

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

M.F.A. NO.1797 OF 2021 (MC)

BETWEEN:

SRI.T.SADANANDA PAI,

... APPELLANT

(BY MR.NAGARAJA HEGDE, ADV.,)

AND:

MRS.SUJATHA S PAI,

... RESPONDENT

(BY MR.NISHIT KUMAR SHETTY, ADV.,)

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THIS M.F.A. IS FILED U/S 28(1) OF HINDU MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE DATED 19.08.2015, PASSED IN MC NO.144/2009, ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, UDUPI, ALLOWING THE PETITION FILED U/SEC 13(1A)(ii) OF HINDU MARRIAGE ACT.

THIS M.F.A. COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 28(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) has been filed against judgment dated 19.08.2015, by which the petition filed by the appellant under Section 25 of the Act seeking permanent alimony has been dismissed and the marriage between the parties has been dissolved by a decree of divorce.

2. Facts giving rise to filing of this appeal briefly stated are that the marriage between the parties was solemnized on 25.03.1993. As per version of the appellant, respondent left the matrimonial home in February 1994 prior to delivery of the child. It is also not in dispute that from the wedlock, a son has

been born to the parties. However, despite the birth of son, respondent did not join the matrimonial home.

3. Thereupon, the appellant filed a petition seeking restitution of conjugal rights, which was decreed vide judgment and decree dated 04.01.2005. The respondent preferred an appeal against the aforesaid order before this court viz., MFA No.1165/2005, which was dismissed by order dated 20.04.2009. However, the respondent did not join the matrimonial home. Thereafter, the appellant filed a petition seeking dissolution of marriage. In the aforesaid proceeding, the appellant filed a petition seeking permanent alimony from his wife.

4. The Family Court vide judgment dated 19.08.2015 dissolved the marriage by a decree of divorce. However, the petition filed by the appellant under Section 25 of the Act was dismissed. The

appellant is aggrieved only to the extent of rejection of his petition under Section 25 of the Act.

5. Learned counsel for the appellant submitted that the respondent is employed as a Assistant Manager in a Co-operative Society. It is further submitted that the appellant was employed as a security guard in a temple on a contract basis, however, he has lost the job and has no means to sustain himself. It is submitted that the respondent is under an obligation to maintain the appellant. On the other hand, learned counsel for the respondent has submitted that respondent is employed as an Assistant Manager in a Co-operative Society at Bhramavara on a monthly salary of Rs.8,000/- and has to take care of the son from the wedlock who is aged about 15 years.

6. We have considered the submissions made on both sides and have perused the record. In

determining the issue pertaining to permanent alimony, the status of parties, reasonable wants of spouse, independent income and property of the claimant are the relevant factors, which have to be taken into consideration. In the instant case, the appellant who is an able bodied person in his cross-examination has admitted that he has a share in the lands held by his father and that he also possesses a share in residential house. It has further been admitted that the aforesaid properties are valuable properties. It has also been admitted by him that he was previously employed as a Security Guard in a temple. On the other hand, the respondent is a Assistant Manager in a Co-operative Society. Admittedly, the respondent is taking care of the son born out of the marriage who is presently aged about 15 years.

7. It is also not in dispute that the appellant has not taken care of the child. A considerable expenditure is required to be incurred for education of the son and the burden of the same has been cast upon the respondent. The appellant is an able bodied person and has the capacity to earn. The Family court therefore, has rightly rejected the petition filed by the appellant under Section 25 of the Act.

For the aforementioned reasons, we do not find any ground to interfere with the impugned judgment and decree.

In the result, the appeal fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**