

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.5-448 of 2020

[Sh. Reena Devi Vs. Chhagan & others]

Petitioner: Through Mr. Ahmed Nawaz Chang, advocate.
Respondent: Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.
Date of hearing & order: 11.11.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant constitutional petition, the petitioner has challenged the legality of impugned Judgment dated 8.9.2020 whereby Family Appeal No.5 of 2020 filed by respondent No.1 before learned 1 st Additional District Judge Umerkot was allowed and the judgment dated 19.2.2020 decreeing the Family Suit No.13 of 2019 in favor of petitioner by learned Family Judge No.II Kunri was set aside.

2. Brief facts of the case are that the petitioner as per Hindu laws after marriage with respondent No.1 on 13.07.2016 started living with him in joint family; that petitioner at the time of marriage brought dowry articles which includes kitchen & Electronics appliances and Gold; that from the wedlock, no issue was born; that after marriage the petitioner found her in-laws being cruel towards her as well as respondent No.1 used to maltreat her, hence she requested respondent No.1 to provide her separate residence and to improve his earnings but he failed to maintain her and thereafter she was ousted from the house on 15.02.2018 whereupon parents of petitioner approached respondent No.1 to keep the petitioner / plaintiff in his house but to no avail, hence she filed suit for maintenance with further direction to respondent No.1 to provide him separate residence.

3. After admission of suit, respondent No.1 filed written statement denying the allegations leveled in the plaint more particularly he submitted that he filed Suit for conjugal rights in Family Court Mithi and he has shown his readiness to keep her if she wishes to reside with him and lastly he prayed for dismissal of suit.

4. Learned trial court on failure of pre-trial proceedings framed three issues, recorded evidence of the parties and after hearing them through their counsel decreed the suit in favour of petitioner. Respondent No.1 being aggrieved with the said Judgment and Decree preferred Family Appeal No. 05

of 2020 which was allowed vide Judgment dated 8.9.2020 setting aside the Judgment of Family Court dated 19.2.2020 hence the instant petition.

5. I have heard the learned counsel for the petitioner as well as the learned Additional Advocate General, Sindh, and have also gone through the record as well as impugned judgments of both the Courts below.

6. I have noticed that respondent No.1 has been served; however, he has chosen to remain absent this factum is disclosed vide order dated 23.04.2021.

7. It reveals that the petitioner filed Family Suit No.13 of 2019 for maintenance which was decreed; however, respondent No.1 preferred Family Appeal No.5 of 2020 which was allowed vide judgment dated 8.9.2020, and the judgment of Family Court was set aside on the premises that no justifiable reason existed for petitioner to demand separate residence from her husband.

8. Learned counsel for the petitioner has strongly objected to the findings of learned Appellate Court on the ground that there was desertion and cruelty on the part of respondent No.1; however, that fact was ignored and erroneously held that there was no desertion and cruelty besides there were intimidating relations between the petitioner and her in-laws which explicitly show that learned Appellate Court failed to appreciate the real facts brought on record. He prayed for allowing the petition in terms of the ratio of judgment and decree passed by learned Family Court in Family Suit No.13 of 2019.

9. Respondent No.1 was held liable to pay maintenance to the petitioner; and, petitioner led evidence and examined herself and one Krishan Kumar who supported her version and nothing was brought on record contrary as opined by the Appellate Court besides marriage between the parties remained strained and petitioner was receiving the life threats at the hand of family members of respondent No.1; therefore, she demanded separate residence besides petitioner is school teacher in Kunri. Petitioner also claimed maintenance which was taken care of by the Family Court vide judgment and decree dated 19.02.2020.

10. Petitioner has submitted that, the wife has the right to live in separate accommodations with her husband and children, and not to share it with anyone, whether it is father, mother, or relative.; that women have a right to have an accommodation that befits them; they can demand to live alone with their husbands, demand independence in running their household, and there is no sin upon her. If one cannot afford a house, he must give his wife a place

within the house, where she can live in privacy without any interference, which fact has been ignored by the trial court.

11. It is well settled that in social and legal perspectives, no human being can be denied or deprived of any fundamental right, nor can be reserved for any particular group on the external consideration of his wealth, status caste or color, or any other ground. It clearly shows that equality before the law and equal protection of law is the cardinal principle. Marriage is the most overwhelming time in women's lives, particularly when adjusting to their in-laws. There are certain cultures where women are obliged to live with In-laws.

12. I have noted that the findings of Appellate Court are based on no reasonable justification as petitioner brought tangible evidence to prove her case before the trial court which is based on correct appreciation of law and fact. The Appellate Court had no material to discard the view point of learned trial court, thus the judgment dated 8.9.2020 passed by learned Additional District Judge-I Umerkot is recalled and the judgment and decree passed by learned Family Court is restored.

JUDGE