion is specifically pleaded and proved. In the present case, the petitioner's presence is unsurprising as it is not disputed that the petitioner was residing with his father and the daughters were not residing with their father or regularly attending to the testator during the final period of his life. It is true that earlier the father had bequeathed another valuable property situated at Sundar Nagar, Delhi to the petitioner. But that alone also is no ground to suspect the will in question because the whole idea behind execution of the will is to interfere or deviate from the normal line of succession. Further, this is not a case wherein, the daughters have been completely dis-inherited. They have no case that their father had completely disinherited them or had not given them their due share. RW1, one of the daughters who did not offer herself for cross examination is seen to have filed a statement that during his lifetime her father had gifted his Sundar Nagar house to the Petitioner and it was his wish that the Jungpura Extension house be shared by his daughters. For the said purpose he had created a trust in respect of Jungpura property and under the terms of the said trust the rent of the said property was to be received by his daughters. That trust was for a limited period of 5 to 6 years and after the trust ceased to exist, her father had notified his intention by writing to her and her other sisters that he wanted the said house to be divided amongst his daughters. She declined to take a share in the Jangpura house during his lifetime because she wanted her father to have some property for himself during his lifetime. None of the objectors have such a case in the objection. If any such trust had been created, then the objectors ought to have taken steps to substantiate the same. However, no such attempt is seen made. Therefore, I do not find any materials to conclude that the disposition is unnatural.

[25] Yet important, another aspect is regarding the contention of the objectors regarding the execution of another will by their father. They do not seem to have made any earnest efforts to trace the same and produce it before the court. However, when the petitioner produced the same, they objected to its production and admission in evidence on the ground that there was no such pleading in the petition. But a pertinent aspect to be noted is that they do not have a case that the 1958 will was forged or fabricated by the petitioner and produced before the court. As per the said will executed way back in the year 1958, the property in question has been bequeathed to the petitioner. Be that as it may, the said will cannot be relied on, as the same has not been proved by examining the attesting witnesses.

[26] I also briefly refer to the authorities relied upon by the objectors. The decisions in **Venkatachala Iyengar** (supra), **Rani Purnima Debi** (supra) and **Jaswant Kaur** (supra) reiterate the well-established principle that where genuine and substantial suspicious circumstances exist, the propounder must remove them to the satisfaction of the Court. Those judgments, however, turned on fact situations where

the Will itself disclosed inherent contradictions, unexplained departures from the natural line of succession, or a demonstrable impairment of the testator's cognitive faculties. No such foundational infirmity is present here. In the present case, the evidence of PW-2 and PW-3 establishes a coherent and consistent account of due execution, and the suspicious circumstances alleged by the objectors rest on conjecture rather than material evidence.

[27] Reliance on the dictum of **Yashoda Gupta** (supra), **Raja Ram Singh** (supra), **Harbans Singh** (supra) and **Brahmapal Singh** (supra) is equally misplaced. Those cases proceeded on clear proof of undue influence, dominance of the beneficiary, suppression of medical records, or exclusion of natural heirs in circumstances very different from the present. Here, the daughters admittedly were not residing with or regularly attending to the testator in his final years, no medical or neurological evidence of incapacity has been produced by them, though ample opportunity was available to them. The factual foundation that justified interference in the cases relied upon by the objectors is wholly absent in the present matter, rendering those authorities inapplicable.

[28] The plea that probate could not be granted in respect of only the Delhi property is equally untenable, as the petition itself was confined to the property within the jurisdiction of the court and it lies within the power of the District Judge to grant limited probate effective within the State. The factual record does not disclose any impediment in the trial court exercising jurisdiction on this aspect.

[29] In view of the discussion hereinabove, this Court is satisfied that the petitioner has duly discharged the initial and substantive burden of proving due execution and attestation of the Will in terms of Section 63 of the ISA and Section 68 of the Evidence Act. The testimonies of PW-1, PW-2 and PW-3, taken together, establish the foundational facts required of a propounder. Consequently, the onus had shifted to the objectors to substantiate the allegations of undue influence, coercion, fraud or the existence of any real and legitimate suspicious circumstance. However, the objectors, having neither produced contemporaneous medical evidence nor established any material contradiction(s) going to the root of testamentary capacity or volition, have failed to discharge this shifted onus. The mere reliance on peripheral inconsistencies or broad allegations, unsupported by tangible evidence, is insufficient in law to rebut the presumption arising from the proof of execution.

[30] In view of the foregoing discussion, this Court finds no ground to interfere with the findings returned by the trial court. The appeal is, therefore, devoid of merit and is hereby dismissed. The order granting probate in respect of property No. 15, Jangpura-B, New Delhi, is accordingly affirmed.

[31] Application(S), if any pending, shall stand closed

2026(1)FLJ47

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge: Dr Kauser Edappagath)

Rp (F C) (Revision Petition (Family Court)) No 343 of 2024 **dated 05/12/2025**

V P Abdurahiman S/o Muhammed

Versus

C Safiya D/o Marakkar (L)

MAINTENANCE TO DIVORCED WIFE

Code of Criminal Procedure, 1973 Sec. 125 - Maintenance To Divorced Wife - Former spouses under Muslim law - Respondent sought maintenance alleging remarriage with petitioner after earlier divorce - Petitioner denied second marriage - Court noted that strict proof of marriage not essential under Sec. 125 CrPC - Evidence showed cohabitation and acknowledgment sufficient to infer marital relationship - Family Court rightly granted maintenance - Petition Dismissed

Law Point: In proceedings under Sec. 125 CrPC, proof of long cohabitation and acknowledgment as spouses suffices to infer marital tie for granting maintenance even without formal proof of marriage

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 125

Counsel:

C Dinesh, K Ramakumar (Senior Advocate), P Samsudin, Jasneed Jamal, Lira A B, Devika E D, Abin Rashid

JUDGEMENT

Dr Kauser Edappagath, J.- [1] This revision petition has been filed challenging the order passed by the Family Court, Malappuram, in MC No.270/2022 dated 4/7/2024.

[2] The parties are Muslims governed by the Muslim Personal Law. The petitioner married the respondent on 9/5/1983 in accordance with Muslim customary rites. In the said wedlock, a girl child named Shabna was born. The marriage lasted only for three years. On 20/9/1986, the petitioner divorced the respondent by pronouncing talaq. On the next day itself, i.e. on 21/9/1986, the petitioner contracted a second marriage with Mrs. Asmabi. Four children were born in the said wedlock. On 4/4/1991, the respondent married Mr. Moideenkoya. According to the respondent, the marriage lasted only for one year. However, the dissolution of the marriage between the respondent and Mr. Moideenkoya is disputed by the petitioner. The second wife of the petitioner, Mrs. Asmabi, expired on 6/11/2020. According to the petitioner, after her death, he contracted a third marriage with Mrs. Kadeeja. The respondent filed a

maintenance case against the petitioner, claiming maintenance invoking Section 125 of Cr.P.C. before the Family Court as MC No.270/2022, alleging that she remarried the petitioner on 27/4/2012 in accordance with the Muslim customary rites.

[3] The petitioner resisted the maintenance case, mainly contending that there was no second marriage between him and the respondent as alleged. The petitioner has also denied the case of the respondent that her marriage with her second husband, Mr. Moideenkoya, was dissolved. According to the petitioner, since there was no marriage between him and the respondent on 27/4/2012 as alleged, he is not liable to provide maintenance to the respondent. However, the Family Court, after appreciation of evidence, repelled the said contention of the petitioner and granted maintenance to the respondent at the rate of '6,000/- per month from the date of the petition as per the impugned order.

[4] I have heard Sri.K.Ramakumar, the learned Senior Counsel appearing for the petitioner and Sri. P.Samsudin, the learned counsel for the respondent.

[5] The learned Senior Counsel for the petitioner submitted that the respondent has miserably failed to prove the dissolution of her second marriage with Mr.Moideenkoya and the alleged remarriage with the petitioner, and hence the Family Court went wrong in awarding maintenance to her. On the other hand, the learned counsel for the respondent submitted that the evidence adduced by the respondent is sufficient to prove the dissolution of her second marriage as well as the solemnisation of her remarriage with the petitioner. The learned counsel further submitted that proceedings under Section 125 of Cr.P.C, being summary in nature, strict proof of marriage is not necessary. The learned counsel also submitted that if there is evidence to prove long cohabitation, maintenance under Section 125 could be ordered even without strict proof of marriage. Reliance was placed on **Chanmuniya v. Virendra Kumar Singh Kushwaha and Another**, 2011 1 SCC 141and **Kamala and Others v. M.R.Mohan Kumar**, 2019 11 SCC 491

[6] Both admit their first marriage and its dissolution by the pronouncement of talaq. However, their alleged remarriage on 27/4/2012 is in dispute. The entire controversy revolves around the question of the legal validity and proof of remarriage between the petitioner and the respondent.

[7] The marriage under Muslim law is a religious rite and a solemn pact between a man and a woman, soliciting each other's life-companionship, but it is in the form of a civil contract. The essentials of a Muslim marriage include free consent, competency and the proposal (ijab) and acceptance (qubul) occurring in the same meeting. Additionally, the presence of at least two male or one male and two female Muslim witnesses is required under Sunni law. The husband must also pay or agree to pay a dower (mahr) to the wife. Though the Muslim law does not require a ceremonial solemnisation of marriage, in India, a Muslim marriage takes place ceremonially in the form of a Nikah, which in law means a direct or indirect exchange of proposal and acceptance between the parties in the presence of witnesses, followed by recital of

verses and extracts from the Quran, [Revealed religious text of Islam and primary source of Muslim law] and Hadith, [Sayings, actions and approval of Prophet Muhammed and primary source of Muslim law.]elating to the importance of marriage and providing guidance for a happy married life.

[8] Muslim law recognizes out-of-court divorce initiated by both husband (talaq) and wife (khula), as well as divorce by mutual consent (mubarat) and divorce through court by the wife (Dissolution of Muslim Marriages Act, 1939). A divorced woman can remarry after the expiration of the legal iddat period **[5]** if it is legally required. However, a divorced woman cannot freely remarry the same man who divorced her by talaq. Remarriage between a divorced man and woman under Muslim law is only permissible if the woman marries another man and then divorces him this is known as the doctrine of Halala or Nikah Halala. Nikah Halala is an accepted Islamic practice, where a woman who has been irrevocably divorced by her husband through talaq mode must marry another man and then divorce him before she can remarry her first husband. The term comes from the Arabic word 'halal', meaning 'permissible' or 'lawful', reflecting the intent to make the woman permissible again for her first husband. This practice is based on an interpretation of the Quranic verse [Surah Al-Baqarah, Verse 230] , which states that a man cannot remarry his ex-wife after a final, irrevocable divorce until she has married and been divorced by another man. To prevent the misuse of this rule to unlawfully circumvent the legal ban on remarriage to a divorced wife through talaq, the law insists that the second marriage must have been consummated and not entered into with the prior intention of dissolving it to remarry the first husband. The Privy Council has held that the second marriage of a divorced woman must not be sham; it must have actually occurred [**Saiyid Rashid Ahmad and Another v. Mt.Anisa Khatun and Others**, 1932 AIR(PC) 25] . Therefore, for a remarriage of a divorced Muslim woman with her ex-husband to be valid, the intervening marriage, its consummation, and legal dissolution are necessary.

[9] Coming to the merits of the case, the intervening marriage by the respondent with Mr.Moideen Koya was not disclosed in the petition for maintenance. However, in the chief affidavit of the respondent, she stated that after divorcing the petitioner, she married Mr Moideenkoya on 4/4/1991. At any rate, the petitioner has admitted the said marriage. Ext.D1 certificate also proves that. But the petitioner has specifically denied the case of the respondent that she divorced Mr.Moideenkoya within one year of the marriage. As stated already, an intervening marriage, its consummation and dissolution in a lawful manner, are prerequisites for a divorced Muslim wife to remarry her first husband. Hence, unless and until the respondent proves the dissolution of her marriage with her second husband Mr.Moideenkoya, her alleged second marriage with the petitioner cannot have any legal validity.

[10] As stated already, the respondent has not pleaded at all about her second marriage with Mr.Moideenkoya and its dissolution in the petition for maintenance. Apart from the vague statement of the respondent in her chief affidavit that she

divorced Mr.Moideenkoya within one year of marriage, there is no proof to prove the same. In cross-examination, when a specific question was put, she could not say the date or year of divorce. She has no case that Mr.Moideenkoya pronounced talaq in her presence, or it was communicated to her directly. According to her, her father and uncle approached Mr.Moideenkoya and obtained talaq. She further stated that she cannot say whether the factum of the pronouncement of talaq was intimated to the mosque. On the side of the respondent, her brother was examined as PW2, and daughter was examined as PW3. PW2 did not say anything about the dissolution of the respondent's marriage with Mr.Moideenkoya in his chief affidavit. In the cross-examination, he stated that when the respondent divorced Mr.Moideenkoya, he was a minor. PW3 was also a minor when the respondent allegedly divorced Mr.Moideenkoya. She did not depose anything about the dissolution of the marriage between the respondent and Mr.Moideenkoya. Thus, the evidence adduced by the respondent is insufficient to prove the dissolution of the marriage between the respondent and Mr.Moideenkoya. One of the basic conditions for the validity of a marriage in Muslim Law is that the woman must not have a living and legally recognised husband. If a woman whose marriage to a living man subsists under the Muslim Law marries a man, her second marriage will be batil (void) under Muslim law. Thus, in the absence of proof of the dissolution of the marriage of the respondent with Mr.Moideenkoya, her remarriage with the petitioner would be void even if it stands proved. It would be hit by the doctrine of halala as well.

[11] The petitioner has also specifically disputed his second marriage alleged to have been solemnised with the respondent on 27/4/2012. According to him, no such marriage had taken place. When the petitioner denies marriage, the burden is upon the respondent to prove the same. To prove the respondent's remarriage with the petitioner on 27/4/2012, the respondent relied on her own evidence as well as the evidence of PWs 2 and 3.

[12] Under Muslim Law, at the time of nikah, the bride can be represented by her wali (guardian). Normally, the father of the bride would be wali and, in his absence, a brother can act as wali. According to PW2, he acted as wali of the respondent and performed nikah with the petitioner. PWs 1 to 3 deposed that nikah was performed at their residence in the presence of the khatib [A religious cleric who officiate nikah ceremony]

and two witnesses. The presence of two adult male witnesses or one male witness and two women witnesses is mandatory for a Muslim marriage. However, neither of these witnesses who were allegedly present at the time of nikah was examined. It is true that under Muslim law, the marriage contract is not required to be reduced to writing, and the factum of nikah need not necessarily be entered in the register maintained at the mosque. However, preparation of a marriage contract (nikah namah) and entering the details of marriage in the register maintained at the local mosque is a common practice. PW1 stated that both witnesses had signed in the register. However,

that register was not summoned. The khatib was also not examined. Therefore, even though PWs 1 to 3 spoke about the marriage, in the absence of evidence of the witnesses and the khatib who performed the nikah, it cannot be said that the marriage has been satisfactorily proved.

[13] The learned counsel for the respondent submitted that the evidence of PWs 1 to 3 would prove that the petitioner and the respondent were living as husband and wife since the date of their second marriage in 2012 and living together of a man and woman as husband and wife for a considerable period of life would raise presumption of valid marriage between them and such presumption would entitle the woman to maintenance under Section 125 of Cr.P.C.

[14] True, it is settled that the law presumes in favour of marriage and against concubinage. It is equally settled that when a man and woman have cohabited continuously for a long number of years and when a man and woman are proved to have lived together as husband and wife, the law will presume, unless the contrary is proved, that they are living together in consequence of a valid marriage and not in the state of concubinage [Chanmuniya (supra) and Kamala (supra)] . However, such a presumption is rebuttable. It is equally settled that the presumption of lawful marriage would arise where there was prolonged and continued cohabitation as husband and wife and where there was no insurmountable obstacle to marriage, such as a prohibited relationship between the parties, the woman being an undivorced wife of a husband who was alive and the like, [**Mohd.Amin and Others v. Vakil Ahmad and Others**, 1952 AIR(SC) 358] .

[15] The issue whether a man and a woman who have lived together for an extended period should be considered husband and wife for Section 125 of the Cr.P.C., even if their marriage was not validly performed, has been discussed in detail by the Supreme

Court in several decisions. In **Vimala (K) v. Veeraswamy (K)**, 1991 2 SCC 375 , a three-judge Bench of the Supreme Court interpreting Section 125 of Cr.P.C. held that a woman without the legal status of a wife can fall within the section's scope. However, it noted that a second wife, whose marriage is void due to the survival of the first marriage, is not a legally wedded wife and is therefore not entitled to maintenance under Section 125 of Cr.P.C. The Supreme Court in **Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Another**, 1988 AIR(SC) 644and **Savitaben Somabhai Bhatiya v. State of Gujarat and Others**, 2005 3 SCC 636took the view that 'wife' in Section 125 of Cr.P.C. refers only to a legally married wife. It was held that the marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eyes of law, and she is not entitled to the benefits of Section 125 of Cr.P.C. Therefore, to raise the presumption of a valid marriage for Section 125 of Cr.P.C. based on cohabitation, the couple must be qualified to marry and not be within the prohibited degrees of marriage. In this case, as already stated, in the absence of the dissolution of the respondent's second marriage

with Mr. Moideenkoya, she remains disqualified from marrying the petitioner. Consequently, the long cohabitation of the petitioner and respondent does not entitle the latter to claim maintenance under Section 125 of Cr.P.C.

[16] The upshot of the above discussion is that the evidence adduced by the respondent is insufficient to prove the dissolution of her second marriage with Mr.Moideenkoya and remarriage with the petitioner. It appears that, since the proceedings under Section 125 of Cr.P.C. being summary in nature, unlike other matrimonial proceedings, the respondent did not adduce sufficient evidence to prove her case. However, considering the entire facts and circumstances of the case, and also considering the fact that the finding in the MC proceedings shall have a bearing on the status of the respondent as the wife of the petitioner, I am of the view that an opportunity has to be given to the respondent to adduce further evidence, if any, to prove the dissolution of her second marriage as well as the remarriage. For these reasons, the impugned order is set aside, and MC No.270/2022 is remanded to the Family Court, Malappuram, for fresh disposal. The Family Court shall dispose of the case in accordance with law after giving opportunity to both sides to adduce further evidence within a period of three months from the date of receipt of a copy of this order.

RP(FC) is disposed of as above.

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5 The waiting period that a Muslim woman must observe after a marriage ends, whether by divorce or death of her husband. The length of the iddat period varies depending on the circumstances such as whether the marriage ended by divorce or death, and if the marriage was consummated

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2026(1)FLJ52

HIGH COURT FOR THE STATE OF TELANGANA

(Hon'ble Judge: K Lakshman; Vakiti Ramakrishna Reddy)

Family Court Appeal No 82 of 2020 **dated 05/12/2025**

C Satish Babu

Versus

D Swapna

MARITAL CRUELTY

Hindu Marriage Act, 1955 Sec. 13 - Marital Cruelty - Husband sought dissolution of marriage on grounds of cruelty and desertion - Wife denied allegations and sought restitution of conjugal rights - Evidence of husband limited to his own statement without corroboration - No independent proof of cruelty or desertion produced - Panchayat proceedings and letters showed husband suspected wife's character and mistreated her - Wife continuously expressed willingness to rejoin - Conduct of

husband caused separation - Family Court found no proof of cruelty or desertion - Appeal found findings proper and reasoned - Impugned decree of dismissal confirmed - Miscellaneous petitions closed - Appeal Dismissed

Law Point: For dissolution of marriage on grounds of cruelty or desertion, burden lies on petitioner to prove allegations through independent and credible evidence - Mere allegations without proof or corroboration do not constitute legal cruelty or desertion

Acts Referred:

Hindu Marriage Act, 1955 Sec. 13

Counsel:

Y Harini, Ajay Kumar Madisetty, K Srinivas

JUDGEMENT

K. Lakshman, J.- [1] Heard Sri K. Srinivas, learned counsel representing Ms. Y.Harini, learned counsel for the Appellant and Sri Ajay Kumar Madisetty, learned counsel appearing for the respondent.

[2] Feeling aggrieved and dissatisfied with the order and decree dated 19.06.2020 passed in FCOP No.617 of 2017 by the Judge, Family Court, Secunderabad, the appellant filed the present appeal.

[3] The appellant husband filed the aforesaid petition under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (for short, 'the Act') seeking dissolution of marriage dated 21.08.2008 on the grounds of cruelty and desertion contending:-

i. His marriage with the respondent wife was performed on 21.08.2008 as per Hindu rites and customs, at Secunderabad.

ii. It is an arranged marriage.

iii. They were blessed with a male child on 26.11.2013 out of their lawful wedlock. He is 13 years at present.

iv. After marriage, the respondent wife joined the company of the appellant husband at his residence.

v. For about two months, she was good with him. Thereafter, she expressed that the marriage was performed on the force of elders without her consent due to financial constraints.

vi. Her family members and grand-parents used to come to his house most frequently and after their visit, behavior of the respondent wife became aggressive towards her husband and his family members.

vii. She used to go to her parents house at Warangal very frequently. She insisted him to put up separate residence. When he refused, she used to abuse him in filthy language and assault him physically.

viii. She was in the habit of chatting on her mobile during late hours in the bathroom for a long time, when he asked the details with whom she was chatting, she used to delete the call data to keep it hidden from him which led to suspicion.

ix. She used to abuse the elders in unparliamentarily language. When he questioned, she left his house and lodged a complaint against him with Women Protection Cell where counseling was conducted for thrice but in vain.

x. The respondent and her parents approached 'kula sangam' / Caste Association and on their persuasion, he brought her back to his home in the month of September, 2010.

xi. One midnight, she bit him and caused injury. Both of them went to hospital for treatment. She left the hospital without informing him to her grandparents home and did not come back.

xii. He got issued legal notice dated 27.04.2012 requesting her to join his company but she joined him after 12 months with the intervention of Advocate.

xiii. In the month of March, 2013, she conceived and blessed with a male child on 26.11.2013.

xiv. In the month of July, 2015, as there was a quarrel between his wife and his sister, to avoid complication, he dropped his wife at her parents house. Since then she did not come back.

xv. He requested her to come back at least for the welfare of their child but she refused.

xvi. She again lodged a complaint before Women Protection Cell but she did not heed the advice of the Women Protection Cell to join him due to her adamant attitude.

xvii. Her non cooperation effected his health very badly, he suffered from sciatic pain and was totally bed ridden. But the respondent did not turn up.

xviii. Thus, there was desertion of more than two years.

[4] With the aforesaid submissions, he sought to grant decree of divorce against the appellant herein wife.

[5] The appellant wife filed counter cum counter claim denying the allegations made by the appellant husband contending:

i. Her husband and his parents did not provide her any separate room to maintain her privacy and they treated her like a maid servant.

ii. Her husband used to beat her in the mid night and ask her to get out of their home.

iii. Her husband used to hold her ATM card and withdraw money without her consent. Her husband took her entire gold ornaments.

iv. He prevented her from joining his society from 05.01.2017 onwards on the advice of his parents.

v. She did not cause any inconvenience to him.

vi. She was ill-treated and caused deep injury on her head within one year of her marriage by pushing her against wall when she failed to get money from her parents. She was treated by Dr.Ramulu, Secunderabad.

vii. She wants to lead marital life at her in-laws place.

[6] With the aforesaid contentions, she sought to dismiss the petition and grant restitution of conjugal rights.

[7] To prove the cruelty, the appellant - husband examined himself as P.W.1 and marked Exs.A.1 to A.7. Ex.A.1 is wedding card, Ex.A.2 is wedding photograph, Ex.A.3 is proceedings of Kula Sangham, Ex.A.4 is legal notice, Ex.A.5 is reply notice, Ex.A.6 is Memorandum of Understanding and Ex.A.7 is Photostat copy of Aadhar Card.

[8] To disprove the claim of the appellant husband, the respondent - wife examined herself as R.W.1 and marked Exs.B.1 to B.6. Ex.B.1 is Photostat copy of OP card of Star hospital dated 14.07.2014, Ex.B.2 is declaration deed before marriage, Ex.B.3 is Gangaputra Sangam acknowledgment, dated 18.06.2010 and Ex.B.4 is photostat copy of community resolving letter dated 04.07.2010, Ex.B.5 is Photostat copy of complaint filed by the respondent with Begumpet Police Station and copy of receipt dated 30.11.2016 of complaint.

[9] On consideration of the said evidence, both oral and documentary, vide impugned order dated 19.06.2020, learned Family Court, dismissed the said FCOP filed by the appellant husband whereas, allowed the counter claim of the respondent wife directing the appellant husband to take back the respondent to conjugal society within two months from the date of the said order.

[10] Challenging the said order, the appellant husband preferred the present appeal.

[11] As discussed supra, the appellant husband filed the aforesaid FCOP against the respondent wife seeking dissolution of marriage on the grounds of cruelty and desertion. Therefore, he has to plead and prove the said cruelty by producing relevant evidence.

[12] Though the appellant husband pleaded that after two months of the marriage, the respondent informed him that the marriage was performed without her consent on the force of the elders of the family due to financial constraints, he has not examined any witness to prove the same. He has also made an allegation that since the date of marriage, the attitude of the respondent towards appellant husband and his family was different etc, he has not examined any witness to prove the same. Though the appellant alleged that the respondent abused him and his parents in filthy language and assaulted him, he has not examined his parents in proof of the same.

[13] It is also apt to note that the appellant has made serious allegation that respondent was in the habit of chatting on her mobile phone in bathroom during late hours and she did not reveal with whom she was chatting. But he has not examined any witness and produced any evidence to prove the same.

[14] Perusal of record would reveal that due to the differences between the appellant and respondent, Gangaputra Sangam conducted panchayat on 04.07.2010 at 12 noon and the said fact was informed to the appellant vide Ex.B.3 notice dated 18.06.2010. Both the appellant and respondent participated in the said meeting/panchayat arrived at an understanding and the terms were reduced into writing i.e. Ex.A.3 dated 04.07.2010. In the said resolution, it is specifically mentioned that the appellant insisted the respondent to have medicines not to conceive which is illegal. There is also a reference that the appellant and his mother abused and assaulted the respondent. The appellant also insisted the respondent to sign on a white paper. He has also started suspecting her by making false allegations. Thus, on consideration of the said facts, in the said meeting it was resolved that if the appellant is not interested in respondent doing job, she has to leave the said job. If necessary, they have to set up separate family. Even then, there is no change in the attitude of the appellant.

[15] The appellant has also addressed a letter dated 19.08.2010 to Gangaputra Association, with a request to resolve the disputes between him and his wife. Thereafter, he has issued Ex.A.4 legal notice dated 27.04.2012 to his wife demanding to give consent for obtaining divorce with mutual consent. Respondent sent Ex.A.5 reply dated 15.05.2012 denying the allegations made by the appellant in the said legal notice. She expressed her willingness to join the appellant.

[16] It is also the specific contention of the respondent that her son is suffering with cardiac problem. In proof of the same, she has filed Ex.B.1 OP card dated 14.07.2014. The appellant did not dispute the said fact. As discussed supra, it is the appellant who filed the aforesaid application against the respondent/wife seeking dissolution of marriage on the ground of cruelty and desertion, has to plead and prove the same beyond reasonable doubt. He has admitted that after birth, his son cropped up some health problem. Doctors diagnosed that his son is born with a hole in the heart. He has also admitted that after birth of his son, his wife started behaving differently. She stated that she intends to live independently without allowing his sisters and parents visiting there. But he has not examined any witness to prove the same.

[17] Learned counsel for the appellant husband vehemently contended that the respondent wife deserted the appellant many times and it is a multiple desertion. But he failed to examine any witness and failed to prove the same by producing any document. The appellant failed to elicit anything from R.W.1 during the crossexamination.

[18] On the other hand, during the cross-examination, he has admitted that his marriage took place on 21.08.2008, whereas, his wife conceived in April, 2013. During 5 years period i.e. 2008 to 2013, his wife did not stay with him. He has taken legal steps in the year 2012 seeking divorce. However, he has issued Ex.A.4 legal notice. He has also further admitted that his family members advised to take back his wife to lead marital life. He did not pay maintenance to his wife from 2008 to 2012. During the said period, his wife joined his society two times and they lead conjugal

life. His wife used to quarrel either with him or with his sisters or parents. Quarrels are continuous process between him and his wife even as on the date. Even then, he has not examined either his parents or sisters in proof of the same.

[19] It is also relevant to note that the appellant is suffering with sciatica problem. He has stated the same in his evidence itself.

[20] It is also apt to note that the respondent has filed counter claim in the said OP seeking restitution of conjugal rights. The same was allowed. Even then, the appellant did not prefer any appeal challenging the same.

[21] During cross-examination, he admitted that he has gone through the counter filed by the respondent and that he has not noticed any claim made by the respondent along with the counter. He is not accepting the counter claim made by the respondent. However, he has filed rejoinder.

[22] Though he made several allegations that respondent did not provide breakfast, lunch and dinner etc, to him, he has not mentioned anything in the legal notice and in the present petition. The said facts are not mentioned in Ex.A.3 proceedings of kula sangham, Ex.A.6 Memorandum of Understanding and Ex.B.4 Photostat copy of community resolving letter, dated 04.07.2010. However, he has admitted that he started suspecting the character of respondent which developed in his mind immediately after three months. He has not investigated personally the suspicion about the respondent's character. He broke cell phone of the respondent. After one and a half year, they lead happy marital life for about six months. Thereafter, again misunderstandings developed between them. During the crossexamination, he has further admitted that the respondent was not cooperating with him in leading conjugal life and she used to fight with all his family members. He lived with his wife for about ten years and during that period, there was misunderstanding with his wife. He admitted that during her stay with him, he physically beat her two times, even then, the respondent stayed with him. Respondent lodged a complaint against him in Women Protection Cell who called them for counseling. He has also advised about approaching Gangaputra Sangam. The said Sangam held panchayat and passed aforesaid resolution.

[23] During the course of cross-examination, he has further admitted that on one occasion, while he was discharging conjugal duties with the respondent, she beat him on his thigh, he consulted doctor for treatment. When he stated to the doctor that his wife beat him, she suddenly left the consulting room and went away to her parents house. Even then, he has not filed any document, elicited anything from the respondent as R.W.1 during cross-examination. He has not filed prescription to show that he was treated by the doctor apart from examining the said doctor.

[24] It is apt to note that on mere allegations and insinuations, neither Family Court nor this Court can grant decree of divorce. Appellant has to plead and prove the cruel acts and desertion by producing relevant evidence, both oral and documentary.

[25] As discussed supra, burden lies on the appellant to prove the same by producing relevant evidence. In the present case, the appellant failed to produce any evidence either oral or documentary. As discussed supra, he has also admitted during cross-examination that he beat his wife twice and caused bleeding injuries. He has further admitted that in the month of April, 2014, he took back his wife along with his son to his house to lead marital life. His wife stayed with him from April, 2014 to July, 2015 in his house. On 14.07.2015, a quarrel took place between his wife and his sister. Then he sent his wife to her parents house for one week. When he went to bring back his wife and son, she refused to come back. Then he brought back his son only and after two hours, he dropped his son back with the respondent. On 26.08.2015, his father went to his wife's place and brought her son back. He retained his son for about 12 days. She did not make any enquiry of his son and wife when he was bed ridden. He has also admitted that he has not paid any pie towards maintenance of his wife and son. Even then, he is claiming that respondent subjected him to cruelty and assaulted him. It is not multiple desertion as claimed by the appellant. It is the appellant who made respondent to leave his company. The said facts are clear from Ex.A.3, A.6 and B.4. Therefore, the allegations made by the appellant against the respondent are contrary to the aforesaid documents.

[26] Respondent always expressed her willingness to join company of the appellant. Therefore, the appellant cannot contend that the respondent deserted him multiple times. Now, the appellant is 46 years and respondent is 41 years. During the course of hearing, it is brought to the notice of this Court that respondent is employed and is capable of maintaining herself. The appellant has the responsibility to maintain his son.

[27] It is also relevant to note that the respondent has filed I.A.No.1 of 2021 in the present appeal seeking a direction to respondent to pay an amount of Rs.50,000/- towards Advocate fee. Vide order dated 13.12.2022, this Court allowed the said application in part and directed the appellant husband to pay Rs.30,000/- (Rupees thirty thousand only) to the respondent to meet her legal expenses within thirty days.

[28] It is also apt to note that this Court referred the matter to mediation and it was 'unsuccessful'.

[29] Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound; therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system as observed by the Apex Court in **Samar Ghosh v. Jaya Ghosh**, 2007 4 SCC 511

[30] Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of

cruelty or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two is relevant factors which a Court must take into consideration as observed by the Apex Court in **Rakesh Raman v. Smt. Kavita**, 2023 AIR(SC) 2144.

[31] Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values which they attach importance. Each case has to be decided on its own merits as held by the Apex Court in **Naveen Kohli v. Neelu Kohli**, 2006 4 SCC 558

[32] Cruelty is not defined in any statute. It is a course or conduct of one, which is adversely affecting the other. We have to consider the entire evidence and the allegations made by the husband, assess the same and come to a conclusion as to whether it amounts to cruelty or not.

[33] Learned counsel for the appellant husband placed reliance on the principle laid down by the Apex Court in **Samar Ghosh** (supra), wherein the Apex Court referred certain illustrations with regard to the cruel acts. They are only illustrative but not exhaustive. This Court has to consider the allegations made by the appellant and evidence produced by him, both oral and documentary, to come to a conclusion as to the said allegations made by him against his wife are cruel acts or not. As discussed supra, the appellant herein failed to prove the said allegations made by him against his wife by producing relevant evidence. Except examining himself, he has not examined any other witness. The aforesaid documents would reveal that the respondent never subjected him to cruelty and never deserted him.

[34] He has also placed reliance on the principle laid down by the High Court of **Karnataka at Bangalore in Col.K.Murugaiah (Retd) vs. Smt. Valli** [Order dated 24.12.2010 in Miscellaneous First Appeal No.1212 of 2005 (MC)]. It is a case of multiple desertion. As discussed supra, in the present case, respondent never deserted the appellant as alleged by him. He failed to prove the same. The facts of the said case are different to the facts of the case on hand. As discussed supra, though the counter claim is allowed, he has not preferred any appeal.

[35] In the present case, the appellant herein utterly failed to prove the aforesaid cruelty and desertion by producing proper and relevant evidence. On consideration of the said aspects only, vide impugned order dated 19.06.2020, learned Family Court dismissed the said HMOP No. 617 of 2017 filed by the appellant. It is a reasoned order and well founded. Therefore, the impugned order does not require interference of this Court.

[36] In the light of the aforesaid discussion, this appeal is liable to be dismissed and is dismissed.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed

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2026(1)FLJ60

HIGH COURT FOR THE STATE OF TELANGANA

(Hon'ble Judge: K Lakshman; Vakiti Ramakrishna Reddy)

Family Court Appeal No 312 of 2018 **dated 05/12/2025**

Shiva Deepthi

Versus

Konduti Vivek

MARITAL CRUELTY

Indian Penal Code, 1860 Sec. 498A, Sec. 323, Sec. 448, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 125 - Hindu Marriage Act, 1955 Sec. 9, Sec. 13 - Protection of Women from Domestic Violence Act, 2005 Sec. 12 - Marital Cruelty - Husband filed petition for divorce on cruelty alleging abnormal behaviour, quarrels, and false complaints - Wife denied allegations stating husband deserted and failed to maintain her - Evidence showed wife suffered from health issues since before marriage suppressed by parents - Frequent quarrels and complaints disrupted relationship - Allegations of physical assault and public humiliation proved by witnesses - Family Court granted divorce - Appellate Court re-examined evidence and found findings justified - Held conduct of wife amounted to mental cruelty making cohabitation impossible - Decree of divorce confirmed - Appeal Dismissed

Law Point: Persistent abusive behaviour, unfounded allegations and deliberate humiliation of spouse constitute cruelty under Section 13(1)(ia) of Hindu Marriage Act justifying decree of divorce.

Acts Referred:

Indian Penal Code, 1860 Sec. 498A, Sec. 323, Sec. 448, Sec. 506

Code of Criminal Procedure, 1973 Sec. 125

Hindu Marriage Act, 1955 Sec. 9, Sec. 13

Protection of Women from Domestic Violence Act, 2005 Sec. 12

Counsel:

Y Sonanjali, N Naveen Kumar, Mujib Kumar Sadasivuni, Mahila Mandali

JUDGEMENT

K. Lakshman, J.- [1] Heard Ms. Y.Sonanjali, learned counsel representing Sri N.Naveen Kumar, learned counsel for the Appellant and Sri Mujib Kumar Sadasivuni, learned counsel appearing for the respondent.

[2] Feeling aggrieved and dissatisfied with the order dated 31.05.2018 passed in FCOP No.1598 of 2014 by the Judge, Family Court, Ranga Reddy District at L.B.Nagar, the appellant filed the present appeal.

[3] The respondent husband filed the aforesaid petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short, 'the Act') seeking dissolution of marriage on the grounds of cruelty contending as follows:-

i. His marriage with the respondent wife was performed on 15.05.2011 as per Hindu rites and customs, at Hyderabad.

ii. It is an arranged marriage.

iii. At the time of marriage, she was studying MBA course.

iv. They were blessed with a female child on 05.06.2012 out of their lawful wedlock.

v. After couple of weeks, she left his company.

vi. Despite his request, she did not come back to join him on the pretext that her college is near to her parents house and she needs to prepare for her MBA examinations.

vii. She stayed at her parents house for about three weeks and during the said period, he used to visit her and take her out for dinner and movies.

viii. He took her to Kerala for honeymoon during 15-6-2011 to 19-6-2011 along with his friend and his friend's wife, who were also newly married couple.

ix. During their stay at Munnar, she behaved abnormally and strangely, she did not talk with anyone and on one night, she threw the mobile phone, comb, bag etc. on him by shouting loudly without any reason.

x. When he questioned her about her behavior, she informed that she is suffering from psychic problem since her childhood, she is using medicines and if she discontinues the medicines, her behaviour will be abnormal.

xi. The parents of the appellant wife suppressed the said fact prior to the marriage.

xii. In the month of July, 2011 as it was ashadamasam, she went to her parents house to appear for her MBA exams.

xiii. After completion of ashadamasam, when he along with his parents went to her parental house to bring her back, she refused.

xiv. On persuasion, she joined him and stayed for only 3 days and left the house without informing any one.

xv. Her parents informed that as she was suffering with psychic problem, she went to their house.

xvi. Even he spent a sum of Rs.30,000/- for her treatment.

xvii. On his several requests, she joined his company at Vanasthalipuram, on the next day, she picked up quarrel with him, abused him in filthy language, slapped him and threatened that she would commit suicide.

xviii. Unable to control her, he left the bed room and went to ground floor. She also rushed behind him, slapped him and tore his shirt in the presence of everyone. When his parents tried to stop her, she abused them in filthy language and threw dining table chair on his paternal aunt who is aged about 95 years as such she sustained injuries. She also threw the land line phone on ground.

xix. She again came back to his house and stayed at about 4 to 5 days during which period, she used to take medicines, sleep for 15 hours and she used to go into the kitchen and throw all household articles.

xx. He was in Pune and Gujarath from October 2011 to January 2012 on his official work and visited to Hyderabad twice and requested her to join him in Pune, for which she refused.

xxi. On enquiry, her father informed him that she was undergoing treatment with Dr.Gowri Devi of Image Hospital as well as Asha Hospital. On her birthday on 15-12-2011, his mother invited her and her parents for dinner and gifted one gold ring and new cloths to her in his absence.

xxii. When he returned to Hyderabad, he contacted Dr.Gowri Devi at Asha Hospital, Banjara Hills, she informed him the appellant wife is her old patient and taking treatment from the past few years. The respondent conceived when he was at Pune. On his request, she joined him, but there was no change in her attitude and left his house.

xxiii. She used to say that she got married him against her wishes and that she is not interested in him.

xxiv. In spite of his request, to come to his house for performing "Seemantham" function, the appellant did not come and she continued to stay at her parents house.

xxv. She gave birth to a female child on 05-06-2012. When he along with his parents went to see the child, they were not treated properly and insulted them in the presence of all their relatives.

xxvi. She lodged a complaint with Women Police Station Saroornagar, on 03-09-2012 against him and his parents. The police called them to the police station on 08-09-2012 and 09-09-2012, where she and her parents demanded him to put up separate residence.

xxvii. Though he put up separate residence at Plot No.19, Ammadaya colony, GSI, PO Mansoorabad and requested her to join him, she refused.

xxviii. He got issued legal notice dated 19.11.2012 requesting her to join his company within one week. She got issued reply notice dated 26-11-2012 refusing to join him.

xxix. Again she approached Women Police Station, Saroornagar and lodged a complaint, who in turn, registered as a case in Cr.No. 160 of 2012 for the offence punishable under Section 498-A of IPC in which case, he was released on bail.

xxx. On his release on bail, the appellant wife along with her parents, her uncle Sreeramoju Nandakumar, Siddeshwar, Mani Rani, Mahila Madali President, Kaveri and 14 others trespassed into their house and severely beat his old aged mother and other inmates, which was recorded in CC camera. Then he lodged a complaint with the Police, Vanasthalipuram, Police Station, who in turn, registered a case in Cr.No. 71 of 2013 for the offences under Sections 448, 323 and 506 of IPC and after investigation, the Investigating Officer, filed charge sheet.

xxxi. In view of the several complaints lodged by the appellant, a Look Out Circular was issued against him and the immigration authorities detained him.

xxxii. She has also filed a petition seeking restitution of conjugal rights, but she is not regularly attending to Court.

xxxiii. Because of her health condition and the aforesaid disputes, he cannot lead marital life with her.

[4] With the aforesaid contentions, he sought to grant decree of divorce against the appellant herein wife.

[5] The appellant wife filed counter denying the allegations made by the respondent husband contending:-

i. She was studying MBA final year at Stanly College of Engineering and Technology for women, at Nampally, Hyderabad, which is nearer to her parents house.

ii. As she was pregnant, she could not appear for MBA final year examination, she stayed at her parents house and completed the course in the year 2013.

iii. After marriage, she joined the respondent - Husband and discharged her duties as a house wife.

iv. The respondent - husband, being a software professional, frequently used to go to different places like Pune, Gujarath etc, and not used to talk with her.

v. She stayed at her parents house for about three weeks during Ashadamasam.

vi. The respondent Husband took her to Kerala for Honeymoon during 15-6-2011 to 19-6-2011 along with his friend and his wife, who were also newly married couple.

vii. Her pregnancy was confirmed when he was at Pune. He never requested her to come and join him.

viii. In fact, her father paid the hospital charges to the tune of Rs.61,665/-. Her husband took away all the bills on the pretext that he would claim the amount from his company, but falsely claiming that he alone paid the said amount.

ix. Her husband went out of station for about 2 months on official work, but he did not inform her the same.

x. He never requested her to join and she never refused to join him.

xi. He never asked him to get a house nearer to her parents house at Masabtank. After receipt of a letter dated 6-11-2012 from him with regard to new flat, she along

with her child and her parents went to the said house, but the same was found locked but the said house owner informed that he was not staying in the said house.

xii. Her husband lodged a false complaint with the Police Vanasthalipuram Police Station who, in turn, registered a case in Cr.No. 71 of 2013 for the offence under sections 448, 323 and 506 of IPC and after investigation, the police filed charge sheet against her and her relatives which was ended in acquittal.

xiii. At her instance, police never issued Look out Circular against him, due to which his movements were curtailed, he was never stopped at the airport by the immigration authorities, never detained him and handed him over to the police as such he lost his job and that he was put to humiliation and great mental agony. The said allegations are false and baseless.

xiv. She filed DVC No.15 of 2014 against him and his family members. She also filed a petition under Section 125 of Cr.P.C. vide MC No. 34 of 2013. Despite orders passed in Crl.M.P No. 589 of 2015 to pay interim maintenance of Rs.4000/- to her and Rs.4,000/- to her daughter, the respondent husband remained defaulter as such, she along with her daughter were compelled to stay with her parents.

xv. She never left his company without his knowledge at any point. She never lead happy marital life from the beginning as he developed hatred towards her, used to abuse her in filthy language on petty issues and harassed her to bring additional dowry of Rs.5 to 6 Lakhs or a car.

xvi. He used to harass her demanding additional dowry. He stopped talking to her for days together.

xvii. She conceived in the month of September, 2011, but her husband never took care of her nor provided anything for her expenses.

xviii. Due to the continuous harassment, she suffered depression during 5th month of her pregnancy.

xix. Her husband is staying in his own house at Vanasthalipuram and fetching Rs.1,00,000/- per year towards rent. He is also working as software professional in M/s. Hitachi Consultants, Hyderabad and drawing salary of Rs. 1,60,000/- per month.

xx. It is her husband who deserted her and failed to provide any maintenance and subjected them to cruelty. She is always ready and willing to join him along with her daughter.

[6] With the aforesaid contentions, she sought to dismiss the petition.

[7] To prove the cruelty, the respondent - husband examined himself as P.W.1 and the doctors who treated the appellant wife as P.Ws.2 and 3 and marked Exs. P.1 to P.10. Ex.P.1 is wedding card, Ex.P.2, P.8 to P.10 are photographs, Exs. P.3 and 4 are reply notices, Ex.P.5 is certified copy of judgment in C.C.No.719 of 2013, Exs.P.6 and P.7 are medical prescriptions.

[8] To disprove the claim of the respondent husband, the appellant - wife examined herself as R.W.1, her father as R.W.2 (his evidence is eschewed), her mother

as R.W.3 and her maternal uncle as R.W.4 and marked Ex.R.1 acknowledgment slip of TTD, dated 07.03.2013.

[9] On consideration of the said evidence, both oral and documentary, vide impugned order dated 31.05.2018, the learned Family Court, allowed the said FCOP dissolving the marriage dated 15.05.2011 of the respondent husband with the appellant wife. However, learned Family Court, directed the respondent husband to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) in the name of the child towards her maintenance and on such deposit, the appellant is at liberty to withdraw interest accrued on the said deposit until the minor girl attains age of majority.

[10] Challenging the said order, the appellant wife preferred the present appeal. Vide order dated 20.07.2018, this Court suspended the impugned order. The same is subsisting as on today.

[11] According to the respondent husband, the appellant wife was suffering with schizophrenia prior to marriage. The parents of the appellant wife suppressed the said fact while performing the marriage. It is also the specific contention of the respondent husband that after marriage, he took the appellant wife to Kerala to Honeymoon along with his friend and his friend's wife, the newly married couple. During their stay at Munnur, the appellant -wife behaved abnormally and strangely stopped talking with any one and that at one night she shouted loudly. However, the respondent husband has not examined his friend or his friend's wife to prove the same. Though the respondent contended that appellant wife was suffering with psychic problem since her childhood, he neither examined any witness nor filed any document to prove the same. It is also apt to note that during cross-examination, he has not elicited anything from the appellant wife/RW1.

[12] It is the specific contention of the appellant - wife that during pregnancy, she complained about sleeplessness, dullness and low mood and took treatment with P.Ws. 2 and 3. P.Ws. 2 and 3 also deposed that the appellant - wife has taken treatment with them complaining the aforesaid ailments during her pregnancy. Respondent husband did not elicit anything from them to prove that the appellant has taken treatment with them before marriage. Thus, respondent herein failed to prove the said allegation that the appellant wife was suffering with psychic problem from her childhood, more particularly, before marriage. Despite making an allegation that the appellant - wife used to leave his company without informing him as she was suffering with psychic problem, the respondent/husband failed to prove the same.

[13] Respondent husband made a serious allegation against his wife that she picked up quarrel at Vanasthalipuram, abused him in filthy language, slapped him and threatened him that she would commit suicide. However, he has not examined any witness including his parents, neighbours or relatives in proof of the same. He has not lodged any complaint against the appellant herein. It is also alleged by respondent husband that on that particular point of time, when he went to ground floor to his parents, the appellant wife rushed behind him, slapped and tore his shirt in the

presence of everyone. His parents tried to stop her, she abused him in filthy language, threw dining table, chair on his parental aunt who is about 95 years, as such she sustained injuries. She also threw the landline phone on the ground. He further alleged that out of shock with the behavior of the appellant wife, he along with his parents called her parents who took her to their house for treatment stating that she behaves like that sometimes due to her psychic problem. However, respondent husband has not examined his parents or any other person in proof of the same. He has not elicited anything from R.Ws.3 and 4 with regard to the same.

[14] It is also the specific allegation of the respondent - husband that his job involves in touring, when he was in Pune during October, 2011 to January, 2012 on his official work, he visited Hyderabad twice and requested her to join him in Pune for which she refused. When he enquired with the father of the appellant with regard to her health condition, he informed that she was undergoing treatment with P.W.3-Dr. Gowri Devi, Image hospital as well as Asha hospital. On the birthday of the appellant i.e. on 15.12.2011, mother of the respondent - husband invited the appellant wife and her family members for dinner and gifted one gold ring and new clothes to her in his absence. Respondent has also made an allegation that he visited Asha hospital and contacted P.W.3, who informed him that the appellant is her old patient and taking treatment from the past few years. But he failed to elicit the said fact from P.W.3 during crossexamination.

[15] In fact, P.W.3 specifically deposed that the appellant wife came to her on 09.01.2012 during pregnancy, complaining decrease in sleep, restless, fearfulness. During cross-examination, she has admitted that there is possibility for women suffering from sleeplessness, restlessness, irritable angry. There is possibility of the same to any person suffering from the above disease. The patient was fit for marital life.

[16] Respondent husband/R.W.2 also made an allegation that the appellant approached Women Police Station on 03.09.2012, lodged a complaint against him and his parents. The Police called him and his parents to the Police Station on 08.09.2012 and 09.09.2012 where the appellant and her parents demanded him to put up a separate residence. Though he tried to convince the appellant, she refused due to her adamant attitude. However, the police have registered a case against the husband and his parents for the offence under Section 498-A of IPC and on completion of investigation, the Investigating Officer laid charge sheet against the respondent. During the course of hearing, it is brought to the notice of this Court that the police arrested the respondent and he was remanded for ten days. His bail was rejected twice. He was detained in Airport twice.

[17] Thus, according to the husband, the appellant wife subjected him to cruelty.

[18] Though there is an allegation that they were approached Sri Jalagam Prabhakara Chary, the mediator to settle the issue, the respondent husband did not examine him.

[19] Respondent husband made a serious allegation against the R.W.4 maternal uncle of the appellant wife with regard to his interference in the family life of the appellant and respondent. The cross-examination of R.W.4 would reveal that he used to work as correspondent in SRL Pharmacy College, Warangal and he was removed from service and a case is pending with regard to the same.

[20] It is also apt to note that on the complaint lodged by respondent/husband, police have registered a case against R.W.4. He has admitted the said fact during his cross-examination. He was present on 25.01.2013 at the time of incident at the house of respondent. He also admitted his presence in Ex.P.8 photograph. He has further admitted that he does not know personally regarding relations between the appellant and respondent. He has challenged the said order and it is pending. Except that the respondent husband failed to elicit anything from him.

[21] R.W.3 mother in law of the respondent during crossexamination admitted that she gave evidence in C.C.No.719 of 2013 i.e. Ex.P.5. She further stated that she was not aware as to what transpired between the appellant and the respondent at her matrimonial house. Mr. Jalagam Prabhakara Chary, is not running any marriage bureau, but used to search for alliance at request of the parents of the appellant. She was in contact with the said Jalagam Prabhakara Chary. She has not mentioned in her evidence the date on which R.W.4 Nanda Kumar, her sister's husband and her sister attended mediation. However, she has denied the suggestion that the appellant is suffering with the depression even prior to her marriage and the same was observed by respondent even during the honeymoon trips. She has further admitted that she went to the house of the respondent and appellant after they put up separate family. The disputes were pending between the appellant and respondent when the appellant was pursuing her M.S. in USA. At that time, the respondent and appellant attended counselling in WPS, Saroor Nagar. They did not inform the respondent about sending the appellant to USA. The child was with them when the appellant stayed in USA.

[22] The aforesaid stated facts would reveal that there were disputes between the appellant and respondent. It is also apt to note that during cross-examination, the appellant R.W.1 categorically admitted with regard to lodging a complaint against the respondent and her parents for the offence under Section 498-A of IPC, filing an application under Section 12 of the DVC Act, a petition under Section 125 of CrPC claiming maintenance. She has also admitted that she filed an application under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights and the said petition was dismissed for default. Even the application filed by her under Section 12 of the DVC was dismissed for default. The respondent was acquitted in the complaint filed by her for the offence under Section 498-A of IPC. She did not prefer any appeal challenging the said judgment.

[23] She has also admitted that her father in- law died when she was in USA and her father attended the funeral. She completed MBA after marriage from Stanley College, Hyderabad. She took treatment when she was pregnant under R.W.3.

However, she denied the suggestion that she was suffering from psychic problem from her childhood before the marriage. She has also admitted that respondent was arrested on the complaint lodged by her. However, she has further admitted that she was not aware as to whether the respondent was arrested and sent to judicial custody. The aforesaid evidence would reveal that there were disputes between the appellant and respondent from the beginning of the marriage. Their marriage was solemnized on 15.05.2011. They were blessed with a female child on 05.06.2012. They have lived for a short period together. The appellant was studying MBA at the time of marriage. There is also no dispute that they went to Kerala for honeymoon on 19.06.2011. Though respondent husband made a serious allegation regarding psychic behavior of the appellant during the said trip, he failed to prove the same.

[24] The aforesaid evidence also would reveal that the appellant has taken treatment with P.Ws. 2 and 3 for sleeplessness, restlessness and fearlessness etc. The evidence of P.Ws. 2 and 3 would reveal the said fact.

[25] It is also not in dispute that the appellant was sent to judicial remand for ten days on the complaint lodged by the appellant. His bail application was rejected. Look Out Circular was issued at the instance of the appellant. According to him, he was detained in Airport twice.

[26] It is also not in dispute that the appellant was pursuing MBA at the time of marriage. While the disputes were going on, she went to USA without informing respondent. R.W.3 admitted the said fact, during cross-examination.

[27] Perusal of the record would also reveal that Mahila Mandali conducted counselling. It was not successful. It is also not in dispute that the appellant went to the office and residence of the respondent and informed with regard to lodging of a complaint against the respondent and his parents. Thus, there are strained relations between the appellant and respondent.

[28] There is also no dispute that the respondent got issued a legal notice to appellant on 19.11.2012 and the appellant got issued reply dated 26.11.2012 which is Ex.P.3. Thereafter, respondent issued another rejoinder to the reply to the said notice dated 01.12.2012 i.e. Ex.P.4. Respondent has explained all the aforesaid facts.

[29] It is also not in dispute that C.C.No.719 of 2013 registered by the Police, Vanasthalipuram Police Station at the instance of the appellant was ended in acquittal vide Ex.P.5 judgment dated 27.09.2016. Respondent has not preferred any appeal challenging the said judgment. Respondent has also filed Ex.P.6 - medical prescriptions. Ex.P.7 medical prescription, dated 09.01.2012 and perusal of the same, would reveal that the appellant has taken treatment with P.Ws. 2 and 3 on 09.01.2012 and 13.01.2012 i.e. post marriage, during pregnancy.

[30] As discussed supra, though the respondent husband made a serious allegation against the appellant wife that she is suffering from psychic problem from her childhood, more particularly, before marriage, he has not examined any witness and

produced any document in proof of the same. He has not elicited anything from P.Ws.2 and 3. On consideration of the same, vide impugned order dated 31.05.2018, learned Family Court, held that the appellant was suffering from irretrievable anger which caused disputes in marital life. In fact, the aforesaid evidence of P.Ws. 2 and 3 would reveal that the appellant suffered with the said ailments during her pregnancy.

[31] It is also not in dispute that the parents of respondent obtained anticipatory bail in the crime registered by the Women Police Station, on the complaint lodged by the appellant. They have also approached this Court seeking a direction to the police not to call them frequently. As discussed supra, on the complaint lodged by respondent, police Vanasthalipuram have registered a case in Cr.No.71 of 2013 against the appellant and her parents, her maternal uncle (R.W.4) for the offence under Section 448, 313 and 506 of IPC. The aforesaid incidents proves that there are strained relations between the appellant and respondent.

[32] It is also apt to note that considering the disputes between the appellant and respondent, on coming to conclusion that there was possibility of settlement, vide order dated 18.04.2022, this Court referred the matter to the Mediator. On 10.10.2022, the Mediator, Mediation and Arbitration Centre, High Court for the State of Telangana, submitted report dated 22.07.2022, stating that the mediation was unsuccessful. Therefore, the efforts made by the Mediation Centre were in vain.

[33] Vide order, dated 14.11.2025, we have directed the appellant, respondent and their daughter for the purpose of interaction. In compliance with the said order, they were present on 19.11.2025, we have interacted with them separately. During the course of interaction, we came to know that the respondent met the child twice at Inorbit mall and GVK mall. During the course of hearing, it is also brought to the notice of this Court that the respondent has paid an amount of Rs.17 Lakhs to the appellant and her daughter towards maintenance. Now, the appellant has been working. Therefore, he stopped payment of the said maintenance.

[34] As discussed supra, there is strained relation between the appellant and respondent. They have been staying separately since 2012 onwards. There was exchange of legal notices between them.

[35] There is no dispute with regard to the legal position that neither Family Court nor this Court can grant decree of divorce on the ground of irretrievable breakdown of marriage but certainly, the said aspect can be considered along with other aspects while deciding the present appeal. As discussed supra, there is no possibility of re-union of the parties.

[36] On consideration of the said aspects only, vide impugned order, learned Family Court granted decree of divorce dissolving the marriage of the appellant with the respondent. However, learned Family Court directed the respondent to pay the amount of Rs.10,00,000/- towards maintenance of minor child. The daughter of the appellant and respondent was born on 05.06.2012 and she is 13 years as of now. She is

studying 8th class. As discussed supra, respondent has also paid an amount of Rs.17,00,000/- to his daughter towards maintenance. Admittedly, he has not filed any application seeking custody of the child and for her visitation rights. However, he met her twice i.e. once in Inorbit mall and second time in GVK Mall. Admittedly, the appellant has brought up her daughter and provided education and has to perform her marriage. Therefore, the aforesaid amount of Rs.10,00,000/- awarded by the Family Court towards maintenance of the child is not sufficient. During the course of interaction, the respondent informed us that he has a house at Vanasthalipuram and he has 1/4th share in the said house. He would get 50 to 60 Lakhs towards his share. As discussed supra, the appellant is working now and she can maintain her own. Therefore, she is not entitled for any permanent alimony.

[37] In the light of the aforesaid discussion, the impugned order, dated 31.05.2018 passed in FCOP No.1598 of 2014 by the learned Family Court granting decree of divorce dissolving the marriage dated 15.05.2011 of the respondent with the appellant is confirmed. However, respondent is directed to pay an amount of Rs.80,00,000/- (Rupees Eighty Lakhs Only) towards maintenance of his daughter by way of deposit of the said amount in FDR in a nationalized bank by mentioning his daughter as nominee and hand over the original FDR to his daughter. However, he shall complete the said exercise within a period of three months from the date of receipt of a copy of this order. The aforesaid amount is towards full and final settlement of the appellant and her daughter including permanent alimony and maintenance. In view of the same, the appellant and her daughter shall not make any further claim against the respondent over the properties of the respondent husband in any manner etc. It is also made clear that if the respondent husband fails to pay the said amount within the aforesaid period of three (3) months from today, liberty is granted to the appellant wife and her daughter to take steps against her husband in accordance with law.

[38] With the aforesaid directions, this appeal is disposed of. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed

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2026(1)FLJ70

HIGH COURT FOR THE STATE OF TELANGANA

(Hon'ble Judge: Nagesh Bheemapaka)

Writ Petition No 32058 of 2025 **dated 03/12/2025**

Chikka Raghunandan, S/o Chikka Rama Rao

Versus

Union of India

PASSPORT RENEWAL

Indian Penal Code, 1860 Sec. 498A, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 41A - Dowry Prohibition Act, 1961 Sec. 4, Sec. 3 - Passports Act, 1967 Sec. 10, Sec. 6 - Passport Renewal - Petitioner sought renewal of passport which authorities withheld citing pendency of criminal case under dowry laws - He contended non-receipt of notice and suppression allegations by complainant - Respondents failed to show issuance of notice or written order under Passports Act - Court held mere pendency of criminal proceedings without judicial restraint cannot justify refusal or delay in renewal - Authorities failed to follow procedure under Sec.10 of Passports Act and violated right to travel abroad under Article 21 - Petition allowed with direction for renewal for one year - Miscellaneous Petitions Closed - Petition Allowed

Law Point: Mere pendency of criminal case without judicial restraint order cannot deny or delay passport renewal - Authorities must record reasons and issue notice under Sec.10 of Passports Act before refusal

Acts Referred:

Indian Penal Code, 1860 Sec. 498A, Sec. 506

Code of Criminal Procedure, 1973 Sec. 41A

Dowry Prohibition Act, 1961 Sec. 4, Sec. 3

Passports Act, 1967 Sec. 10, Sec. 6

Counsel:

S Lakshmi Kanth, B Jithender, L Ravichander, Ramanjaneyulu,

JUDGEMENT

Nagesh Bheemapaka, J.- [1] The case of the petitioner,precisely as per the writ affidavit, is that he has been residing in United States of America (USA) for more than a decade and employed there. He is an Indian citizen, and holds an Indian Passport bearing No. N5456091, originally valid from 01.12.2015 to 30.11.2025. As the passport was about to expire, he filed a renewal application on 16.08.2025, after which the Respondent authorities issued anacknowledgment dated 19.08.2025 containing ARN 25-2004104432. Shortly thereafter, on 21.08.2025, Respondent No.3 sent an official email requesting that the petitioner furnish the current status and supporting documents relating to any pending cases or proceedings so that his renewal application could be further processed. The petitioner replied the same day, stating that to the best of his knowledge, there were no pending cases against him. However, to his shock, he received another email dated 22.08.2025 from Respondent No.3 informing him that, during processing, it had been discovered that he was listed as an accused in Crime No.569/2021, registered under Sections 498A and 506 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, before the Women Protection Section, Crime Zone, Hyderabad District. In response, the petitioner sent a detailed email dated 23.08.2025,

asserting that he had no knowledge whatsoever of such a case, had never received any summons or notices, and therefore was unaware that any criminal proceedings existed.

1.1 Despite this clarification, Respondent No.3 sent yet another email on 09.09.2025, asking him to directly contact the Women Protection Section (WPS), Hyderabad, and update his case status because Respondent No.3 lacked access to further details about Crime No.569/2021. The petitioner, unable to do so from the United States, asked his father in Hyderabad to make the necessary enquiries. Based on the information obtained by his father, the petitioner wrote a further email dated 10.10.2025 to Respondent No.3 acknowledging that a case Crime No.569 of 2021 had indeed been registered under the aforementioned penal provisions and that it was then pending before the Hon'ble XIII Additional Chief Metropolitan Magistrate, Hyderabad, as C.C. No.2901 of 2022. In the same communication, the petitioner asserted that the case stemmed from a matrimonial dispute initiated by his wife, Kode Sneha, which he characterized as "baseless and vague allegations" motivated by grudge and personal vendetta. In the light of this explanation, he expressly requested that the renewal of his passport be processed without reference to the pending case, particularly because the allegations did not relate to any issue affecting national security or public order.

1.2 Despite these communication exchanges, the Respondent Nos.3 and 4 failed to take any action on the renewal application and continued to keep it pending, thereby causing him grave hardship and serious professional inconvenience. He refers to the ruling of this Court ruling in Sannith ReddyMandhadi, [Writ Petition No.2422 of 2024] particularly paragraphs 15 and 16, wherein the Court held that mere pendency of criminal cases should not be a ground to deny passport facilities and directed renewal of passport for a similarly placed petitioner. Based on this precedent, the petitioner contends that the respondents' continued refusal to renew his passport despite his explanation dated 10.10.2025 is arbitrary, and violative of his right to travel abroad under Article 21.

1.3 It is contended that the respondents appear to justify their inaction by pointing to his alleged involvement in Crime No.569/2021. The petitioner states that the respondent countered the renewal request of the petitioner by alleging through email dated 22.08.2025 that the petitioner was indeed an accused in that case and therefore renewal could not proceed without further verification. The petitioner contends that these counter-allegations are unsupported by any summons or notice ever served on him and maintains that the criminal proceedings themselves arise from a matrimonial complaint, not from any criminal wrongdoing. As such, the clash between allegations and counter-allegations center on whether the pendency of a dowry-related complaint whose legitimacy is in dispute can lawfully obstruct a citizen's right to renewal of a passport needed for ongoing employment abroad.

1.4 The petitioner therefore filed this writ petition, acting through his father and General Power of Attorney holder, authorized under a GPA dated 18.10.2025, seeking

a writ of mandamus against the respondent authorities to renew the petitioner's passport.

[2] A counter affidavit is filed by respondent No.6, Kode Sneha, through her mother and General Power of Attorney holder Kode Satyalaxmi, under a GPA dated 24.03.2025, stating that the marriage of respondent No.6 was solemnized with the petitioner on 15.11.2015, and the marital relationship deteriorated almost immediately after the wedding conducted on 15.11.2015. It is contended that she was subjected to harassment by the petitioner and his parents from the inception of her married life, and that prolonged mistreatment led her to lodge a complaint on 05.08.2021 before the Women Police Station, Central Crime Station, DD Hyderabad. This complaint was registered as FIR No. 569 of 2021invoking offences under Sections 498A and 506 of the IPC and the Dowry Prohibition Act. The respondent emphasizes that on 05.08.2021 itself, the police served a notice under Section 41A of Cr.P.C. on the parents of the writ petitioner, and that this notice was also "received on behalf of the petitioner" by his father the very person who now files and verifies the writ petition as his GPA holder.

2.1 It is contended that the service of notice on 05.08.2021, together with the petitioner's family's consistent involvement in the criminal proceedings, demonstrates that their later claim of having "absolutely no knowledge" of the pending crime is false. It is alleged that by denying knowledge of FIR No. 569 of 2021 before both the passport authorities and this Court, the petitioner and his father have committed perjury by "swearing to wrong affidavit and making wrong statements on oath." She further submits that the Women Police Station completed its investigation and filed a chargesheet before the Hon'ble XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, wherein the petitioner was explicitly shown as absconding, leading to the issuance of a Look Out Circular (LOC) on 28.08.2021. This chargesheet was taken on file as C.C. No. 2901 of 2022, and the trial court simultaneously issued a Non-Bailable Warrant (NBW) against the petitioner.

2.2 It is further contended that the petitioner's father (GPA holder) and the petitioner's mother appeared before the trial court through counsel but thereafter remained continuously absent, prompting the trial court to issue Non-Bailable Warrants against both of them on 18.06.2025. It is stated that NBWs remain pending not only against the petitioner but also against both parents, and that the LOC issued on 28.08.2021 likewise remains in force. She argues that these details, together with the family's explicit receipt of notices and summons, demonstrate that the petitioner's assertion of ignorance in communications such as his emails to the passport authority dated 21.08.2025, 22.08.2025, 23.08.2025, and 10.10.2025 is incorrect.

2.3 It is alleged that the petitioner submitted "wrong information" to the passport officials when he declared that there were no pending cases "to the best of his knowledge," even though his parents had received the notice in criminal proceedings on 05.08.2021 and were later aware of the NBW and summons from the trial court. It

is alleged that the petitioner also withheld from this Court the existence of the LOC and the pending warrants, thereby approaching the Court with unclean hands.

2.4 It is further contended that the judgment in Sannith Reddy Mandhadi (supra), does not assist the petitioner as he is not only involved in criminal case but also suppressed material facts such as warrants and LOC. It is also contended that the petitioner and his parents are also facing a separate Domestic Violence case, filed by the 6th respondent through the Protection Officer, which the petitioner has suppressed in this writ petition.

2.5 The 6th respondent further contends that due to harassment inflicted upon her by the petitioner, she obtained a restraining order from the Court in New Hampshire, USA, which she later withdrew only after repeated assurances from the petitioner and his parents that he would change his behaviour and cease emotional, verbal, mental, and physical harassment. It is stated that after withdrawing this order in good faith, the petitioner resumed harassment, which ultimately led to her complaint in India.

2.6 It is contended that the renewal of a passport cannot be claimed as a matter of right by a litigant who is evading lawful criminal process, against whom a LOC and NBWs are in force, and who has misrepresented the facts, and therefore prays for dismissal of the writ petition.

[3] Heard Mr. L. Ravichander, learned Senior Counsel appearing on behalf of Mr. Lakshmikanth, learned counsel on record for the petitioner; Mr. B. Jithender, learned Standing Counsel for the Central Government representing respondents No.1 to 4; and Mr. Ramanjaneyulu, learned counsel for respondent No.5.

[4] Learned Senior Counsel, while making his submissions in line with the writ affidavit, would essentially contend that pendency of criminal proceedings cannot be a ground for delaying or denying the renewal of the passport, and that it is settled law that obtaining of passport by a citizen is his right, that cannot be curtailed. It is also contended that the petitioner is an Indian national and is now in USA and his passport is expiring today, and he had made application for renewal of his passport well in advance before the validity expires, and unless his passport is renewed, he would be deprived of a legally valid Indian Passport, his residency and employment status in USA would be jeopardised. It is also contended that the petitioner is seeking renewal of his passport so that his passport becomes valid and he can travel to India, and therefore there is no point in the contention being canvassed by the respondents that the petitioner's passport cannot be renewed due to criminal proceedings, as, essentially the petitioner requires his passport even for travelling to India. Learned Senior Counsel rebuts the contention of the learned Standing Counsel for the Central Government that an Emergency Certificate would be issued if required to the petitioner. Learned Senior Counsel contends that the petitioner's passport was not impounded, to give rise to the contention of an Emergency Certificate, and further Section 6(2)(f) of the Passports Act is not applicable to the case of the petitioner, and therefore the petitioner's right to get his passport renewed cannot be curtailed, and no alternative documents in lieu of the renewed passport can be issued

at the discretion of the respondent authorities. Learned Senior Counsel would also contend that the petitioner is not denyingthe pending criminal proceedings, and the petitioner being residing in a foreign country and employed there, and the criminal proceedings in India essentially emanating from a matrimonial dispute cannot be made to come in the way of renewal of his passport, and even as per the settled law, pending criminal proceedings does not bar a person from obtaining or renewing Indian passport, and therefore the respondentauthorities may be directed to renew the Indian passport of the petitioner forthwith without further delay.

[5] Per contra, learned Standing Counsel for the Central Government, based on instructions, and the learned counsel for respondent No.6, based on the counter affidavit filed by the respondent No.6, would essentially contend that the petitioner is an accused in C.C. No. 2901 of 2022, and the petitioner, and also his parents have knowledge of the pending criminal proceedings in India, and the parents of the petitioner have initially attended the proceedings on behalf of the petitioner, however, later on discontinued to attend, and the trial Court issued NBWs against the petitioner; and these facts have emerged in the enquiry during the passport renewal process and the petitioner have not disclosed them while making the application for renewal, and therefore this amounts to misrepresentation and suppression of facts and therefore the writ petition may be dismissed.

[6] Having considered the respective contentions and perused the record, it may be noted thatthe petitioner has submitted his passport renewal application on 16.08.2025, duly acknowledged on 19.08.2025 with ARN 25-2004104432, and that despite complying with all requirements including responding to emails dated 21.08.2025, 22.08.2025, 23.08.2025, 09.09.2025, and10.10.2025 his application was kept pending indefinitely. Significantly, the respondent themselves admit that the application was received and that the petitioner furnished an explanation on 10.10.2025 regarding Crime No.569/2021 (C.C. No.2901/2022), yet no material has been produced to show that the authorities either rejected the application under any provision of the Passports Act, 1967, or afforded the petitioner an opportunity of hearing before withholding the renewal. Further, the respondent does not dispute the petitioner's contention that no notice under Section 10(3) or 10(5) of the Passports Act was issued, nor the passport authority complied with the mandatory requirement of recording reasons in writing before withholding a passport.

6.1 Furthermore, although the respondent alleges that the petitioner and his father had knowledge of the criminal case due to purported service of a Section 41A Cr.P.C. notice on 05.08.2021, she simultaneously admits that the Look-Out Circular (LOC) was issued only on 28.08.2021 and that the Non-Bailable Warrants (NBWs) were issued much later, on 18.06.2025.

6.2 It is settled law that mere pendency of criminal proceedings cannot be a ground to deny or indefinitely withhold passport facilities, particularly in the absence of a specific order under Section 10 of the Passports Act. The ratio of the case in

W.P.No.2422 of 2024 applies to the facts of the present case, and it is clear that unless the competent authority forms an independent opinion supported by reasons, the right to hold and renew a passport, being an extension of the right to travel under Article 21, cannot be curtailed.Even assuming the allegations against the petitioner to be true, they do not obviate the statutory obligation of the passport authority to issue notice, provide an opportunity of hearing, and pass a reasoned order under Section 10. The respondent has not cited any authority permitting the State to keep a passport renewal application "in abeyance" without following due process; and more importantly when the petitioner is in a foreign country with the only document to identify his nationality being a valid passport. Substantively, the mere pendency of criminal proceedings (in C.C. No. 2901 of 2022), without a judicial order restraining the renewal of the passport, cannot constitute a valid ground for refusing or stalling a passport renewal.In view of the foregoing, the impugned inaction of Respondent Nos.2 to 4 in delaying to renew the passport of the petitioner is unsustainable in law.

[7] Accordingly, the writ petition is allowed, with a direction to the 1st respondent to renew the passport of the petitioner for a period of one year. No costs. Miscellaneous petitions pending, if any, shall stand closed

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2026(1)FLJ76

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge: Sanjeev J Thaker)

Second Appeal No 108 of 2023 **dated 02/12/2025**

Harsha Manoj Sharma

Versus

Manoj Krushnakumar Sharma

DIVORCE ON DESERTION

Code of Civil Procedure, 1908 Sec. 100 - Code of Criminal Procedure, 1973 Sec. 127, Sec. 125 - Hindu Marriage Act, 1955 Sec. 13 - Divorce on Desertion - Cause of matter arose when husband filed for divorce on ground of desertion after long separation - Trial Court dismissed petition holding desertion not proved - Appellate Court allowed appeal and granted divorce considering prolonged separation and absence of restitution attempts by wife - Wife challenged order in second appeal claiming no evidence of desertion and that appellate Court acted on presumption - Husband contended he waited years before seeking divorce and wife never returned or sought reunion - Record showed wife received maintenance and stayed away for long period without cause - Court found appellate Court rightly inferred desertion and held divorce justified - Appeal found meritless and dismissed as findings were factual and well supported - No substantial question of law arose - Second Appeal Dismissed

Law Point: Desertion under Section 13(1)(ib) of Hindu Marriage Act is established when spouse voluntarily abandons marital cohabitation without reasonable cause for continuous period; prolonged separation and failure to resume relationship justify dissolution.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 100

Code of Criminal Procedure, 1973 Sec. 127, Sec. 125

Hindu Marriage Act, 1955 Sec. 13

Counsel:

N K Majmudar, N L Ramnani

JUDGEMENT

Sanjeev J.Thaker, J.- [1] The present Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908, challenging the judgment and order passed by the Principal District Judge, Gandhinagar, dated 28.06.2021, in Regular Civil Appeal No.28 of 2018, whereby the said appeal filed by the original applicant husband has been allowed and the judgment and decree passed in HMP No.141 of 2012, by the 6th Additional Senior Civil Judge, Gandhinagar dated 24.01.2018, has been quashed and set aside.

[2] For the sake of brevity, parties are referred to herein as per their original status as that of in the suit.

[3]

3.1 The brief facts arising in the present case are that marriage of the original plaintiff - husband and respondent-wife was solemnized on 22.04.2004 at Jalgaon, Maharashtra as per Hindu Marriage Act. It is an admitted fact that this was second marriage of both the parties and plaintiff husband had daughter from his first marriage, who is residing with the plaintiff husband.

3.2 It is the case of the appellant (defendant) that after the marriage, the appellant was being ill-treated by the family members of the husband on trivial issues and within a short span of marriage of four months, she was deserted by the husband. The appellant thereafter filed an application under Section 125 of the Code of Criminal Procedure, for maintenance and the JMFC, Jalgaon, Maharashtra was pleased to grant amount of maintenance of Rs.2,000/- per month. Thereafter on 02.11.2012 the husband filed application under Section 13 o the Hindu Marriage Act for divorce on the ground of desertion before the Principal Senior Civil Judge being HMP No.141 of 2012.

3.3 The defendant wife appeared in the said suit and filed written statement at Exh.10. After hearing the parties, the trial Court framed issues at Exh.22 which reads as under:

"(1) Whether applicants prove that opponent has left the house of applicant since last two years ?

(2) Whether the applicant proves that opponent has given mental pain to the applicant?

(3) Whether applicant is entitled to get the relief as prayed in the application ?

(4) What order and decree ?"

3.4 The husband examined himself vide Exh.26 whereas the wife has examined himself at Exh.35 and witness of the wife is examined at Exh.39. The trial Court, after hearing the parties and after considering oral and documentary evidences, and after giving findings on all issues, rejected the suit of the plaintiff.

3.5 Against the said judgment and decree passed by the trial Court, the husband filed Regular Civil Appeal No.28 of 2018. In the said appeal, though notice was served to defendant wife, none appeared for the defendant wife. After hearing the learned advocate for the plaintiff - husband, the appellate Court quashed and set aside the judgment and order passed by the trial Court in HMP No.141 of 2012 and allowed the appeal filed by the plaintiff husband under Section 13(1) (ib) of the Hindu Marriage Act and declared the marriage of the plaintiff husband and defendant wife (appellant herein) to be dissolved. Hence, the present Second Appeal.

[4]

4.1 Learned advocate for the defendant - appellant has mainly argued that the appellate Court has not taken into consideration the fact that the plaintiff has not made any attempt for restitution of conjugal rights and there is no criminal complaint filed by the defendant wife and the only proceeding that was filed by the defendant wife was under Section 125 of the Cr.PC.

4.2 Learned advocate for the defendant has also argued that if the deposition of the husband is taken into consideration, even in his deposition, the plaintiff husband has not stated anything that he has made attempts to take back the defendant wife.

4.3 Learned advocate for the defendant has also argued that appellate Court has committed grave error of law by making assumption and presumption about status of both the parties.

4.4 Learned advocate for the defendant has also argued that no opportunity was given to defendant to represent her case before the appellate Court and judgment of the trial Court has been reversed by the first appellate Court taking into consideration social structure of Indian culture and the same can never be ground for divorce and, therefore, judgment and decree passed by the appellate Court is required to be quashed and set aside and present appeal requires to be admitted on the following substantial questions of law, as suggested in the memo of appeal.

"(a) Whether the Ld. First Appellant Court can overlook the proviso of Section 13 of the Hindu Marriage Act, and deliver judgment on assumptions and presumption with respect to the desertion ?

(b) Whether the Ld.First Appellant Court can travel beyond the deposition of the parties and make presumption taking examples of Social Structure, as mentioned in para no.8 & 10 of impugned judgment ?

(c) Whether in the matrimonial disputes the Ld.First Appellant Court can shift the burden of proof on the defendant - wife, by making merely presumption or assumptions in favour of plaintiff - husband, in absence of any specific evidence, either orally or documentary lead by husband ?

(d) Whether in the First Appeal the defendant - wife would compel to prove the facts of matrimonial dispute, which the plaintiff - husband has failed to prove ?

(e) Whether the Ld. First Appellant Court can terminate the relations of husband and wife as mentioned in the Hindu Marriage Act, merely by presumption or assumptions ?

(f)Whether Ld. First Appellant Court can reverse the judgment and decree of Ld. Trial Court which is based upon the guided principle of law, merely by taking examples of social structure and presumption and assumptions ?"

[5]

5.1 Learned advocate for the plaintiff has mainly argued that even after separation, the plaintiff waited for 8 - 10 years and thereafter the divorce proceedings were filed on the ground of desertion and mental cruelty.

5.2 Learned advocate for the plaintiff has also argued that if the date of marriage is taken into consideration, i.e. 22.04.2004 and thereafter the parties have lived together from 22.04.2004 to 20.05.2004 and thereafter from 25.07.2004 to 24.08.2004 and therefore there is a clear cohabitation between the parties for the period of two months and thereafter after waiting for at least for 10-12 years plaintiff husband filed suit for divorce.

5.3 Learned advocate for the plaintiff has also argued that the appellate Court had given full opportunity to defendant wife to put forward her case before the appellate Court. However, defendant wife neither bothered to appear in the matter or represent her case before the appellate Court. Moreover, if the Record and Proceedings before the appellate Court are taken into consideration, the matter was placed for order from 20.07.2018 till date 28.06.2021 i.e. date when the said appeal was disposed of, the defendant wife had not bothered to appear in the matter and, therefore, after re-appreciating the evidence and taking into consideration the fact that the defendant wife has deserted the plaintiff husband the appellate Court has granted divorce.

5.4 Learned advocate for the plaintiff has also argued that the appellate Court has taken into consideration the fact that there was desertion between the parties for more than six years at the time when the said appeal was decided by the first appellate Court and the defendant wife has not taken any steps for restitution of conjugal right and if the defendant wife really wanted restitution, the defendant wife could have come

forward with the case that she tried her level best to come and stay with the husband but her husband did not agree to the same.

5.5 Learned advocate for the plaintiff has also argued that after the disposal of the application under Section 125 of the Cr.P.C. the defendant wife had filed proceedings under Section 127 fo the Cr.P.C. and in the said proceedings, on 20.01.2022, plaintiff husband filed written statement vide Exh.15, in the said proceedings and in the said proceedings it is stated that the plaintiff husband has remarried after waiting for appeal period of second appeal. Therefore, the wife was aware of the fact that the plaintiff husband has remarried but thereafter also appeal was not filed within a period of limitation and that the said second appeal was filed on 17.10.2020 i.e. beyond the period of limitation and, therefore, if the present Second Appeal is admitted, the same will cause injustice to the plaintiff husband therefore also present second appeal is required to be dismissed.

5.6 Learned advocate for the plaintiff husband also argued that in the oral evidence of the plaintiff, the plaintiff husband has stated that he had tried a lot to get back the defendant wife and the said statement has not been cross-examined by defendant wife and, therefore, the said fact has been proved by the plaintiff husband and, therefore, the judgment and decree passed by the appellate Court whereby the judgment and decree of the trial Court has been reversed does not require any interference and, therefore, the present Second Appeal is required to be dismissed.

[6]

6.1 Having heard learned advocates for the parties, having gone through the judgment and decree passed by the trial Court and the judgment and decree passed by the appellate Court, it appears that the appellate Court has taken into consideration the fact that the co-habitation between the plaintiff and defendant is for two months from the date of marriage.

6.2 There is nothing on record to show and suggest that defendant wife wants to cohabit with the plaintiff husband. If the oral evidence of the plaintiff is taken into consideration, in examination-in-chief, he has stated at Exh.26 that defendant wife has permanently shifted to her father's house taking all her belongings with her.

6.3 It has also been stated in the examination-in-chief that the defendant is of suspicious mind and is quarrelsome and at para:5 of the examination-in-chief, the plaintiff husband has stated that after defendant left matrimonial home, he had tried several time to bring the defendant wife back to his house and the fact remains that the fact has not been challenged by the defendant wife, while cross-examining the plaintiff's witness.

6.4 If the entire cross-examination of the plaintiff husband is taken into consideration, in the entire cross, questions that were asked were as to physical and mental violence of the plaintiff and his family members towards defendant, and the said facts have not been proved either by defendant in her examination vide Exh.35,

nor in examination of father of the defendant at Exh.39 and, therefore, the appellate Court has rightly come to the conclusion that the defendant has deserted the plaintiff husband for continuous period of not less than two years preceding the presentation of the petition.

6.5 The other factors which also have to be considered is that the husband has waited at least around 10-12 years before filing petition for divorce on the ground of desertion and mental cruelty and, therefore, the fact that at this stage, defendant wife intends her willingness to cohabit with the plaintiff husband is only after thought and by her conduct, the same is not proved by the defendant wife.

6.6 In the case of Jaichand (Dead) through Lrs and Other v. Sahnulal and Another reported in 2024 SCC OnLine SC 3864, the Hon'ble Apex Court has observed as under:-

"28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

6.7 Therefore, also the defendant has miserably failed to show that there is any substantial question of law involved in the present appeal and the substantial question of law which has been suggested in the memo of appeal are also not substantial question of law and on facts and the said factual aspect have well been considered by the First Appellate Court and, therefore, the present appeal requires to be dismissed.

[7] Under the circumstances, this Second Appeal is devoid of any substantial question of law. The first appellate Court has rightly decided the issue between the parties in the right perspective and as stated above no substantial question of law arises in the present appeal. The present appellant has failed to prove his case before the learned first appellate Court. This Court does not find any substance in the present Second Appeal as the same is devoid of any merit both on facts and law and the same is dismissed at admission stage

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2026(1)FLJ81

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: Jayant Banerji; K V Aravind)

M F A (Miscellaneous First Appeal) No 3193 of 2023 **dated 01/12/2025**

Nirmala Bai W/o Late Madhav Rao

Versus

Pushpabai W/o Chandu Rao; Chandu Rao S/o Vijendra Rao Dumale

VOID MARRIAGE

Code of Criminal Procedure, 1973 Sec. 127, Sec. 125 - Hindu Marriage Act, 1955 Sec. 5, Sec. 11 - Void Marriage - Appeal filed by first defendant against judgment of Family Court declaring plaintiff as legally wedded wife of second defendant - Plaintiff had earlier marriage with second defendant - Appellant claimed to be second wife and sought to establish validity of marriage and maintenance order under Cr.P.C. - Evidence showed marriage of plaintiff and second defendant solemnized earlier and subsisting - Second marriage during subsistence of first held void under Sec.5 and 11 of Hindu Marriage Act - Family Court decree confirmed restraining interference with lawful marital relationship - Appellant permitted to assert legal rights available under law - Appeal Dismissed

Law Point: Marriage contracted during subsistence of earlier valid marriage is void under Sec.5 and Sec.11 of Hindu Marriage Act though second wife may claim limited legal rights such as maintenance but not validity of marriage

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 127, Sec. 125

Hindu Marriage Act, 1955 Sec. 5, Sec. 11

Counsel:

Gurudath B S

JUDGEMENT

K.V. Aravind, J.- [1] Heard Sri B.S. Gurudath, learned counsel for the appellant. Respondent Nos.1 and 2 are served, but remain unrepresented.

[2] For the sake of convenience, the parties are referred to as per their ranks before the III Additional Principal Family Judge, Mysuru, [Family Court] . The appellant was defendant No.1, respondent No.1 was the plaintiff and respondent No.2 was defendant No.2 before the Family Court.

[3] This appeal is filed by defendant No.1 in O.S.No.18/2022, assailing the judgment dated 30.03.2023 passed by the Family Court.

[4] The plaintiff filed a suit seeking a declaration that she is the legally wedded wife of defendant No.2; and for a permanent injunction restraining defendant No.2 from changing her name in his service register, and further restraining defendant No.1 from interfering with the matrimonial life of the plaintiff and defendant No.2.

4.1 Defendant No.1 filed her written statement denying the plaint averments and contending that she is the legally wedded wife of defendant No.2, their marriage having been solemnized on 13.05.2005 at Nimishamba Temple, Srirangapatna. It is further pleaded that defendant No.1 is a widow with two children and that her marriage with defendant No.2 was duly performed. It is also pleaded that defendant No.1 filed a petition under Sections 125 and 127 of the Code of Criminal Procedure, 1973, [

Cr.P.C.] , seeking maintenance, which came to be allowed by the Principal Family Court, Mysuru, directing defendant No.2 to pay maintenance. Various documents were marked in support of her case.

4.2 Defendant No.2 filed his written statement admitting his marriage with the plaintiff, which was solemnized on 11.06.1995 at Vasavi Kalyana Mantapa, Kalkunike, Hunsur Town, Mysuru District, and also admitting that two children were born from the said wedlock.

4.3. The Family Court, after considering the evidence on record, held that the marriage between the plaintiff and defendant No.2 was solemnized much prior to the marriage claimed by defendant No.1 with defendant No.2. The Family Court further observed that the marriage between the plaintiff and defendant No.2 was not disputed by defendant No.1. It was, therefore, held that in view of Section 11 of the Hindu Marriage Act, 1955, [Act] , the marriage of defendant No.1 with defendant No.2 is void. Accordingly, the Family Court decreed the suit declaring the plaintiff to be the legally wedded wife of defendant No.2, restrained defendant No.2 from changing the name of the plaintiff in his service records, and further restrained defendant No.1 from interfering with the peaceful marital life of the plaintiff with defendant No.2.

[5] Sri B.S. Gurudath, learned counsel for the appellant, submits that the Family Court committed an error in not appreciating that defendant No.1 had proved her marriage with defendant No.2, which was solemnized on 13.05.2005 at Nimishamba Temple, Srirangapatna. Learned counsel further submits that in the petition filed under Sections 125 and 127 of the Cr.P.C., seeking maintenance, defendant No.2 had not disputed the relationship and had paid maintenance to defendant No.1. The order granting maintenance has not been challenged by the plaintiff. Hence, it is submitted that defendant No.1 has established her marriage with defendant No.2. Learned counsel contends that, in the light of the evidence on record, the decree declaring the plaintiff as the legally wedded wife of defendant No.2 is erroneous.

[6] The respondents, though served, have chosen not to appear before this Court. Hence, service of notice is held to be sufficient. Accordingly, this Court proceeds to decide the appeal on the basis of the submissions made by the learned counsel for the appellant and the material available on record.

[7] It is evident from the record that the marriage between the plaintiff and defendant No.2 was solemnized on 11.06.1995 at Vasavi Kalyana Mantapa, Kalkunike, Hunsur Town, Mysuru District, and that they have been blessed with two children aged about 25 and 15 years. The evidence on record establishes the factum of their marriage. Furthermore, the subsistence of the marriage between the plaintiff and defendant No.2 is not disputed by defendant No.1.

[8] The defence of defendant No.1 is that her marriage with defendant No.2 was solemnized on 13.05.2005 at Nimishamba Temple, Srirangapatna, and that the Family Court, while entertaining her petition under Sections 125 and 127 of Cr.P.C., had

ordered maintenance, which was complied with by defendant No.2. It is, therefore, contended that the marriage of defendant No.1 with defendant No.2 stands proved.

[9] On perusal of the oral and documentary evidence on record, it is evident that the marriage between the plaintiff and defendant No.2 solemnized on 11.06.1995 stands proved. Even if the evidence led by defendant No.1 is accepted as proved, it would only establish that a marriage ceremony between defendant No.1 and defendant No.2 was performed, but not its validity in law. The order passed by the Family Court in Crl.Misc.No.79/2010 is of no assistance to defendant No.1, as the said order does not deal with the validity of the alleged marriage. The acceptance of the order of maintenance, at the most, may prove the factum of marriage between defendant No.1 and defendant No.2, but not its legal validity. The issue that arises for consideration in the present case is the validity of the said marriage.

[10] The Family Court has recorded a finding that the marriage between the plaintiff and defendant No.2, solemnized on 11.06.1995, stands proved. It has further held that the marriage between defendant Nos.1 and 2, said to have been solemnized on 13.05.2005, even if accepted, is void in view of Section 5 read with Section 11 of the Act. The Family Court, upon considering the evidence on record, held that the marriage between the plaintiff and defendant No. 2 is valid. It further found that the marriage asserted to have been contracted between defendant Nos. 1 and 2 took place during the subsistence of the valid marriage between the plaintiff and defendant No.2. The Family Court therefore concluded that, in view of Section 5 read with Section 11 of the Act, the marriage between defendant Nos. 1 and 2 is void.

[11] The finding recorded by the Family Court is based on the evidence on record and is in conformity with Sections 5 and 11 of the Act. No contrary material has been placed before this Court for consideration. Upon perusal of the record, we find no reason to differ from the findings rendered by the Family Court.

[12] Despite the aforesaid legal position, a lawful right is nevertheless available to the second wife to claim maintenance under the Act [(2004) 9 SCC 617]. Further, in a suit for partition, the second wife would be entitled to a share in the property to the extent of the share devolving upon the husband [(2020) 11 SCC 232]. These rights, however, do not, by themselves, validate the second marriage, which would otherwise be hit by the provisions of Section 5 read with Section 11 of the Act.

[13] Under the circumstances, the decree of permanent injunction would militate against the aforesaid legal rights of the appellant. Moreover, the very enforceability of a decree of permanent injunction in matters pertaining to marital relationships is itself doubtful. Therefore, the decree of permanent injunction requires modification. We accordingly hold that the appellant is permanently restrained from interfering in the relationship between defendant Nos. 1 and 2, except to the extent that she may lawfully and validly assert her legal rights against her husband.

[14] For the aforesaid reasons, we are of the considered view that the order of the Family Court is well-reasoned, is supported by the evidence on record, and that the appellant has not made out any ground warranting interference therewith.

[15] The appeal being devoid of merit is accordingly **dismissed**

2026(1)FLJ85

DELHI HIGH COURT

(Hon'ble Judge: Anil Kshetarpal; Harish Vaidyanathan Shankar)

Mat App (F C) (Matrimonial Appeal (Family Court)); C M Appl (Civil Miscellaneous Application) No 281 of 2024; 48706 of 2024 **dated 28/11/2025**

Sushma

Versus

Rattan Deep & Anr

CUSTOMARY DIVORCE VALIDITY

Code of Civil Procedure, 1908 Or. 41R. 22, Or. 41R. 3 - Hindu Marriage Act, 1955 Sec. 5, Sec. 29, Sec. 13, Sec. 11, Sec. 4 - Customary Divorce Validity - Appeal filed against decree declaring marriage void - Appellant contended that earlier marriage dissolved through customary Panchayati divorce prevailing in community - Evidence produced only photocopy of deed without examination of scribe or witnesses - Family court found that though custom of divorce proved, appellant failed to prove actual customary divorce with previous husband - Court held that mere oral claim or unproved deed insufficient to establish valid dissolution - Customary practice must be proved by cogent evidence of prevalence and past instances - Marriage solemnized without valid divorce contravened Sec.5(1) of Act - Declaration of nullity upheld - Appeal Dismissed

Law Point: Customary divorce under Hindu law must be strictly proved by credible evidence showing continuous, certain and reasonable custom; mere assertion or unproved document cannot invalidate subsisting marriage.

Acts Referred:

Code of Civil Procedure, 1908 Or. 41R. 22, Or. 41R. 3

Hindu Marriage Act, 1955 Sec. 5, Sec. 29, Sec. 13, Sec. 11, Sec. 4

Counsel:

Sc Singhal, Parth Mahajan, Garvita Bansal, Ritvik Madan, Mrinal Singh, Priya Rani Jha

JUDGEMENT

Anil Kshetarpal, J.- [1] Through the present Appeal, the Appellant assails the correctness of a judgment and decree dated 07.06.2024 [hereinafter referred to as

Impugned Judgment] passed by the Family Court while granting declaration to the effect that her alleged marriage with the Respondent No.1 was void as it was solemnized in contravention of Section 11 read with Section 5(1) of Hindu Marriage Act, 1955 [hereinafter referred to as HMA].

[2] The following two questions require adjudication in the present Appeal:

i. Whether the Appellant has successfully proved that custom constitutes sufficient ground to take Panchayati Divorce among the Jat community, thereby dissolving the marriage? and

ii. If the answer to the first question is in the affirmative, whether there was Panchyati Divorce amongst the Appellant and the Respondent No.1.

[3] In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

[4] The Appellant was previously married to Sh. Sanjay, whereas the Respondent No.1 was also previously married to some else. The Appellant claims that her marriage with Sh. Sanjay was dissolved by a customary divorce on 23.05.2009, whereas the Respondent No.1 claims that his marriage was dissolved by a Competent Court on 25.05.2009 and that he has a daughter from previous marriage. The Appellant and the Respondent No.1 entered a matrimonial alliance on 16.05.2010 and out of the wedlock, Mr. Daksh (son) was born on 15.03.2011.

[5] Respondent No.1 filed a previous Petition under Section 13(1)(ia) of the HMA, which was later withdrawn since the parties settled the dispute and started co-habiting together. However, on 12.10.2012, the Appellant left her matrimonial home. Respondent No.1 claims knowledge of the fact that the Appellant was not previously divorced on 25.09.2013, whereas he filed the Petition on 10.10.2013.

[6] The Appellant took a stand that the factum of her previous divorce was brought to the notice of the Respondent No.1 and his family and thereafter, they entered into the matrimonial alliance. The Appellant also stated that she had taken divorce from her previous husband on 23.05.2009 as per custom prevailing in their community. Apart from alleging cruelty at the hand of the Respondent No.1, the Appellant also submitted that the Respondent No.1 and his family members demanded dowry and wanted that the Appellant should take her share in the properties of her father.

[7] Upon analysing the pleadings, the Family Court culled out the following issues:

i. Whether a customary divorce is permissible in the caste/community of the parties?

ii. If the answer to additional issue no. l is in affirmative, whether the respondent had obtained the customary divorce from her husband on 23.05.2009?

[8] Respondent No.1 entered the witness box as PW-1, whereas the Appellant examined five witnesses including herself appearing as RW-1. The father of the Appellant, Sh. Ranbir Singh, appeared as RW-2 and the uncle of the Appellant, Sh.

Balwan Singh, appeared as RW-3. The Appellant also examined Sh. Om Prakash and Sh. Rajbir as RW-4 and RW-5 respectively.

[9] The Appellant has produced a photocopy of the alleged Deed of Divorce which has not been exhibited, however, has been marked as X . On its careful reading, it is evident that it is only an agreement/mutual settlement between the Appellant and her previous husband. This agreement is scribed by Sh. Ramchandar Dahiya, and signed by three witnesses, namely Sh. Hawa Singh, Sh. Mahender Singh and Sh. Rajpal. However, neither the scribe nor any of these witnesses have been examined in this matter.

[10] While answering the Issue No.1, the Family Court held that the custom of taking customary divorce has been successfully established, whereas while answering the Issue No.2, the Family Court held that the respondent failed to produce any valid panchayatnama and thus alleged customary divorce through panchayat on 23.05.2009 could not be established. Consequently, while returning the finding that the marriage between the Appellant and the Respondent No.1 was in contravention of Section 5(i) of the HMA, the family court annulled it under Section 11 of the HMA.

[11] Before proceeding further, it is appropriate to take note of statutory provisions of the HMA:

4. Overriding effect of Act. Save as otherwise expressly provided in this Act,

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i) neither party has a spouse living at the time of the marriage;

[(ii) at the time of the marriage, neither party

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity]

(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

xxxx xxxx xxxx

11. Void marriages. Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

xxxx xxxx xxxx

29. Savings. (1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

[12] It is evident that by virtue of Section 4 of the HMA, it was declared on the enforcement of the HMA that any text, rule, or interpretation of Hindu law, or any custom or usage as part of that law in force immediately before the commencement of the HMA shall cease to have effect with respect to any matter for which this provision is made in HMA. However, the opening words of Section 4 that save the provisions as provided in the HMA are relevant.

[13] Section 29 of the HMA saves any right recognised by custom or conferred by any special enactment to obtain dissolution of a Hindu marriage. Hence, the customary divorce, if validly proved, is saved by the provision of the HMA. Before delving deeper into how custom ought to be proved, it is significant to iterate how courts have interpreted custom:

[14] In **Bhimashya and Others v. Janabi (Smt) Alias Janawwa**, 2006 13 SCC 627 the Supreme Court held:

"A custom is a particular rule which has existed either actually or presumptively from time immemorial and has obtained the force of law in a particular locality,

although contrary to or not consistent with the general common law of the realm. A custom to be valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin, and fourthly, it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.

[15] In **Gokal Chand v. Parvin Kumari**, 1952 AIR(SC) 231 the Supreme Court declared that:

"A custom, in order to be binding, must derive its force from the fact that by long usage it has obtained the force of law, but the English rule that 'a custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary' should not be strictly applied to Indian conditions."

[16] However, to prove custom, the parties are required to lead cogent evidence. It is not sufficient to prove custom of dissolution of marriage by examining few witnesses. It is expected from the parties to prove the prevalence of customary divorce in their area/community by producing judgments that recognise their custom and show past instances of customary divorce in the community.

[17] One of the ways to prove the custom is reference to any text or interpretation of Hindu law or usage for long period of time. Once the Court is called upon to declare that there exists a custom which is contrary to the codified law, the burden of proof is heavy upon the party asserting custom. Custom cannot be extended by analogy and it cannot be established by a priori method. **Uzagar Singh v. Mst. Jeo**, 1959 AIR(SC) 1041 laid down that the ordinary rule is that a custom, general or otherwise, has to be proved under Section 57 of the Evidence Act, 1872. This fact has been laid down by the Court from time to time in the following manner:

17.1 The Supreme Court in **Saraswathi Ammal v. Jagadambal And Another**, 1953 SCR 939 held as follows:

Privy Council in Abdul Hussein Khan v. Soma Dero(1). It was there said that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any custom applicable to the parties concerned that can be the rule of decision in a particular case. It is well settled that custom cannot be extended by analogy. It must be estabished inductively, not deductively and it cannot be established by a priori methods. Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the community living in another district is necessarily following the same-custom.

17.2 An identical view has been taken by the Supreme Court in **Salekh Chand (Dead) By Lrs v. Satya Gupta And Ors**, 2008 13 SCC 119. In **Yamanaji H. Jadhav**

v. Nirmala, 2002 2 SCC 637 the Supreme Court reiterated this principle in the context of the Act, holding as follows:

"As per the Hindu Law administered by courts in India, divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since said custom of divorce is contrary to the law of the land and which if not proved will be a practice opposed to public policy. .... It is true in the courts below that the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a court of law. In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequence of their not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law."

17.3 The Gujarat High Court in **Bhartiben W/O Amitbhai Vitthalbhai** held that:

13. It is well settled principles of law as laid down by the Supreme Court that prevalence of customary divorce in the community to which the parties belong, contrary to general law of divorce must be specifically pleaded and established by person propounding such custom. In our view, in the absence of any proper pleadings on behalf of the plaintiff in the plaint about the then alleged existing custom and customary divorce in the Leuva Patel Community, the plaintiff could not have led any oral evidence on the said issue.

[18] Now, the stage has come to analyse the evidence led by the Appellant to prove prevalence of customary divorce amongst the Jat community. RW-2 and RW-3 are the father and maternal uncle of the Appellant respectively and are interested witnesses. RW-4 is an 80- year old man, who was Deputy Sarpanch of the village. However, RW-4 did not attend the alleged meeting of the Panchayat wherein the divorce was granted to the Appellant from previous husband. RW-5 has also admitted that he never attended the alleged meeting of the Panchayat. Apart from referring to other instances of grant of Panchayati Divorce to few persons, the Appellant has not produced any evidence, including text, to show that Panchayati Divorce was being granted in the community from a very long time. The Appellant has also not produced any Panchayati decision in this regard.

[19] Thus, the evidence led by the Appellant to prove the prevalence of custom of dissolving the marriages through Panchayat falls short of the legal requirement to prove the same. The Appellant has also not examined the scribe, Sh. Ramchander Dahiya, and the three witnesses namely Sh. Hawa Singh, Sh. Mahender Singh and Sh. Rajpal, who allegedly signed as witnesses to the document dated 25.09.2013. The details of the alleged Panchayat meeting and the members who attended the meeting have not been disclosed. Though, the Issue No.1 was decided in favour of the Appellant by the Family Court, however, the same being erroneous is liable to be set aside, though no cross-objections or cross-appeal has been filed by the Respondent No.1.

[20] Order XLI Rule 22 read with Order XLI Rule 3 of the Code of Civil Procedure, 1908 enables the Courts to pass appropriate judgment irrespective of appeal or cross-objections. Moreover, the Respondent No.1 has no right to file an appeal against finding in a particular issue as his Petition for declaring that his marriage with the Appellant was void, has been allowed by the Family Court.

[21] The Appellant has only produced an agreement which has been styled as Deed of Divorce executed on 25.09.2013. We have already expressed our opinion that this document is a mere agreement/mutual settlement between the Appellant and her previous husband, which is attested by three witnesses. It has been recited in the said agreement that the parties have decided to dissolve their marriage by this agreement. However, there is no reference to any Panchayat or meeting of the respectables of the area. The original copy of the agreement dated 25.09.2013 has also not been produced. Neither the scribe nor the witnesses to this agreement have been examined. Such agreement does not fulfil the requirement of the customary divorce as alleged. Thus, the finding of the Family Court under Issue No. 2 is upheld.

[22] Learned counsel for the Appellant has submitted that the parties married in the year 2010 and out of the said wedlock, Mr. Daksh (son) was born on 15.03.2011. Learned counsel has now submitted that the marriage between the parties cannot be annulled in this manner and that the family court s decree be set aside.

[23] This Court has examined the argument advanced by the learned counsel for the Appellant, however, finds no merit in the same. Section 11 of the HMA explains void marriages. It is evident that if any marriage is solemnized amongst the Hindus in contravention of any one of the conditions specified in clauses (i), (iv) and (v) of section 5 of the HMA, such marriage is null and void and not voidable.

[24] The Appellant has failed to prove that she was divorced from her previous husband as per custom. Hence, in view of Section 5(i) of the HMA, the Appellant could not solemnize the marriage with the Respondent No.1. Learned counsel for the Appellant has not challenged the correctness of finding of the Family Court which says that the Respondent No.1 came to know on 25.09.2013 about the fact that the Appellant had not obtained divorce from her previous husband. The Respondent No.1 filed the petition in October, 2013, which is within the prescribed period of limitation.

[25] In view of the aforegoing discussion, this Court does not find any reason to interfere with the Impugned Judgment passed by the Family Court.

[26] Accordingly, the present Appeal, along with the pending application, is dismissed

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2026(1)FLJ92

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Debangsu Basak)

C O (Civil Order) No 26 of 2024, 110 of 2023 **dated 27/11/2025**

Sib Charan Roy; Nilaksha Roy

Versus

Nilaksha Roy and Anr; Sib Charan Roy and Anr

SENIOR CITIZEN JURISDICTION

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 Sec. 2, Sec. 5, Sec. 4 - Senior Citizen Jurisdiction - Senior citizen sought eviction of son from property under Senior Citizens Act - Tribunal ordered eviction - Son challenged jurisdiction - Court found senior citizen lived separately for many years and owned another residence - He sought eviction to sell property not for residence or maintenance - Tribunal jurisdiction limited to maintenance and welfare matters when senior citizen in need of support - Civil dispute over property disposal outside purview of Act - Tribunal acted beyond authority - Proceedings Quashed

Law Point: Tribunal under Senior Citizens Act cannot adjudicate property or lease disputes unrelated to maintenance or welfare when senior citizen not dependent or in need of support

Acts Referred:

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 Sec. 2, Sec. 5, Sec. 4

Counsel:

Arnab Sengupta, Deborshi Dhar, Prerna Khaitan, Bikramaditya Ghosh, Supriya Singh, Ved Rai, Mayank Bhandari, Vivek Saha

JUDGEMENT

Debangsu Basak, J.- [1] Two revisional applications are taken up for analogous hearing as they involve the same parties.

[2] A senior citizen, filed CO 26 of 2024 assailing an order dated September 12, 2023 passed in Appeal Petition No. 04 of 2023 of the Appellate Authority under the

provisions of the West Bengal Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The son of the senior citizen filed CO 110 of 2023 directed against the order dated August 14, 2023 passed by the Tribunal purporting to exercise jurisdiction under the Act of 2007.

[3] The senior citizen left his son and his wife since deceased to live separately. The senior citizen was living separately for over 23 years at a different place. Wife of the senior citizen and the son were living together at the immovable property which is the subject matter of the proceeding under the Act of 2007. The concerned immovable property belonged to the grandfather of the senior citizen. House thereon was constructed by the senior citizen and his wife, now deceased, jointly. Senior citizen granted lease of the immovable property to his son. Senior citizen is retired and is enjoying pensionery benefits. Senior citizen possesses a residence of his own.

[4] Son is presently working. He is not residing on the subject property. He visits the subject property apparently when his employment permits him to do so.

[5] Disputes and differences arose between the senior citizen and his son as to the manner and method of disposal of the immovable property concerned.

[6] It transpires that, the senior citizen is inclined to sell the immovable property. Son does not want it to be sold and if senior citizen is willing to sell the house to the son he is willing to purchase the said house at price to be fixed by them mutually. Senior citizen refused to do so.

[7] Senior citizen thereafter approached the maintenance Tribunal under the Act of 2007.

[8] The first issue is whether the maintenance Tribunal can assume jurisdiction such a scenario.

[9] Authorities are cited on behalf of the senior citizen to the effect that a maintenance Tribunal can direct eviction.

[10] Authorities cited on behalf of the senior citizen namely, Shweta Shetty & Ors. vs. State of Maharashtra & Ors.,2021 SCCOnline Bom 4575, Smt. **Mamata Sarki & Anr. vs. The State of West Bengal & Ors**, 2020 AIR(Cal) 166 and **Naresh Kumar And Anr. vs. The Appellate Tribunal Maintenance and Welfare of Parents and Senior Citizens Act, 2007 & Ors.**, 2024 113 PunLR 164 held that, a maintenance Tribunal possesses jurisdiction to direct eviction.

[11] Factual matrix in all those three authorities are completely different from that obtaining in the present case. In all the three authorities, the senior citizen required the immovable property concerned for his residence. The children of senior citizens involved therein were obstructing the peaceful user and enjoyment of such immovable property by the senior citizens.

[12] In the facts of the present case, the senior citizen does not require the immovable property concerned for his residence. Senior citizen is seeking to sell it to some other person.

[13] Every dispute between the senior citizen and a son cannot come within the scope and ambit of a Tribunal established under the Act of 2007.

[14] The Act of 2007 defines a "maintenance" under Section 2(b) and "welfare" in Section 2(k) which are as follows

2(b)- "maintenance" includes provisions for food, clothing, residence and medical attendance and treatment;

2(k)-"welfare" means provisions for food, health case, recreation centres and other amenities necessary for the senior citizens."

[15] Section 5 of the Act of 2007 allows an application for maintenance under Section 4 to be made. Section 5 sub-section (2) and (3) allow Tribunal exercising jurisdiction under the Act of 2007 to grant an order of maintenance.

[16] To successfully invoke the jurisdiction of the maintenance Tribunal, the jurisdictional fact of a senior citizen being in need of maintenance within the meaning of the Act of 2007 is required to be established. Once such jurisdictional fact is established then a maintenance Tribunal is clothed with the power to issue a direction which for the welfare of the senior citizen involved.

[17] Therefore, not only establishment of the jurisdictional fact is imperative, but also, the order of Tribunal needs to be for the welfare of the senior citizen, for any order of Tribunal to withstand scrutiny for excess of jurisdiction.

[18] In the facts of the instant case, the civil disputes between the senior citizen and the son concerned, relates to eviction of a lease from the immovable property. Senior citizen does not require the property concerned for his residence. Senior citizen does not want to reside at the immovable property. Senior citizen is not in any need for any maintenance from the son. The mechanism of the Act of 2007, in such factual scenario cannot be utilized for the purpose of evicting the lessee who is also the son of the senior citizen from the immovable property concerned.

[19] In my view, therefore, the assumption of jurisdiction by the Tribunal under the Act of 2007 is incorrect. The order passed by the Sub-divisional Magistrate on assumption of jurisdiction under the Act of 2007 being incorrect, is set aside.

[20] In view of the my finding that, the Tribunal under the Act of 2007 does not possess requisite jurisdiction under the Act of 2007, with regard to disputes between the parties before me, the issue as to whether or not, an appeal can be preferred by a senior citizen under the Act of 2007 need not be answered.

[21] Co/26/2024 and CO/110/2023 are disposed of by quashing the proceedings under the Act of 2007

2026(1)FLJ95

MADHYA PRADESH HIGH COURT

(Hon'ble Judge: Vishal Dhagat; B P Sharma)

First Appeal No 1750 of 2024 **dated 25/11/2025**

Dr Mahendra Kushwaha

Versus

Pooja Kushwaha

JUDICIAL SEPARATION DENIED

Hindu Marriage Act, 1955 Sec. 28, Sec. 10, Sec. 13 - Family Courts Act, 1984 Sec. 19 - Judicial Separation Denied - Husband sought judicial separation alleging wife concealed illness of epilepsy and made false allegations causing mental cruelty - Wife denied pre-marriage illness and alleged husband deserted without cause - Evidence showed illness developed post-marriage and not concealed - Court found no cruelty proved and husband failed to discharge marital obligations - Upheld trial court decision dismissing plea for judicial separation and allowing restitution of conjugal rights to wife - Appeal Dismissed

Law Point: Concealment of disease not constituting incurable or contagious disorder before marriage does not amount to cruelty; judicial separation cannot be granted without proof of deliberate deceit or persistent cruelty

Acts Referred:

Hindu Marriage Act, 1955 Sec. 28, Sec. 10, Sec. 13

Family Courts Act, 1984 Sec. 19

Counsel:

Amit Verma, Anubhav Singhal, Ghanshyam Sharma

JUDGEMENT

Vishal Dhagat, J.- [1] Appellant had filed first appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 challenging judgment and decree dated 24.08.2024 passed by Principal Judge, Family Court, Mandla (MP) in RCSHM No.74/2022 by which application under Section 10 of the Hindu Marriage Act, 1955 filed by appellant for judicial separation was dismissed.

[2] Learned counsel appearing for appellant submitted that respondent was suffering from epilepsy prior to her marriage with appellant and said fact was suppressed from him. Later on, when appellant/husband declared the said fact and filed a petition for divorce/judicial separation, incorrect and false allegations were made against him. It was stated by respondent that husband malafidely gave her food to eat which were too sweet due to which she suffered sickness/epilepsy. Husband and

his mother were doing conspiracy against respondent and he wants to live separately. Aforesaid false allegations amount to mental cruelty against appellant and falls within ambit of Section 13(1) of the Hindu Marriage Act, 1955. It is submitted that respondent has specifically denied that she is suffering from epilepsy in her written statement and also in oral statement given in Court. Over and above aforesaid fact she had made various false allegations of conspiracy and attempt to injure her by giving sweets. Counsel for appellant further submitted that respondent was suffering from epilepsy prior to her marriage with appellant. Said fact can be found out from various document which has been exhibited i.e. Ex.P/40 to Ex.P/44. In aforesaid document/prescriptions, it has been mentioned that respondent is suffering from seizures. She is being given medicine for seizures. Said documents reflect that she was having disease before her marriage. It is submitted that trial Court had committed an error in deciding the issues framed by it. Trial Court has also committed an error in holding that appellant had deserted respondent without any reasonable cause, therefore, respondent is entitled for decree of restitution of conjugal rights. It is submitted that pleadings of parties, evidence available on record and deposition of witnesses show that cruelty has been committed with appellant by respondent which is a ground for getting divorce under Section 13(1)(ia) of the Hindu Marriage Act and on basis of said ground appellant has prayed for grant of judicial separation under Section 10(1) of the Hindu Marriage Act, 1955.

[3] Learned counsel appearing for respondent opposed the appeal and denied said facts. It is submitted by him that if judicial separation is permitted then it will enhance woes of respondent and it will amount to cruel treatment of respondent by appellant in her difficult times of sickness. Husband has to take care of wife and not to plead judicial separation in Court. Epilepsy is not disease which cannot be treated. It is further submitted that respondent was not suffering from Epilepsy prior to her marriage. Later, she had developed the said disease. Learned counsel appearing for respondent further submitted that trial Court has rightly decided issue No.4 wherein respondent has proved desertion by appellant without reasonable cause, therefore, no error has been committed by the trial Court in granting decree of conjugal rights in favour of respondent and dismissing petition for judicial separation between the parties. In these circumstances, first appeal may not be allowed on the sole ground raised by appellant.

[4] Heard the counsel for the parties.

[5] Trial Court has framed seven issues. Issue No.1, 3 and 4 are material in this case. All aforesaid issues are related to facts whether respondent was suffering from Epilepsy before her marriage and said fact was suppressed from appellant and later on, respondent made false allegation against appellant which amounted to cruelty. Appellant had no reason to desert respondent. Since, all of said issues are intertwine, therefore, issues No.1, 3 and 4 are considered together.

[6] On going through the pleadings and evidence available on record, it is found that respondent had admitted in paragraph-13 of her cross-examination that she is suffering from seizures even prior to her marriage and said fact was not disclosed to appellant even though there was three meetings before marriage. Fact about Thyroid disease of respondent was only disclosed. However, in her written statement as well as in examination, it is denied by respondent that she is suffering from Epilepsy, on the contrary allegations were made against husband and his mother that they were doing conspiracy to make her sick by giving her sweet food. She deposed that on eating sweets, she suffered dizziness. Said allegations were without any basis and were not proved in the trial Court as nothing has been stated in deposition. Pleadings regarding said fact has been made in written statement filed by respondent and supported by an affidavit and later on, during final argument. Dr. Muddasar Kharadi (PW-6) was examined in Court and he has stated that respondent suffered from seizures. She was medically examined by him. Her condition was described as "secondary generalization" in prescription (Ex.P/23) but he submits that "secondary generalization" means Epilepsy. Appellant has stated that she suffers seizures prior to marriage and even after marriage she suffered seizure before appellant in June, 2022 and July, 2022. He has seen the condition of respondent and was very tensed after seeing her. Respondent has suppressed fact of her disease from appellant. Document which is placed on record i.e. Ex.P/40 to Ex.P/44 also show that respondent was taking treatment for her disease prior to her marriage and even after her marriage. Aforesaid facts establish that disease of Epilepsy was suppressed from appellant and his family member.

[7] Whether suppression of disease at the time of marriage and subsequently making baseless allegation of conspiracy on appellant and mother-in-law amounts to cruelty?

[8] Every person has choice to choose marital partner. They exercise their option and marry each other after seeing Biodata and meeting each other and talking with family members and friends. In arrange marriage these are source by which a person can learn about other person and exercise their option to marry. If appellant was told about the disease of seizures/Epilepsy he may not have exercised his option to marry respondent. Things would have been different if respondent had contracted the disease after marriage. In such condition, it was duty of husband to take care of wife. In this case, deception is played upon the appellant and he was made to exercise option of marriage by suppression of fact and later on, false allegation of conspiracy was levelled on him. He has to face financial and emotional consequences. He will be in tension in respect of health of his wife and would remain worried rest of his life. Not only suppression was done but when case was filed in Court stand was taken that appellant and his mother was doing conspiracy to make her sick. Aforesaid conduct of respondent amounts to cruelty which will fall within the ambit of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Since, cruelty is one of the grounds for getting divorce, therefore, on said ground appellant can seek judicial separation.

[9] Trial Court had committed an error of fact and law in deciding Issue No.1 and Issue No.2. Respondent herself admitted that she did not disclose to her husband about seizures and Dr. Muddasar Kharadi (PW-6) has stated that disease which was described by him in prescription is Epilepsy, therefore, trial Court ought to have held that respondent was suffering from Epilepsy. Disease has been suppressed from appellant and false allegations were made which amount to cruelty, therefore, **Issue No.1** and **Issue N o . 3** are answered in **"Positive".** Since, aforesaid issues are answered in "Positive", therefore, it cannot be said that appellant was not having any cause for deserting respondent. Due to aforesaid reason, appellant had deserted the respondent and trial Court had committed an error in holding that appellant deserted respondent without any cause. Issue No.4 has also been decided wrongly by the trial Court. **Issue No.4** is answered in **"Negative"**. Issue No. 2 was not challenged before this Court neither Issue Nos.5 and 6 were challenged by appellant as same were in favour of appellant. No argument has been raised by the respondent over said issues, therefore, no interference is called for in finding given by the trial Court in respect of Issue Nos.2, 5 and 6.

[10] In view of aforesaid findings, judgment and decree dated 24.08.2024 passed in RCSHM No.74/2022 by Principal Judge, Family Court, District-Mandla (MP), is set aside. Appellant is granted decree of judicial separation from respondent under Section 10(1) of the Hindu Marriage Act, 1955 and decree passed by trial Court for restitution of conjugal rights is set aside.

[11] First appeal is **allowed.**

[12] Decree be drawn accordingly

2026(1)FLJ98

HIMACHAL PRADESH HIGH COURT

(Hon'ble Judge: Ajay Mohan Goel)

C M P M O (Civil Miscellaneous Petition (Main)) No 518 of 2025 **dated 21/11/2025**

Sonam Tharchen

Versus

Shamtan Dolma

INVALID DIVORCE BY LOK ADALAT

Hindu Marriage Act, 1955 Sec. 13 - National Legal Services Authority (Lok Adalats) Regulations, 2009 Reg 17 - Invalid Divorce by Lok Adalat - Petition challenging award of Lok Adalat granting mutual divorce between parties - Regulation 17(7) of NALSA (Lok Adalats) Regulations, 2009 prohibits Lok Adalat from granting divorce by mutual consent - Held that Award passed by Lok Adalat granting mutual divorce is void ab initio - Consequently, execution order based on such award also quashed -

Divorce petition revived before Family Court for adjudication on merits - Petition Allowed

Law Point: Lok Adalat has no jurisdiction to grant decree of divorce by mutual consent under Regulation 17(7) of NALSA (Lok Adalats) Regulations, 2009; any such award is void.

Acts Referred:

Hindu Marriage Act, 1955 Sec. 13

National Legal Services Authority (Lok Adalats) Regulations, 2009 Reg 17

Counsel:

Rajni Gandhi, Raj Negi

JUDGEMENT

Ajay Mohan Goel, J.- [1] By way of this petition, the petitioner has, inter alia, prayed for the following reliefs:-

"i. Set aside the award dated 09.09.2023 passed by the Ld. Additional Principal Judge, Family Court, Solan, H.P., in Case No. 35/2019, as being illegal, without jurisdiction and contrary to the Hindu Marriage Act, 1955 and the Lok Adalat Regulations, 2009;

ii. Set aside the order dated 30.05.2025 passed in Execution Petition No. 57/2025 by the Ld. Family Court, Solan, H.P., along with all consequential proceedings, including the order of property attachment"

[2] The petitioner has assailed Award dated 09.09.2023, passed by the Chairman, Lok Adalat, Solan, District Solan, which reads as under:-

"Case taken up before National Lok Adalat today.

The respondent Shamtan Dolma vide her separate statement recorded on 09-08-2023, placed on record has stated that she has compromised the matter with respondent before the Mediator on 07-08-2023 vide compromise deed Ex. P1, according to which compromise decree be passed.

On the other hand, respondent Sonam vide his separate statement placed on record dated 09-08-2023, has stated that he has compromised the matter with the petitioner vide compromise deed Ex. P1 and he has no objection, if compromise decree is passed as per Ex. P1.

In view of the statements of the parties and Compromise deed Ex. P1, the present petition under Section 13 of Hindu Marriage Act is decided being compromised. Compromise Deed Ex. P1 and statements of the parties shall form part of the order. Misc. applications, if any stands disposed off being infructuous. Be tagged with main case file File after its due completion be consigned to the record room."

[3] The petitioner has also assailed order dated 30.05.2025, passed by the learned Executing Court, in an application filed by the respondent herein, for the execution of order dated 09.09.2023.

[4] Learned counsel for the petitioner submits that the Award passed by the learned Lok Adalat is per se void ab initio for the reason that the learned Lok Adalat has exercised power not conferred upon it. She referred to the National Legal Services Authority (Lok Adalat) Regulations, 2009, in general and Regulation 17 (7) in particular and submitted that the Lok Adalat, in terms of this Regulation, shall not grant any bail or a divorce by mutual consent. Learned counsel argued that despite this specific Regulation which bars a Lok Adalat from granting any bail or divorce by mutual consent, the impugned Award was passed by the learned Lok Adalat, which, therefore, is non-est and is liable to be quashed and set aside. She further submitted that order dated 30.05.2025, passed by learned Executing Court, being based on an Award which is non-est and void ab initio, is also not sustainable. Accordingly, she prayed that in light of the same, the petition be allowed.

[5] On the other hand, learned counsel for the respondent, though has tried to justify the Award on the ground that the same was result of mutuality shown by the parties before the learned Lok Adalat, however, he could not dispute that the Regulation in issue bars the grant of divorce, be it by mutual consent, as far as the Lok Adalat is concerned.

[6] Having heard learned counsel for the parties, this Court is of the considered view that the Award dated 09.09.2023, passed by the learned Lok Adalat, in terms whereof, mutual divorce was granted, in favour of the parties, is not sustainable in the eyes of law as the same is hit by Regulation 17(7) of the National Legal Services Authority (Lok Adalat) Regulations, 2009. When Regulation 17(7) prohibits grant of mutual divorce, learned Lok Adalat cannot pass any such Award. In the present case, the Award under challenge is, therefore, bad in law.

[7] Similarly, as far as the order passed by learned Executing Court is concerned because the foundation of the same is order dated 09.09.2023, which has been held to be bad by this Court, therefore, as the foundation of the said order goes, the edifice also has to fall.

[8] Accordingly, in light of above observations, this petition is allowed. Award dated 09.09.2023, passed by the Chairman, Lok Adalat, Solan, District Solan, is quashed and set aside. Order dated 30.05.2025, passed by the learned Executing Court, in an application filed by the respondent under Order 21, Rule 11 of the Civil Procedure Code, for execution of Award dated 09.09.2023, is also quashed and set aside. The proceedings filed under Section 13 of the Hindu Marriage Act by the respondent are ordered to be revived and the same be heard and disposed of by learned Family Court concerned, in accordance with law, on merit. Parties through counsel are directed to appear before the learned Family Court on **15.12.2025.**

[9] The petition is disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of accordingly

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2026(1)FLJ101

IN THE HIGH COURT OF ALLAHABAD

(Hon'ble Judge: Arindam Sinha; Satya Veer Singh)

First Appeal Defective No 541 of 2025 **dated 18/11/2025**

Avdhesh Kumar

Versus

Dhruvi Chandra

MAINTENANCE ORDER

Hindu Marriage Act, 1955 Sec. 12 - Maintenance Order - Appeal filed against maintenance pendente lite order under Hindu Marriage Act - Appellant challenged direction of payment fixed by Family Court alleging excessive deduction from salary - Respondent submitted that appellant neglected maintenance and failed to disclose complete income details - Family Court held appellant earning substantially more than shown in salary slip and directed payment of litigation expenses and maintenance - High Court observed that appellant failed to produce salary records before Family Court and adverse presumption drawn against him - Held that direction of payment of Rs. 15,000 per month maintenance and Rs. 20,000 litigation cost justified - Appeal dismissed as devoid of merit - Impugned order confirmed - Appeal stands dismissed

Law Point: When a party conceals income particulars and fails to produce relevant documents, adverse presumption may be drawn, and maintenance fixed by trial court based on available material cannot be interfered with unless perverse or arbitrary

Acts Referred:

Hindu Marriage Act, 1955 Sec. 12

Counsel:

Dinesh Kumar Singh, Sanjay Srivastava

JUDGEMENT

Arindam Sinha, J.- [1] Mr. Dinesh Kumar Singh, learned advocate appears on behalf of appellant-husband. He submits, the appeal stands preferred against judgment dated 28th April, 2025 of the Family Court, directing maintenance pendente lite. The appeal was presented in time and also certified copy of formal order filed by supplementary affidavit on 21st July, 2025. Yet the appeal stands marked as defective.

[2] He submits further, service has been made. Mr. Ganesh Shanker Patel, learned advocate holding the brief appears on behalf respondent. He hands up judgment dated 29th October, 2025 of the Family Court, rejecting appellant's petition under section 12 in Hindu Marriage Act, 1955. The certified copy is handed back.

[3] By our order dated 6th November, 2025 we had recorded that office report of 4th November, 2025 said, the certified copy had been kept in the file. As such regular number be allotted. Mr. Singh hands up English translation of impugned judgment with copy to Mr. Patel.

[4] On query submission at the Bar is, the learned advocates are ready to argue the appeal. Mr. Singh submits, salary slip of his client stands disclosed at page-60 of the appeal papers. Net salary credited is Rs.34,196.85/-. The Supreme Court in **Kalyan Dey Chowdhary vs. Rita Dey Chowdhary**, 2017 AIR(SC) 2383had declared that not more than 25% of the net salary can be directed to be paid as maintenance pendente lite. In this case direction of Rs. 15,000/- out of net salary credited at 34,196.85/-, is almost 50%. The direction be modified in appeal, following **Kalyan Dey Chowdhary** (supra).

[5] Mr. Patel submits, the direction should not be interfered with. The Family Court had gone into the facts and found that of the claim made by his client, only Rs. 20,000/- was directed to be paid as litigation expenses and Rs. 15,000/- per month as maintenance pendente lite. There was the marriage duly solemnized on 21st January, 2024 but shortly thereafter parties separated. His client has been compelled to live separately. Appellant did not provide for her maintenance and even after impugned judgment, no payment was made.

[6] Perused impugned judgment dated 28th April, 2025. No documentary evidence was produced before the Family Court by appellant nor respondent. Rs. 80,000/- was alleged by respondent to be monthly income of appellant, who having not produced his salary slip before the Family Court, has disclosed at page-60 one payment advice dated 31st March, 2025 in respect of his salary. From it we see, gross salary is Rs. 74,542.85/-. It is close to the figure of Rs. 80,000/- alleged by respondent. Furthermore, there are deductions of, inter alia, loans taken by appellant. Those deductions and deduction of aggregate income tax of Rs. 3,060/- reduced the net income figure to aforesaid sum of Rs. 34,196.85/- Considering appellant did not produce any salary slip before the Family Court nor preceding or subsequent salary slips in relation to the disclosed slip dated 31st March, 2025 before us, there is adverse presumption against appellant that the deductions for repayment of loans are annual deductions. In the circumstances, respondent, who, we presume could not lay hands on appellant's salary slip, by alleging his income to be Rs. 80,000/- was more truthful before the Court.

[7] In Kalyan Dey Chowdhary (supra), there was reference to an earlier case, where the direction amounted to 25% of the income of the other spouse. In view of above impression we have of appellant, we are unable to accept Rs. 34,196.95/- as appellant's net income. Directions for, litigation expenses at Rs. 20,000/- and

maintenance pendente lite at Rs. 15,000/- per month appear to have been correctly deduced by the Family Court. Impugned judgment is confirmed.

[8] The appeal does not bear merit. It is dismissed

2026(1)FLJ103

IN THE HIGH COURT AT CALCUTTA

[From JALPAIGURI BENCH]

(Hon'ble Judge: Debangsu Basak)

C O (Civil Order) No 141 of 2025 **dated 18/11/2025**

Promit Bose

Versus

Ankita Majumder (Bose)

MAINTENANCE QUANTUM

Hindu Marriage Act, 1955 Sec. 24 - Maintenance Quantum - Husband challenged maintenance granted under Section 24 of Hindu Marriage Act - Wife receiving compensation under Domestic Violence Act - Court held wife without independent income entitled to one-third of family income as maintenance - Directed payment of total Rs.1,10,000 per month including amount under DV Act - Petition modified to adjust quantum - Revisional application disposed accordingly - Maintenance Amount Modified

Law Point: Under Section 24 of Hindu Marriage Act, spouse without income entitled to one-third of family income as maintenance after adjusting sums received under other statutory provisions

Acts Referred:

Hindu Marriage Act, 1955 Sec. 24

Counsel:

Amit Kumar Basu, Bonny Basak, Rima Sarkar, Sidhi Sethia

JUDGEMENT

Debangsu Basak, J.- [1] The revisional application is directed against Order No. 9 dated April 10, 2025 passed by the learned Fast Track Court in Siliguri in Misc. Case No. 10 of 2024.

[2] The revisional application is at the behest of the husband.

[3] Learned advocate appearing for the petitioner submits that, the learned Judge misconstrued and misapplied the principles relating to grant of maintenance under Section 24 of the Hindu Marriage Act, 1955. He submits that, the Opposite Party did not come with clean hands in her application under Section 24 of the Act of 1955. He

points out that, the parties to the proceedings under Section 24 of the Act of 1955, were required to file declaration of assets and affidavit as to assets. Petitioner duly did so. Petitioner disclosed his monthly income. Opposite Party, however, suppressed her income that she receives by working at a particular place.

[4] Learned advocate appearing for the petitioner submits that, the Opposite Party is highly educated. She holds a Master degree in English. She is capable of earning herself. She may work to maintain herself.

[5] Learned advocate appearing for the petitioner submits that, the Opposite Party is receiving compensation under the Protection of Women from Domestic Violence Act, 2005. He contends that, a lady cannot approach different fora for the purpose of receiving compensation or alimony or maintenance on one pretext or the other by invoking the provisions of the Act of 1955 or the provisions of the Criminal Procedure Code or the provisions of the Act of 2005. The quantum of maintenance imposed by the impugned order requires reworking.

[6] Opposite Party is represented.

[7] Marital status of the parties before Court is admitted. Parties are married to each other.

[8] Opposite Party approached the fora under the provisions of Act of 2005. She was directed to receive and the Court is informed that she is receiving Rs.25,000/- per month in terms of the order passed under the Act of 2005.

[9] Opposite Party also filed an application under Section 24 of the Act of 1955. Such application was taken up for consideration and decided by the order impugned.

[10] The impugned order proceeds to take note of the assets declared by both the parties.

[11] It is admitted by the petitioner that the petitioner is presently working at France and is drawing a monthly salary equivalent to Rs.3,30,000/-per month converted to the Indian currency.

[12] Documents disclosed in the proceedings under Section 24 of the Hindu Marriage Act show that the opposite party is receiving a sum of Rs.25,000/- per month in terms of the order passed under the Act of 2005. Independent income of the Opposite Party is yet to be established.

[13] The income of the petitioner, therefore, is Rs.3,30,000/- per month.

[14] Usually the spouse without employment is granted 1/3rd of the family income as maintenance. Accepting amount of maintenance that is granted is 1/3rd of the family income, 1/3rd of Rs.3,30,000/- will be Rs.1,10,000/- per month.

[15] The Opposite Party is receiving a sum of Rs.25,000/- per month in terms of the order passed under the Act of 2005. Such sum of Rs.25,000/- should be deducted from the aggregate of sum of Rs.1,10,000/- per month which the Opposite Party is entitled to receive from the petitioner for her maintenance. Consequently, in the

proceedings under Section 24 of the Hindu Marriage Act, the Opposite Party is entitled to receive a sum of Rs.85,000/- per month.

[16] Contention with regard to approach to different fora for the purpose of receiving maintenance or compensation, as advanced on behalf of the petitioner, is of no consequence. It is the family income which is taken into consideration. Opposite Party is without any income of her own. She is not working presently. The family income is therefore Rs.3,30,000/- per month. It is out of the total family income that the amount of maintenance is directed to be paid. The quantum of maintenance ultimately receivable by the spouse applying for maintenance is largely 1/3rd of the family income.

[17] In such circumstances, the impugned order which directs a maintenance of Rs.50,000/- per month to be paid to the petitioner is modified. The petitioner will proceed to pay a sum of Rs.1,10,000/- per month in aggregate which will include sum of Rs.25,000/- per month payable under the Act of 2005 to the Opposite Party and a sum of Rs.85,000/- per month under the Act of 1955. Payment under the Act of 1955 will commence from the month in which the application under Section 24 of the Act of 1955 was filed before the Trial Court.

[18] Co/141/2025 is **disposed of** accordingly

2026(1)FLJ105

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge: Madhuresh Prasad; Supratim Bhattacharya)

F A T No 157 of 2021 **dated 17/11/2025**

In The Matter Of: Pradip Kumar Pyne

Versus

Nil

PROOF OF WILL

Evidence Act, 1872 Sec. 90, Sec. 69, Sec. 68 - Indian Succession Act, 1925 Sec. 63 - Bharatiya Sakshya Adhiniyam, 2023 Sec. 92, Sec. 67, Sec. 68 - Proof Of Will - Appeal filed by son of testator seeking letters of administration in respect of a Will executed decades ago - Appellant claimed both attesting witnesses had expired and sought presumption of genuineness under Section 90 of Evidence Act - Trial court rejected prayer holding that presumption under Section 90 not applicable to Will and signatures of attesting witnesses not proved - Appellate court observed that execution and attestation of Will must be proved in terms of Section 63 of Indian Succession Act and Section 68 of Evidence Act - Found that witness acquainted with handwriting of testator and attesting witness proved their signatures - No suspicious circumstance

found regarding Will - Held that appellant entitled to letters of administration - Letters of administration directed to be issued - Appeal Allowed

Law Point: When both attesting witnesses to a Will have expired, proof of execution may be established by evidence of a person acquainted with handwriting of testator and at least one attesting witness under Section 69 of Evidence Act; presumption under Section 90 not applicable to Wills

Acts Referred:

Evidence Act, 1872 Sec. 90, Sec. 69, Sec. 68

Indian Succession Act, 1925 Sec. 63

Bharatiya Sakshya Adhiniyam, 2023 Sec. 92, Sec. 67, Sec. 68

Counsel:

Saurav Sen, Triptimoy Talukder, Diptomoy Talukder

JUDGEMENT

Supratim Bhattacharya, J.- [1] This present First Appeal has been preferred by Pradip Kumar Pyne, the son of the testator of the Will namely Gopinath Pyne.

[2] The Will in contention is said to have been executed on 25.02.1976.

[3] The said Pradip Kumar Pyne sought for letter of administration in respect of the said Will before the learned Chief Judge, City Civil Court, Calcutta being Probate Case No. 50 of 2011.

[4] On a written objection being filed on behalf of the opposite party namely Ruby Dutta the probate case became contentious and has been renumbered as Other Case being O.C. 33 of 2014 and was transferred to City Civil Court, Calcutta, Bench II for disposal.

[5] During the proceedings as the opposite party defendant did not take any step so ultimately the case was fixed for ex parte hearing.

[6] After taking both oral and documentary evidence and considering the same the O.C. 33 of 2014 has been dismissed ex parte without cost on 31.05.2017.

[7] Being aggrieved by and dissatisfied with the judgment and order dated 31.05.2017 passed by the learned City Civil Court, II Bench Calcutta in OC no. 33 of 2014, the present appeal has been preferred.

Factual Matrix.

[8] The lis involves a Will dated 25.02.1976 said to have been executed by the testator namely Gopinath Pyne who was the father of the present appellant/plaintiff. The said Gopinath Pyne was the sebait in respect of the deity namely Sri Sri Narugopal Jiu and one of the Sebaits in respect of the deity namely Sri Sambhunath Jiu. The said testator through the impugned Will intended to nominate his wife namely Smt. Bina Pyne to be a sebait and joint trustee in respect of the aforementioned two deities on his death, with all the rights, duties which have vested in him as joint trustee. Through the

impugned Will the testator also appointed Pradip Kumar Pyne the appellant/plaintiff as the executor of the said Will. The plaintiff/appellant sought for letters of administration in respect of the said Will as because it has been stated that the two attesting witnesses of the said Will namely Kedarnath Pyne and Arunprakas Dhar have expired.

[9] The said letters of administration was sought for by placing Smt. Rubi Dutta as an opposite party.

[10] The said Rubi Dutta had filed written statement and had prayed for dismissal of the said case, but ultimately she did not contest the suit as such the said case was heard ex parte. In the present appeal also she has not appeared to contest the appeal

[11] In the proceeding before the Trial Court Pradip Kumar Pyne the executor adduced evidence as PW1. One Chittapriya Raychowdhury a practicing advocate of City Civil Court, Calcutta adduced evidence as PW2. An Upper Division Clerk posted in the office of Registrar of Assurance Calcutta namely Pijush Kanti Das deposed as PW3.

The following documents have been marked as Exhibits:

Exhibit-1 - Death certificate of Gopinath Pyne

Exhibit-1/1 - Death Certificate of Anun Prakas Dhar

Exhibit-1/2 - Death certificate of Bina Pyne

Exhibit-1/3 - Death certificate of Kedarnath Pyne

Exhibit-2- Tax receipt of KMC

Exhibit-2/1 - Tax receipt of KMC

Exhibit-3 Original Will

Exhibit-3/1- Signature of Kedarnath Pyne.

Exhibit-3/2- Signature of Gopinath Pyne.

Exhibit 4- Ration Card.

Exhibit-5 Trust Deed.

Exhibit-6 - Power of attorney executed by Gopinath Pyne.

Exhibit-7 Authorization letter.

Exhibit-8- Photo copy of the certified volume copy.

[12] The Trial Court framed the following issues:

Issues

1. Is the suit maintainable in its present form and prayer?

2. Has the plaintiff been able to prove due execution and attestation of the Will?

3. Has the plaintiff been able to prove his case?

4. Is the plaintiff entitled to the relief as sought for?"

[13] Before the Trial Court on behalf of the testator it was submitted that both the attesting witnesses namely Kedarnath Pyne and Arun Prakas Dhar have expired as such issuance of letters of administration has been sought for. It was submitted that the

Will in question being a thirty years old document so genuineness of the said document under Section 90 of the Indian Evidence Act is to be presumed. It was also submitted on behalf of the petitioner/plaintiff that letters of administration can be issued as there is no suspicious circumstance. The learned Trial Judge has discarded the submission as regards to presumption of correctness of the impugned Will under Section 90 of the Evidence Act being a document of more than thirty years, on the ground that the aforesaid section does not apply to a Will. The Trial Court has held that neither the signature of the two attesting witnesses have been proved nor any person acquainted with the handwriting or signature of either of the two attesting witnesses has been examined. The learned Trial Judge, in the impugned judgment found that there is no explanation for non-examination of son, daughter, relative or any associate of any of the two attesting witnesses. This non-examination of any of the attesting witnesses or any person who is acquainted with the handwriting or the signature of either of the attesting witnesses is to be scrutinised. Considering the aforesaid facts and circumstance, the learned Trial Judge has not granted letters of administration in respect of the said Will.

[14] The Ld. Senior Counsel Mr. Sourav Sen being assisted by Triptimoy Talukder and Diptomoy Talukder representing the appellant/petitioner submitted during his exhaustive argument that there is no suspicious circumstance as regards to the impugned Will.

He has further submitted that both the attesting witnesses namely Kedarnath Pyne and Arun Prakas Dhar have expired.

He has further submitted that death certificates of the testator Gopinath Pyne and both the attesting witnesses have been proved and those have been marked as exhibits.

The learned counsel has also submitted that the Will in question has been executed on 25.02.1976 that is more than thirty years ago as such the Will in question being an old document so the correctness of the said document is to be presumed.

He has further submitted that a learned advocate has deposed being PW2. The said witness has proved the signature of the testator and one of the attesting witnesses namely Kedarnath Pyne.

The learned counsel has relied upon two judgments. One passed by the Hon'ble Apex Court in the case between **V. Kalyanaswamy (Dead) by legal representatives and another vs. L. Bakthavatsalam (Dead) by legal representatives and others**, 2021 16 SCC 543. He has also relied upon another judgment passed by a coordinate Bench of this Court passed in FAT 304 of 2019 between Sujata Dhar vs. Ranjit Kumar Dhar and Ors.

[15] From the submission of the learned counsel and the documents on record it transpires that the appellant who is the executor appointed by the testator in the said Will in question has prayed for letters of administration.

[16] Section 63 of the Indian Succession Act, 1925 lays down execution of unprivileged Wills. The said Section states as follows:

"63. Execution of unprivileged Wills.

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:

(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

The aforementioned section states explicitly that a will shall be attested by two or more witnesses.

Generally for proof of execution of a document which is required as per the provisions of law to be attested, Section 68 of the Indian Evidence Act corresponding to Section 67 of the Bharatiya Sakshya Adhiniyam comes into play.

In the present proceeding both the attesting witnesses have expired. When both the attesting witnesses have expired then to prove a Will Section 69 of the Indian Evidence Act, 1872 corresponding to Section 68 of the Bharatiya Sakshya Adhiniyam, 2023 comes in aid. The said section of the Bharatiya Sakshya Adhiniyam, 2023 lays down as follows:

"68. Proof where no attesting witness found.

If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."

The said section lays down that if no attesting witness can be found it must be proved that the attestation of one attesting witness at least is in his handwriting and the signature of the person executing the document is in the handwriting of that person. This proof can only be adduced by other person.

[17] In this present case a learned advocate namely Chittapriya Ray Chowdhury (PW2) has deposed claiming that he used to conduct cases on behalf of the testator namely Gopinath Pyne for twenty years. He has further deposed that a power of attorney dated 12.07.1993 (exhibit-6) was executed by the testator Gopinath Pyne in favour of his

wife namely Bina Pyne, bears his signature as a witness. He has further deposed that in his presence the said power of attorney was executed by Gopinath Pyne. From the said evidence it can be assumed that the said PW2 was acquainted with the testator namely Gopinath Pyne and his signature. The said witness has deposed that he knows the signature of Gopinath Pyne and also the signature of his brother Kedarnath Pyne, since both were his clients. This witness has thus proved the signatures of the testator Gopinath Pyne and that of one of the attesting witnesses namely Kedarnath Pyne. This aforementioned facts complies Section 68 of the Bharatiya Sakshya Adhiniyam. In such circumstance the said witness is competent and trustworthy.

[18] We find force in reliance placed by the appellant on decision of the Apex Court in the case of **V. Kalyanaswamy** (Supra) as also decision of the co-ordinate Bench of this Court in FAT 304 of 2019. Insofar as the submissions advanced on behalf of the appellants that in the present case since no attesting witness could be found, deposition of the person acquainted with the handwriting of the testator and attesting witness is sufficient to prove execution of the Will by the testator. We also consider it apposite to refer to a judgment of the Hon'ble Apex Court passed in the case between **Ashutosh Samanta (Dead) by legal representatives and Ors. Vs. Ranjan Bala Dasoi and Ors**, 2023 19 SCC 448. Paragraph 16 of the said judgment lays down the following:

"16. In Babu Singh v. Ram Sahai **Babu Singh v. Ram Sahai**, 2008 14 SCC 754, the Court held as follows with regard to Section 69: (SCC p. 759, paras 17-18)

"17. It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indicated in Section 69 i.e. by examining witnesses who were able to prove the handwriting of the testator or executants. The burden of proof then may be shifted to others.

18. Whereas, however, a will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act and Section 68 of the Act, in the event the ingredients thereof, as noticed hereinbefore, are brought on record, strict proof of execution and attestation stands relaxed. However, signature and handwriting, as contemplated in Section 69, must be proved."

From the aforementioned discussion it transpires that Section 69 of the Indian Evidence Act corresponding to Section 68 of the Bharatiya Sakshya Adhiniyam has been complied in the proceeding.

[19] Insofar as submission of the learned Advocate for the appellant relying upon presumption regarding documents which are 30 years old, under Section 90 of the Evidence Act 1972, the law in this regard is clearly stated by the Apex Court in the above noted decision of the Apex Court in the case of Ashutosh Samanta (Dead) by legal representatives and Ors. (Supra), wherein the Apex Court in paragraph 13 has stated:

"13. In view of the above decision, wills cannot be proved only on the basis of their age the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Section 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872."

[20] Section 90 of the Indian Evidence Act has been relied by the appellant stating that the impugned Will is thirty years old as such correctness of the said document is to be presumed.

The proof of execution of the Will is governed by other sections of the Act, namely Section 67 and Section 68 of the Bharatiya Sakshya Adhiniyam, 2023 corresponding the Section 68 and Section 69 of the Indian Evidence Act, 1872. Therefore, the contention of the appellant as regards to Section 90 of the Indian Evidence Act , 1872 Corresponding to Section 92 of the Bharatiya Sakshya Adhiniyam, 2023 as regards to presumption as to documents thirty years old being duly executed and attested by the persons by whom it purports to be executed and attested is not at all acceptable. The rule laid down in Section 90 of the Indian Evidence Act , 1872 Corresponding to Section 92 of the Bharatiya Sakshya Adhiniyam, 2023 does not apply to proof of a Will in a probate proceeding and such contention cannot be taken into consideration.

[21] It is also fact that the said Smt. Rubi Dutta on the basis of whose written statement the case before the Trial Court had become contentious had not ultimately contested the suit as such the same was heard ex parte and in the present appeal also she has not entered appearance.

[22] Thus from the aforementioned discussion it is apparent that the appellant has been able to prove the Will impugned.

[23] In such circumstance this Court is of the view that the impugned judgment passed in the probate proceeding being OC No. 33 of 2014 is required to be interfered with and as such is set aside.

[24] The prayer sought for by the appellant is **allowed.**

[25] Letters of administration in respect of the Will dated 25.02.1976 executed by Gopinath Pyne is granted subject to the procedure laid down in law.

[26] Office/Department to take steps accordingly.

[27] Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

[28] Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree

2026(1)FLJ112

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge: M G S Kamal)

Civil Petition No 200024 of 2025 **dated 11/11/2025**

Sangamma W/o Late Mallareddy Meti @ Malleshappa Meti

Versus

State; Commissioner, Public Instructions; Deputy Director of Public Instructions; Mahadevi W/o Late Mallareddy Meti @ Malleshappa Meti

TRANSFER OF SUIT

Family Courts Act, 1984 Sec. 7, Sec. 2, Sec. 3 - Transfer of Suit - Petition filed for transfer of civil suit pending before Additional Civil Judge to Family Court at Kalaburagi - Petitioner claiming status of legally wedded wife of deceased sought declaration and family pension - Respondent contended that similar suit for partition pending before Senior Civil Judge Shahapur - Observed that establishment of Family Court mandatory only in areas exceeding prescribed population and where not established, jurisdiction lies with District or Subordinate Civil Court - Held that Shahapur having no Family Court, Senior Civil Judge had competent jurisdiction - Petition disposed directing withdrawal and transfer of pending suit to Shahapur Court for joint trial with partition suit - Matter to be disposed within one year - Petition Disposed

Law Point: When no Family Court exists under Sec.3 of Family Courts Act, jurisdiction over matrimonial issues vests with District or Subordinate Civil Courts under Sec.7, and such suits may be jointly tried if subject matter common.

Acts Referred:

Family Courts Act, 1984 Sec. 7, Sec. 2, Sec. 3

Counsel:

Mahantesh Patil, Anita M Reddy, D P Ambekar

JUDGEMENT

M.G.S.Kamal, J.- [1] This petition by Smt. Sangamma, claiming to be the wife of one deceased - Mallareddy seeking the following reliefs:-

"O.S.No.190/2019 pending on the file of learned I Addl. Civil Judge and JMFC, Kalaburagi be withdrawn and transferred to the learned Prl. Judge Family Court, Kalaburagi."

[2] Sri. Mahantesh Patil, learned counsel for the petitioner submits that above suit in O.S.No.190/2019 is filed by the petitioner before the I. Additional Civil Judge and JMFC, Kalaburagi. That in the light of provisions contained under Section 7 (1) (c) (d)

of the Family Courts Act, 1984 (hereinafter referred to as 'of the Act,") which excludes the jurisdiction of the Civil Court, the aforesaid suit is required to be withdrawn and transferred to the Principal Judge, Family Court, Kalaburagi, which has the jurisdiction under the Act. He also refers to the order passed by the Division Bench of this Court in the case of **Narasamma w/o Late G. Narasanna, since deceased by her Lrs and others vs. Rajamma w/o Late G. Narasanna in MFA.No.204272/2023** dated 28.11.2024. Thus, he submits that the present suit be withdrawn and transferred to the Family Court, Kalaburagi as prayed for.

[3] In response, Sri. D. P. Ambekar, the learned counsel appearing for the respondent No.4 submits that subsequent to filing of the suit in O.S.No.190/2019, the petitioner Smt. Sangamma has filed another suit in O.S.No.23/2020 against the respondent No.4 herein and others seeking relief of partition and separate possession of various landed and house properties. That written statements in the said suit has been filed denying the very relationship of the petitioner herein with that of deceased - Mallareddy. That the said suit is pending consideration on the file of the Senior Civil Judge, Shahapur, which is a Competent Court to decide the issues of controversy arising between the parties. He submits that even the issue involved in the present suit in O.S.No.190/2019 being similar as to the one involved in suit in O.S.No.23/2020, particularly with regard to establishment of relationship with the parties concerned, may be tried and disposed of analogously. Therefore, he submits that instead of withdrawing and transferring the present suit in O.S.No.190/2019 to the Family Court, at Kalaburagi, the same may be withdrawn and transferred and placed before the Senior Civil Judge at Shahpaur to be tried along with suit in O.S.No.23/2020.

[4] In response, the learned counsel for the petitioner however submits that the issue involved in the suit in O.S.190/2019 being declaration with regard to marital status of the parties, is required to be adjudicated only by the Family Courts, constituted under the provisions of the Family Courts Act. In the light of provisions under Section 7 of the said Act, it is only the Family Court at Kalaburagi would have the jurisdiction to deal with the matter. He also submits that alternatively the suit in O.S.No.23/2020 may be withdrawn and transferred to the Family Court at Kalaburagi to be tried along with the present suit in O.S.No.190/2019.

[5] Learned counsel for respondent No.4 on the other hand submits that such a course of action is unwarranted. Firstly as the subsequent suit in O.S.No.23/2020 filed by the very petitioner is for the relief of partition and separate possession and all the landed properties are situated within the jurisdiction of the Senior Civil Judge in Shahapur, which is the Competent Court to deal with the said matter. Secondly, he refers to the provisions of Section 3 and Clause-(a) of Sub Section (1) of Section 7 of the Act, to submit that since there is no Family Court constituted in Shahapur, it is only the Senior Civil Judge, Shahapur which is competent to deal even the issues pertaining to the matrimonial issues. Thus, he submits on both the counts of territorial

jurisdiction as well as the competency, it is the Senior Civil Judge at Shahapur, which has the jurisdiction.

[6] Heard. Perused the records.

[7] The suit in O.S.No.190/2019 filed by the petitioner against respondent - State authorities as well as Smt. Mahadevi is for the following reliefs:-

i. It be declared that the plaintiff is the legally wedded wife of late Mallareddy Meti and Malleshappa Meti S/o Shankreppa Meti, the Block Educational Officer in the office of the Deputy Director of Public Instructions, Kalaburagi, i.e., the defendant No.3.

ii. A decree for mandatory injunction be granted directing the defendants No.1 to 3 to sanction family pension and other pensionary benefits to the plaintiff as a legally wedded wife of late Mallareddy Meti @ Malleshappa Meti S/o Shankreppa Meti, the Block Educational Officer in the office of the Deputy Director of Public Instructions, Kalaburagi.

iii. Cost of the suit be awarded and

iv. Any order relief be awarded to which the plaintiff is entitled to as per the circumstances of the case.

[8] Written statement in the said suit has been filed denying the claim of the petitioner herein of she being a legally wedded wife of deceased - Mallareddy. The following issues have been framed in the said suit:-

1. Whether the plaintiff proves that she is legally wedded first wife of deceased Mallareddy Meti?

2. Whether this suit is bad for non joinder of parties?

3. Whether the plaintiff is entitled for the relief as sought in the plaint?

4. What order or decree?

[9] The suit in O.S.No.23/2020 is filed by the very petitioner Smt. Sangamma for the following reliefs:-

a. A decree for partition and separate possession may be passed entitling the plaintiff to half share in the suit schedule except suit schedule Item Nos.9 to 11 are self acquired properties of late. Mallareddi @ Malleshappa and Item No.2 land Sy.No.219/4 02 acres and 02 acres total 04 acres situated at village Wadagera Tq: Jewargi be exclusively allotted to Plaintiffs.

b Thasildar Jewargi, Thasildar Surpur may be appointed as a commissioner to divide the lands by meets and bond.

C. The court commissioner be appointed to divide the suit house Item No.12 of suit schedule A properties.

d. That any other relief for which plaintiff in effected be granted.

e. Cost of the suit be awarded to the plaintiffs.

[10] Written statement has been filed denying the claim of the plaintiff to be the legally wedded wife of deceased - Mallareddy even in the said suit and her entitlement to the properties narrated therein. The following issues have been framed in the said suit:-

1. Whether the plaintiff proves that the plaintiff No.1 is the legally wedded wife of late Mallareddy @ Malleshappa Meti?

2 Whether the plaintiff proves that plaintiff No.2 is the adopted son of the plaintiff No.1 and the late Malaureddy @ Malleshappa?

3. Whether the defendant Nos.1 to 3 proves that the defendant No.1 is the legally wedded wife of the late Mallareddy @ Malleshappa Meti?

4. Whether the defendant Nos.1 to 3 proves that the defendants No.2 to 5 are the children's of defendant No.1 and Mallareaddy @ Malleshappa Meti?

5. Whether the plaintiffs proves that Item Nos.1 and 3 to 8 and 12 of the plaint schedule of the plaint schedule properties are the Hindu Undivided ancestral and Joint Family Property of themselves and defendant No.6?

6. Whether the plaintiffs proves that Item Nos.2 and 9 to 11 of the plaint schedule properties are the self acquired property of the late Mallareddy @ Malleshappa Meti.?

7. Whether the defendant Nos.1 to 3 proves that Item No.2 of plaint schedule property is the self acquired property of defendant No 4 (Kavita)?

8. Whether the defendants No.1 to 3 proves that Item No.9 of the plaint schedule property is the self acquired property of defendant No.1?

9. Whether the defendant No.1 to 3 proves that item No.10 of the plaint schedule property is the self acquired property of defendant No.2.?

10. Whether the defendant No.1 to 3 proves that item No.11 of the plaint schedule property is the self acquired property of defendant No.3 (Sridhar)?

11. Whether the defendants No.1 to 3 proves that on the Ugadi day of 1983 the late Mallareddy and defendant No.6 partitioned their immovable properties?

12. Whether the suit of the plaintiff in present form is not maintainable?

13. Whether the suit of the plaintiff is time barred?

14. Whether the suit of the plaintiff is bad for parcel partition?

15. Whether the defendant No.1 to 3 proves that the defendant No. 1 to 5 are absolute owners in possession of Item Nos.1, 3 to 8 and 12 of the plaint schedule property?

16. Whether the plaintiffs are entitled to half share in Items No.1, 3 to 8 and 12 of the plaint schedule properties?

17. Whether the plaintiffs are entitled to relief sought in the plaint.?

18. What order or decree.?

[11] It is under these circumstances, the question that requires to be addressed is:-

"Whether the suit in O.S. No.190/2019 is required to be withdrawn and placed before the Senior Civil Judge, Shahapur, which is trying the suit in O.S.No.23/2020 filed by the very petitioner or the same be merely withdrawn and placed before the Family Court at Kalaburagi as sought for by the petitioner.?"

[12] Apposite to refer to Clause-(d) of Section 2 of the Act, defining the term Family Court, which reads as under:-

(d) "Family Court" means a Family Court established under Section 3.

[13] Section 3 of the Act, reads as under:-

"3. Establishment of Family Courts.- (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,-

(a) Shall, as soon as may be after the commencement of this Act, established for every area in the State comprising city or town whose population exceeds one million, a Family Court;

(b) May establish Family Courts for such other areas in the State as it may deem necessary.

2. The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits."

[14] From the reading of the aforesaid provision under Section 3 of the Act, it is clear that a Family Court be established in a every area comprising City or Town whose population exceed 1 million.

[15] It is also relevant to refer to Clause-(a) and (b) of Sub Section (1) of Section 7 which reads as under:-

"7 (1) .....

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation, and

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a distict Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends."

[16] The conjoint reading of the aforesaid provisions would indicate that for the purpose of the establishment of Family Court, the requirement is population exceeding one million in every area in the State comprising of City or the Town and where such establishment is not required for want of the population exceeding one million, Section 7 of the Act, itself provides that said jurisdictions shall be exercisable by the District Court or any Subordinate Civil Court under any law for the time being in force, in respect of suits and the proceedings of the nature referred to in the explanation.

[17] The explanation of Section 7 indicates that the types of disputes to be dealt with by the District Court or the Sub-Ordinate Civil Court referred to under Clause-a of Sub Section (1) of Section 7 of the Act.

[18] Admittedly, suit in O.S.No.23/2020 is filed before the Senior Civil Judge, Shahapur, which is competent and has jurisdiction to deal with the proceedings of the nature referred to in the explanation, as no Family Court as contemplated under Section 3 of the Act has been established in the said area.

[19] Besides, as rightly pointed out by the learned counsel for the respondents, the subsequent suit is one for partition where all the immovable properties are situated within the jurisdiction of the Senior Civil Judge, Shahapur and the parties are also residing therein.

[20] In that view of the matter, the present petition is **disposed of** directing withdrawal of the suit in O.S.No.190/2019 filed by the petitioner to be transferred / presented before the Senior Civil Judge at Shahapur to be tried analogously with O.S.No.23/2020.

[21] Since, the parties are represented by their counsel, they shall appear before the Senior Civil Judge, at Shahapur on 15.12.2025.

[22] Considering the pendency in the matter, since the year 2019, the Senior Civil Judge, at Shahapur shall endeavor to dispose of the matter expeditiously within an outer limit of one year from the date of receipt of certified copy of this order

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2026(1)FLJ117

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge: Krishna Rao)

T S (Testamentary Suits) No 4 of 2022 **dated 11/11/2025**

Ajit Kumar Sengupta, (Deceased) -andtapati Sengupta

Versus

Manashi Sengupta Bhadra

PROBATE OF WILL

Indian Succession Act, 1925 Sec. 63, Sec. 68 - Probate of Will - Plaintiff sought probate of Will of deceased retired Judge executed in favour of wife and daughter - Defendant contested alleging forgery and undue influence - Evidence of attesting witnesses and draftsman proved due execution and soundness of mind of testator - Cross-examination revealed defendant admitted testator's signature - Court found compliance with statutory requirements under Sec 63 and Sec 68 - No material suggesting coercion or incapacity - Application for handwriting expert report filed belatedly rejected - Held Will genuine and duly executed - Probate granted to executrix - Petition Allowed

Law Point: Once attesting witnesses prove execution and no evidence of incapacity or coercion exists, Will stands proved under Sec 63 and Sec 68 of Indian Succession Act

Acts Referred:

Indian Succession Act, 1925 Sec. 63, Sec. 68

Counsel:

Suparna Mukherjee (Senior Advocate), Sarbajit Mukherjee, Abhijit Sarkar, Abhipriya Sarkar, Kallol Guha Thakurta, Vinod Kumar Singh, Barun Ghosh, Wasim Rahaman, Dipankar Dutta, Saurav Mitra, Rajesh Nath Goswami

JUDGEMENT

Krishna Rao, J.- [1] The plaintiff, namely, Tapati Sengupta, W/o Late Ajit Kumar Sengupta has initially filed an application being P.L.A. No. 309 of 2012 praying for grant of probate of the Last Will and Testament of the deceased Ajit Kumar Sengupta dated 29th February, 2008. On receipt of citation, Snehajit Sengupta being the son of the testator had filed caveat and affidavit-in-support of the caveat. On receipt of caveat, the probate application being P.L.A. No. 309 of 2012 is converted to Testamentary Suit No. 4 of 2022. During the pendency of the suit, Snehajit Sengupta passed away. Upon his death, his wife Smt. Manashi Sengupta Bhadra was substituted as defendant.

[2] As per the case of the plaintiff, Ajit Kumar Sengupta executed his last Will and Testament on 29th February, 2008 by appointing his wife Tapati Sengupta and his daughter Amgana Sengupta as joint executrixes of his last Will. The testator died on 22nd September, 2011 at Bridgeport Hospital, Bridgeport, Fairfield, United States of America leaving behind his wife, Smt. Tapati Sengupta, his son Snehajit Sengupta and his daughter Amgana Sengupta. The daughter has affirmed an affidavit by giving her consent for grant of probate of the last Will and Testament of the deceased in favour of her mother. The son has not given consent but has filed caveat and affidavit in support of caveat objecting for grant of probate.

[3] As per the case of the original defendant, he was the only son of the testator of his first wife. The testator was the Judge of this Court as well as the Allahabad High Court. The mother of the original defendant died intestate at the University College Hospital, London, United Kingdom on the date of his birth. After the death of his mother, his father remarried to the plaintiff herein and in their wedlock, his sister Amgana was born. The death of the testator was never communicated to the defendant either by the plaintiff or her daughter.

[4] Mr. Kallol Guha Thakurta, Learned Advocate representing the defendant submits that the defendant came to know about the death of his father through the advertisement/ obituary published in the News Paper, namely, Ananda Bazar Patrika,

Siliguri Edition, dated 14th October, 2011, due to which the defendant could not perform the last ritual rites and customs of his father.

[5] Mr. Thakurta submits that the alleged Will is vague, untrue, false, forged and fabricated from its very first line to its very last line. The signatures, as well as the initials, are also false and forged. The alleged Will in question also does not include the details of other various properties owned by the deceased. He submits that the manner of language in which the so called Will has been drawn up, cannot be that of the eminent retired High Court Judge.

[6] Mr. Thakurta submits that the purported Will is motivated, malafide, manufactured, purported and concocted one. He submits that the defendant is a Tea-Planter by profession and Tea Garden situated at Jalpaiguri due to which he has no other option but to stay-away from Calcutta. He submits that the testator was an aged person, suffering from various ailments and senility and was not in a sound mind and body and was fully dependent upon his wife. Due to his prolonged absence form Calcutta, the plaintiff got an opportunity to contrive against the defendant and fulfill their sweet desire by putting undue influence, pressure and coercion upon the testator.

[7] Mr. Thakurta submits that no probate should be granted on the basis of the alleged Will and the property left behind by the testator should be divided and distributed in accordance with the Hindu Succession Act, 1956.

[8] On completion of argument, the Learned Counsel for the defendant has filed written notes of argument. After completion of argument and filing written notes of argument, the defendant has filed an application being G.A. No. 9 of 2025 praying for obtaining Handwriting Expert report from the Central Forensic Science Laboratory with regard to the signatures of the testator appearing in the alleged Will. In support of his submissions for obtaining Handwriting Expert report, the defendant has relied upon the judgment in the case of **Rama Avatar Soni Vs. Mahanta Laxmidhar Das and Others**, 2019 11 SCC 415.

[9] Mrs. Suparna Mukherjee, Learned Senior Advocate representing the plaintiff submits that the testator during his life time bequeathed the properties both movable, immovable and personal articles to the plaintiff as his wife for her life time and after the death of the plaintiff to his daughter. She submits that the testator in his last Will and Testament declared that he had no relation with his son for the last 15 years and his son Snehajit Sengupta shall not be entitled to inherit any share in the property of the deceased.

[10] Mrs. Mukherjee submits that the plaintiff has proved the last Will and Testament by examining the two attesting witnesses and the witness who drafted the Will and was kept the Will in his possession as per the advice of the testator. She submits that the attesting witnesses of the Will during their examination have categorically stated that the testator has executed his last Will and Testament in their presence.

[11] Mrs. Mukherjee submits that though in the affidavit-in-support of caveat the defendant has taken the stand that the testator has not executed the Will and the Will is forged one and signatures appearing in the Will is not of the testator but during the cross-examination of the plaintiff's witnesses, the defendant has admitted that the signature appearing in the Will is of the testator.

[12] Mrs. Mukherjee submits that the plaintiff has complied with the provisions of Section 63 of the India Succession Act, 1925 by examining the two attesting witnesses and has proved the Will. She submits that the defendant has not able to prove that the Will is a forged document and not signed by the testator. It is the specific case of the plaintiff that the testator has executed his last Will and Testament while possessing good health and fit state of mind but on contrary the defendant has not brought any evidence that the testator was not in a fit state of mind.

[13] Mrs. Mukherjee submits that in one hand the defendant has made out a case that the Will is a forged document and on the other hand, it is stated that the plaintiff has procured Will by coercion. She submits that in the month of January, 2012 itself the defendant had the knowledge about the Will.

[14] Mrs. Mukherjee submits that the defendant has cross-examined the plaintiff's witnesses and the defendant herself examined as D.W.1 and the plaintiff has cross-examined the defendant. The defendant has argued the matter and filed written notes of argument and subsequently, he has filed an application for obtaining Handwriting Expert report which is not maintainable. She further submits that from the trend of cross examination of the plaintiff's witness it is proved that the defendant has admitted the signature of the testator in the Will.

[15] Mrs. Mukherjee in support of her case, she has relied upon the following judgments:

(i) **Madhukar D. Shende Vs. Tarabai Aba Shedage**, 2002 2 SCC 85.

(ii) **Sridevi and Others Vs. Jayaraja Shetty and Others**, 2005 2 SCC 784.

(iii) **Bagai Construction through its proprietor Lalit Bagai Vs. Gupta Building Material Store**, 2013 14 SCC 1.

[16] To prove the Will, the plaintiff has examined four witnesses, namely:

(i) Mrs. Tapati Sengupta . Executrix

(ii). Mr. Gautam Kumar Mitra Attesting Witness of the Will

(iii) Mr. Surendra Deo Dube Attesting Witness of the Will

(iv) Mr. U.S. Menon, Drafted the Will and Kept the Will in his possession as per the instructions of the Testator.

[17] At the time of examination of the plaintiff and his witnesses, eight (8) documents were exhibited, namely:

Exhibit A: Signature of Amgana Sengupta in the affidavit of Amgana Sengupta.

Exhibit B (Collectively): Signatures and initials of Ajit Kumar Sengupta in the Will.

Exhibit C: Will.

Exhibit D: Signature of Gautam Kumar Mitra on the declaration.

Exhibit-E: Signatures of Ajit Kumar Sengupta at the last page of the Will.

Exhibits- E/1 & E/2: Initials of Ajit Kumar Sengupta at page nos. 1 and 2 of the Will.

Exhibit-F: Signature of Surendra Deo Dube appearing at the last page of the Will (Attested by him).

Exhibit G: Signature of Gautam Kr. Mitra appearing at the last page of the Will (Attested by him).

Exhibit-H: Affidavit of Surendra Deo Dube dated 10th October, 2012.

Exhibit H/1: Signature of Surendra Deo Dube at page no. 2 in the affidavit dated 10th October, 2012.

[18] The defendant has examined herself as D.W.1 and during her evidence, five (5) documents were exhibited which are as follows:

Exhibit I: Letter issued by the Learned Advocate of the defendant to the plaintiff dated 10th January, 2012.

Exhibit J: Reply to the letter dated 10th January, 2012 issued by Mr. U.S. Menon to the Learned Advocate for the defendant dated 24th January, 2012.

Exhibit-K: Letter issued by the Learned Advocate of Mr. U.S. Menon dated 10th February, 2012.

Exhibit-L: Reply of Mr. U.S. Menon to the Learned Advocate of the defendant dated 18th February, 2012.

Exhibit M (Collectively): Communications between Mr. U.S. Menon and Learned Advocate for the defendant between 17th February, 2012 to 13th August, 2012.

[19] During cross-examination of the executrix, the Counsel for the defendant in question nos. 76, 77, 125, 163 and 166 has put the following questions:

"Q. 76. (Shown front page and third page of the Will) you will find there are two handwritten dates is there any initial by Justice Sengupta against these handwritings?

Ans. Yes, initials are there

Q.77. (Shown page 1 and page 3) Besides the line in which this handwritten date surfaced, is there any initial of Justice Sengupta?

Ans. No. But there is an initial at the bottom of the entire page.

Q. 125. (Shown the Will once again) In these three pages of the Will save and except the last page i.e. in the first two pages, Justice Sengupta had put his initials at the bottom of the page. But I am showing you the certified copy of the Sale Deed

(shown) where in case of correction Justice Sengupta has put his full signature what do you say to that in this respect (object to by Learned Counsel Suparna Mukherjee, as this question is repeated and the witness had to wait near about 15 minutes and after that a repetitive question is put to the witness which was put vide Q. 82 to Q. 84) (Mr. Guha Thakurta objected to such objection)?

Ans. I don't know what he would do. That is up to Justice Sengupta.

Q. 163. (Shown the Will once again the signature of Justice Ajit Sengupta) are you hundred per cent sure that this is the very signature of Justice Ajit Sengupta? (objected to by Learned Counsel Suparna Mukherjee on the ground that the question is repeated.

Ans. Yes, it is Justice Sengupta's signature.

Q. 166. You have just deposed that all these signatures are of Justice Ajit Sengupta and all these signatures are tallying with each other but in none of the occasions you are present at the venue when Justice Sengupta was putting his signatures in this document is it correct?

Ans. Yes, that is so."

[20] From the trend of cross-examination of the witness no.1 of the plaintiff, it is find that the defendant has admitted the signature of the testator. The defendant has not put any question to the genuinety of the signatures and the initials of the testator.

[21] At the time of examination of attesting witness, namely, Gautam Kumar Mitra his signature in the Will is marked as Exhibit-D and Exhibit-G, Signatures of Ajit Kumar Sengupta are marked as Exhibit-E and initials of Ajit Kumar Sengupta are marked as Exhibits- E-1 and E-2. Signature of another attesting witness, namely, Surendra Deo Dube is marked as Exhibit-F. Mr. Gautam Kumar Mitra during his evidence stated that Justice Ajit Kumar Sengupta signed his Will in his presence and in presence of another attesting witness, namely, Surendra Deo Dube. He has also stated that in the last page of the Will, the testator has signed as his full signature and first and second page, the testator has made initials as AKS. At the time of cross-examination of Gautam Kumar Mitra, the following questions were put to the witness:

"33. (Shown page 3 of Ext. E)- According to you this is the signature of Justice Ajit Kumar Sengupta and he has put his signature in front of you? /Yes.

34. (Shown two pages of the Will i.e. page 1 and page 2) whether the initials of Justice Ajit Kumar Sengupta were there? /Yes, you are correct.

35. (Shown Ext. E1 & E2) these two initials have also been signed by Justice Ajit Kumar Sengupta? / Yes, this was in my presence."

[22] Mr. Surendra Deo Dube being another attesting witness stated that the testator has called him to the residence to sign in the Will as attesting witness and on 29th February, 2008, he had been to the residence of the testator and in his presence and in presence of another attesting witness, namely, Gautam Kumar Mitra, the testator has signed his Will. He identified the Will and signatures appearing in the last

page i.e. page no.3 as signature of testator, signature of Gautam Kumar Mitra and his signature. He also stated that in other two pages of the Will i.e. page no.1 and page no.2, the testator has put his initials in his presence and in presence of another attesting witness.

[23] Learned Counsel for the defendant during cross-examination of Surendra Deo Dube, the following questions was put to the witness:

"55. On the request of Justice Sengupta you have visited his place to put your signature as an attesting witness Is it correct? /Yes."

[24] Mr. U.S. Menon, being P.W.4 stated that when he has attended the conference with Justice Ajit Kumar Sengupta, he requested him to draft a Will and as per instructions of Justice Ajit Kumar Sengupta, he has drafted the Will and thereafter Justice Ajit Sengupta corrected the Will. He then kept ready the Will sometimes in the year 2007 or 2008. The testator kept the Will with him for some time and in the month of February or March 2008, he told that he has signed the Will in presence of attesting witnesses and requested to keep the Will in safe custody and also told to him to give the said Will to his wife after his demise and accordingly, he kept the Will in his locker or almirah at his home. He further stated that after the death of Justice Ajit Sengupta, he has informed his wife.

[25] Learned Counsel for the defendant has not denied that the testator has not given any instructions to the said witness or he has not drafted the said Will or has kept the Will with him as per instructions of the testator.

[26] The defendant has examined herself as witness. During her evidence, the defendant has not brought any evidence to prove that the Will relied by the plaintiff is forged one. The defendant has also not adduced any evidence to say that the testator was not possessing good health or was not in fit state of mind. From the evidence of defendant, it is clear that the defendant was not residing with the testator. The case which the defendant has made out in her examination-in chief was not the case in the written statement (caveat and affidavit in support of caveat). In her examination-in-chief, the defendant has made out a new case.

[27] Section 63 of the Indian Succession Act, 1925, reads as follows:

"**63. Execution of unprivileged Wills.** Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1 [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

[28] Section 63(c) of the Indian Succession Act, 1925 outlines the requirements for the valid execution of a Will. Specifically it mandates that, the Will must be signed by the testator in presence of at least two attesting witnesses. The witnesses must attest the Will in presence of the testator, confirming they saw the testator sign or acknowledge the signature. The attestation must be performed by at least two witnesses who are present at the time of signing of the testator. The Will must be signed by the witnesses with the intent to attest to the testator's signature and intent to create the Will.

[29] The propounder of the Will has to prove that (i) the Will was signed by the testator in the presence of two attesting witnesses, (ii) The attesting witnesses should have been seen the testator sign the Will or else, the attesting witnesses should depose that they were been told by the testator that the Will is that of the testator and it is the testator who has signed the Will and (iii) It is not necessary that both or all the attesting witnesses of the Will must be examined to prove the Will, rather, at least one attesting witness should be called to prove the due execution of the Will.

[30] Section 68 of the Indian Evidence Act, 1972, necessitates that a document which is required by law to be attested shall not be used as evidence, until and unless, at least one attesting witness to that document has been called in evidence for the purpose of proving its execution. Thus, according to mandate of Section 68 of the Indian Evidence Act, 1972, if there be an attesting witness to a document, alive and capable of giving evidence, then that attesting witness subject to the process of the Court has to be necessarily examined before the document required by law to be attested can be used as evidence.

[31] On combined reading of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1972, it is clear that a person propounding the Will must prove that the Will was duly and validly executed, and this cannot be done by simply proving that the signature on the Will is that of the testator by also proving that the attestations made on the Will are in the manner as required by clause (c) of Section 63 of the Indian Succession Act, 1925.

[32] Whether a particular Will is surrounded by suspicious circumstances or not is a question of fact and it depends upon the facts and circumstances, the propounder has to explain these circumstances and has to remove the suspicion in order to satisfy the conscience of the Court. "A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of

the Will under which he receives substantial benefits and interlineations, obliterations and alterations in the Will, are all in the nature of circumstances which hoist suspicion about the execution of the Will".

Such suspicions cannot be removed by mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in sound mind and disposing state of mind when the Will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had, his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus of proof heavier on the propounder of the Will and thus in cases where the circumstances attended upon the execution of the Will, excite the suspicion of the Court, the propounder must remove all the legitimate suspicion before the document can be accepted as the last Will of the testator.

[33] In the case of **Sridevi and Others (Supra),** the Hon'ble Supreme Court held that:

"11. It is well settled proposition of law that mode of proving the Will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act, 1925. The onus to prove the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the Will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances has to be judged in the facts and circumstances of each particular case. (For this see H. Venkatachala Iyengar v. B.N. Thimmajamma and the subsequent judgments Ramchandra Rambux v. Champabai, Surendra Pal v. Dr. Saraswati Arora, Jaswant Kaur v. Amrit Kaur and Meenakshiammal v. Chandrasekaran.)

12. In the light of this settled position of the law, we have to examine as to whether the Will under consideration had been duly executed and the propounders of the Will had dispelled the suspicious circumstances surrounding the Will.

14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW 2, the scribe, in his testimony has categorically stated that the Will was scribed by him at

the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW 2) and the two attesting witnesses (DWs 3 and 4) is fully corroborated by the statement of the handwriting expert (DW 5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed."

[34] In the Case of **Madhukar D. Shende (supra)**, the Hon'ble Supreme Court held that:

"8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the jury in R. v. Hodge may be apposite to some extent:

"The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence.

Wellfounded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict positive or negative.

9. It is well settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of "not proved" merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."

[35] In the present case, the plaintiff's witnesses no.2 and 3, namely, Gautam Kumar Mitra and Surendra Deo Dube being the attesting witnesses of the Will of the testator have categorically stated in their evidence that as per the request of the testator, they had been to the residence of the testator on 29th February, 2008 and in their presence, the testator has signed the Will and as per request of the testator, the witnesses have signed in the Will as attesting witnesses in presence of the testator.

[36] The another circumstances to prove the Will is the evidence of the plaintiff's witness no.4, namely, Mr. U.S. Menon who as per instructions of the testator has drafted the Will and the testator after finalizing the Will and after execution of the Will has handed over to the said witness with the instruction to hand over the same to wife of the testator after his demise.

[37] The defendant though in his written statement/ affidavit in support of caveat has taken the stand that the Will is vague, untrue, false, forged and fabricated one but the defendant has failed to prove that the Will is false and forged. The defendant even has not given any suggestion that the testator or the attesting witnesses have not signed the Will on the other hand during the cross-examination the defendant admitted the Will, signatures of the testator and signatures of the attesting witnesses.

[38] At the flag end, i.e. after completion of argument and even after filing of written notes of argument by the defendant, the defendant has filed an application being G.A. No. 9 of 2025 praying for forwarding the Will and admitted signatures of the testator for obtaining Handwriting Expert report. In support of his contention, has relied upon the judgment in the case of **Rama Avatar Soni (supra)** wherein the Hon'ble Supreme Court held that:

"8. As pointed out earlier, the appellant has filed the suit CS No. 2/34 of 2008/2003 challenging the genuineness of alleged Will executed by Natabar Das in favour of the first respondent and seeking revocation of the probate of the will. As submitted by the learned Senior Counsel appearing for the appellant, in the said suit, Issue No. 3 has been framed that "Has the Defendant no. 1 by practising fraud managed to get the Will probated, which was a fabricated and manufactured one?" Hence, the genuineness of the Will in question needs to be decided, that is, whether the signature in the Will dated 12-3-1989 allegedly executed by Natabar Das could be ascertained only by sending the document to handwriting expert. As discussed above, earlier in WP(C) No. 14997 of 2013, while setting aside the order of the District Judge dated 18-6-2013, the High Court has observed that the application filed under Order 26, Rule 10A CPC can be considered at a later stage of the proceedings, that is, after closure of the evidence from both sides. After their witnesses were examined, the appellant/plaintiff again reiterated the prayer for sending the Will in question to hand-writing expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the Will in question dated 12-3-1989 to the hand-writing expert.

9. The High Court was not right in saying that, in the plaint, the appellant has challenged only the genuineness of the will and nowhere made allegations with regard to the genuineness of the signature of Mahanta Natabar Das. To challenge the genuineness of the will inter alia indicates challenge to the genuineness of the signature of Mahanta Natabar Das. In our view, the High Court was not right in saying that there was no specific allegation disputing the genuineness of the signature of Mahanta Natabar Das. In the earlier WP (C) No. 14977 of 2013 when the High Court has observed that the prayer under Order 26 Rule, 10A CPC can be considered at a later stage, the High Court was not right in setting aside the order of the District Judge dated 15-3-2016 in CS No. 2/34 of 2008/2003 and the impugned order is liable to be set aside."

[39] The plaintiff has objected the application filed by the defendant had submitted that the defendant has filed the application after the argument has concluded. The defendant has not taken any steps at the evidence stage. She submits that the defendant has filed the present application only to drag the matter. The plaintiff has relied upon the judgment in the case of **Bagai Construction (supra)** wherein the Hon'ble Supreme Court held that:

"11. In Velusamy even after considering the principles laid down in Vadiraj Naggappa Vernekar and taking note of Section 151 CPC, this Court concluded that:

"22. in the interests of justice and to prevent abuse of the process of the court, the trial court [is free to consider] whether it was necessary to reopen the evidence and if so, in what manner and to what extent ."

12. Further, it observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

"19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW 1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of court and court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.

15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by

arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

[40] The facts of the case relied by the defendant are distinguishable from the facts and circumstances of the present case. In the present case, though the defendant has taken the stand in the written statement/ affidavit in support of caveat that the Will is false and forged one but till the argument is over, the defendant has not made any endeavor for sending the Will to Handwriting Expert for obtaining report. The attesting witnesses of the Will have categorically stated that the testator has signed the Will in their presence and the witnesses have also signed the Will in presence of the testator. The defendant has categorically put the question with regard to the signature of the testator and the witnesses have stated that in the last page, the testator has signed the Will as full signature and in page no.1 and page no.2, the testator has put his initial as 'AKS'.

[41] Considering the above, this Court finds that the application filed by the defendant being G.A. No. 9 of 2025 is misconceived and accordingly, the same is rejected.

[42] This Court finds that the plaintiff has proved the last Will and testament of the testator dated 29th February, 2008 and is entitled to get probate of the Will. The department is directed to issue probate of the Will dated 29th February, 2008 of the testator to the plaintiff on compliance of all formalities. At the time of grant of probate, the copy of the Will be made part of the probate. Decree be drawn accordingly.

[43] T.S. No. 4 of 2022 is disposed of
