

In the Court of the Senior Civil Judge, Parvathipuram

Present: Sri B.Sadhu Babu,
Senior Civil Judge, Parvathipuram.

Friday, the 28th day of December, 2018

H.M.O.P. No.01/2018

Between:

Kottakota Gowri Sankararao, S/o Eswararao, aged 30 years, Vysya by caste, Hindu, R/o D.No.2-417, Rayagada road, Parvathipuram Municipality. Vizianagaram District. Cell No.8897953001.

...Petitioner/Husband.

And:

Kottakota Pavani, W/o Gowrisankararao, D/o Konchada Govindarao, aged 23 years, Vysya by caste, Hindu, presently residing at her parents house at D.No.6-119, Police station Road, Parvathipuram Municipality. Vizianagaram District. Cell No.9494975098.

...Respondent/Wife.

This petition coming on 21.12.2018 for final hearing before me in the presence of Sri S.Umamaheswara Rao, Advocate for petitioner/Husband and of Sri R.Sesibushana Rao, Advocate for Respondent/Wife and having stood over for consideration to this day, this Court delivered the following:

ORDER

This petition is filed by the petitioner/husband against the respondent/wife under sec.9 of Hindu Marriage Act to direct the respondent to join the society of the petitioner with his son viz., Nowshik and to lead conjugal life by restitution of conjugal rights; for costs of the petition.

2. The brief facts of the petition are: The respondent is legally wedded wife of the petitioner and their marriage was performed on 30.11.2011 at 8.59 AM at Sri Kanyaka Parameswari Temple, Adabadi veedhi, Parvathipuram as per Hindu rites and caste custom. At the time of marriage alliance both caste elders, parents of both petitioner and respondent executed wedding agreement on 12.06.2011 in the presence of caste elders wherein the respondent and her parents agreed to give 2 ½ tula gold to the petitioner for his utility and the marriage has to be performed by the petitioner without any evil formalities of dowry, the marriage expenses were born by the petitioner. Immediately after marriage, the respondent joined with the petitioner to lead conjugal life. The respondent suffering from gynaec problem as such did not conceive pregnancy till 2015 even though the petitioner got her treated for 4 years. Thereafter at the ill advise of parents of the respondent, the

respondent started ill treating the petitioner and his parents even though the petitioner maintained the respondent properly with utmost love and affection. In the month of August, 2015, the respondent got pregnancy and in the 3rd month the parents of the respondent requested the petitioner and his parents to send the respondent for formality and she stayed there till 5th month and thereafter, the respondent visited the petitioner house and stayed only for two days. The respondent left the house of the petitioner at the instigation of her mother without any intimation to the petitioner. The respondent gave birth to male child on 29.03.2016 at Swamy Hospital, Parvathipuram, the petitioner bear all the hospital expenses. After the birth of male child the petitioner made several attempts to join the conjugal society of the respondent and also made attempts for restitution of conjugal rights through elders viz., Kumili Apparao, Sanchana Uma Maheswararao, but the parents of the respondent bluntly refused to send the respondent lead conjugal life with the petitioner. The mother of the petitioner died on 01.07.2016, thereafter the petitioner and his father suffered lack of female assistance. The respondent filed M.C.19/17 against the petitioner on the file of AJFCM Court, Parvathipuram. The petitioner has love and affection towards the respondent and his children and he never neglected them. Hence, this petition.

3. The respondent filed counter denying the material averments of the petition and contended that: The petitioner never treated the respondent with love and affection and did not provide minimum amenities to the respondent. The petitioner and respondent lead happy conjugal life for one year only. Thereafter, the petitioner and his family members started ill treating the respondent as the respondent brought meager amount towards dowry. The petitioner always insisted the respondent to bring more money towards additional dowry and not less than Rs.50,000/- otherwise he would not allow her into house. The respondent could bring Rs.30,000/- to meet the desire of the petitioner, his parents and sisters, brother in laws. Some time thereafter, the petitioner reiterated the same attitude. The petitioner, his parents, sisters and their husbands used to abuse the respondent as Godralu because she could not conceive any children. Though she got pregnancy later, the petitioner and his family members did not show any happiness, used to abuse her by suspecting her character. Even after giving birth to a male child by the respondent, the petitioner and his parents did not visit to see the newly born child.

The parents of the petitioner and petitioner used to suspect her character by saying her as prostitute. As per the advise of the elders, the respondent went away to the house of the petitioner along with her son anticipating change in the attitude of the petitioner and his parents but invain. Thereafter the mother of the petitioner died and the respondent used to attend all customary poojas even then also she was ill treated by the petitioner, his father and sisters. The respondent thought that the life of her son would be spoiled if she commits suicide due to harassmt of the petitioner as such she went to her parents house. The petitioner is not interested to take her back and it is not safe for her to live and lead conjugal life with the petitioner and prayed to dismiss the petition.

4. During the course of enquiry, the petitioner himself is examined as P.W.1, got examined P.W.2 and 3 and got marked Ex.P.1 Marriage wedding card of the petitioner and respondent. Ex.P.2 Lagna Patrika, dt.12.06.2011. Ex.P.3 Marriage photograph of the petitioner and respondent certified by Gazetted officer. Ex.P.4 Served copy of petition in M.C.19/2017 along with Court notice from the AJFCM Court, Parvathipuram. On behalf of the respondent, the respondent herself is examined as R.W.1 and no document is marked on behalf of the respondent.

5. Heard both sides.

6. Now the points for determination are:

(1) Whether the petitioner is entitled for restitution of conjugal rights as prayed for ?

(2) To what relief?

7. **Point No.1:**

PW1 filed his chief examination affidavit by reiterating his petition averments. Ex.P.1 Marriage wedding card of the petitioner and respondent. Ex.P.2 Lagna Patrika, dt.12.06.2011. Ex.P.3 Marriage photograph of the petitioner and respondent certified by Gazetted officer. Ex.P.4 Served copy of petition in M.C.19/2017 along with Court notice from the AJFCM Court, Parvathipuram.

8. Pw.2 who is the 3rd party filed his chief affidavit and deposed that the parents of the respondent involved in the marital life of the petitioner and respondent, thereafter the respondent started ill treating the petitioner and his parents. In the month of August, 2015, the respondent went to her parents house for delivery, the respondent gave birth to male child in the year 2016, thereafter, respondent refused to join the conjugal society of the petitioner. P.W.3 Kumili Aparao, who is a third party also deposed on the same lines of P.W.2.

9. R.W.1 filed her chief examination affidavit by reiterating her counter averments.

10. The learned counsel for the petitioner submitted that as the petitioner established his case that the respondent is not willing to come and join his conjugal society in spite of making efforts by raising mediation before elders but the respondent refused to join with the petitioner and the petitioner is entitled for restitution of conjugal rights .

11. Per contra, the learned counsel for the respondent submitted that the petitioner and his parents used to demand the respondent to bring additional dowry, used to suspect her character by abusing her as prostitute. The parents of the petitioner, his sisters and their husbands not allowed the respondent to lead conjugal life with the petitioner on account of non compliance of the desire of the petitioner and the petitioner did not provide even minimum needs like food etc., prior to birth of male child they used to call her as godralu, the petitioner has no love and affection towards the petitioner, the petitioner showed hell to the respondent, and prayed to dismiss the petition.

12. In a petition filed under Sec.9 of Hindu Marriage Act, burden of proof operates at two levels. Firstly, burden of proof is on the aggrieved/petitioner who needs to prove that the respondent has withdrawn from his society. Once that burden is discharged by the petitioner, it falls on

the respondent to prove that there exists a reasonable excuse for the withdrawal.

13. In the instant case, the petitioner discharged his burden by examining himself as P.W.1 and also examining P.W.2 and P.W.3, who corroborated the evidence of P.W.1 in all material aspects and deposed that in spite of best efforts of the petitioner to lead conjugal life with the respondent, the respondent is not willing to lead conjugal life with him. The petitioner has utmost love and affection towards the respondent.

14. The respondent in her counter made some allegations against the petitioner that the petitioner and his family members, did not heed the words of the respondent and they started beating her, not allowed her to have conjugal life with the petitioner. The petitioner and his mother ill treated the respondent by abusing her in filthy language, suspected her character, made life of the respondent miserable by saying her as prostitute, demanded her to bring additional dowry, did not provide her food etc. In fact these allegations are serious allegations but surprisingly, the respondent did not give any police report against the petitioner. Apart from that the respondent in her cross examination categorically admitted that except petty disputes, no disputes arose during their conjugal life. She also deposed that she did not submit any police report against her husband and in laws against the alleged dowry harassment so far. From the above it is evident that there are no major disputes between the petitioner and respondent and as admitted by the respondent there are only petty disputes.

15. The respondent except her sole testimony did not adduce any supportive evidence to prove her contentions. The respondent clearly admitted in cross examination that there is no female assistance to the petitioner and his father to cook food etc. after the death of her mother in law. Therefore, this court feels that as the respondent failed to prove her allegations against the petitioner. Thus the petitioner established that the

respondent herself voluntarily staying away from the petitioner, therefore, the petitioner is entitled for restitution of conjugal rights as prayed for.

16. The respondent simply denied the evidence of P.Ws.1 to 3 in the form of mere suggestions, which were denied by them. Suggestions however ingenious have no evidentiary value unless admitted by the witnesses or proved otherwise.

17. In the facts and circumstances stated supra, it is established that the respondent has withdrawn from the society of petitioner voluntarily. Once that burden is discharged by the petitioner, it falls on the respondent to prove that there exists a reasonable excuse for the withdrawal. In the circumstances, stated supra, the respondent failed to prove her case. Therefore, this point is answered in favour of the petitioner.

18. **Point No.2:-** In the result, the petition is allowed directing the respondent to join the petitioner to lead conjugal life within three months from today, failing which the petitioner shall be at liberty to launch appropriate proceeding under law.

Typed to my dictation, corrected and pronounced by me in Open Court, this the 28th day of December, 2018.

Sd/- B.Sadhubabu,
Senior Civil Judge,
Parvathipuram.

APPENDIX OF EVIDENCE
Witnesses Examined

For Petitioner:

For Respondent:

P.W.1: K.Gowri Sankararao

R.W.1: K.Pavani

P.W.2: S.Umamaheswararao

P.W.3: K.Apparao.

Documents Marked

For Petitioner:

Ex.P.1 Marriage wedding card of the petitioner and respondent.

Ex.P.2 Lagna Patrika, dt.12.06.2011.

Ex.P.3 Marriage photograph of the petitioner and respondent certified by Gazetted officer.

Ex.P.4 Served copy of petition in M.C.19/2017 along with Court notice from the AJFCM Court, Parvathipuram

For Respondent: Nil

Sd/- B.Sadhubabu,
Senior Civil Judge,
Parvathipuram.

