



IN THE HIGH COURT OF KARNATAKA

AT KALABURAGI

DATED THIS THE 28TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISC. FIRST APPEAL NO. 200082 OF 2017 (FC)

BETWEEN:

...APPELLANT

(BY SRI. HANAMANTHRAYA SINDOL, ADVOCATE)

AND:

...RESPONDENT

(BY SMT. NEEVA M.CHIMKOD, ADVOCATE - ABSENT)

THIS MFA IS FILED UNDER SECTION 28 OF HINDU MARRIAGE ACT, 1955 PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 05.12.2016 PASSED IN M.C.NO.10 OF 2009 BY THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE AND CJM, AT BIDAR AND ETC.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.04.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:





CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ
and
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The appellant/wife who was respondent in M.C.No.10/2009 is before this Court seeking for the following reliefs:
 - i. *Call for the lower court records.*
 - ii. *Allow the appeal and set aside the impugned judgment and decree dated: 05.12.2016 passed in M.C.No.10 of 2009 by the learned Principal Senior Civil Judge and CJM at Bidar.*
 - iii. *Cost of the proceedings may kindly be decreed.*
 - iv. *Any other relief which is legally and equitably entitled by the appellant may also be awarded in favour of the appellant in the interest of justice.*
2. The respondent-husband instituted proceedings in M.C. No.10/2009 seeking dissolution of marriage by a decree of divorce.
3. The facts, in brief, are that the marriage between the appellant-wife and the respondent-husband was solemnised on 16.06.2002 at Talmadgi Village,



Humnabad Taluk, in accordance with the customs and rituals prevailing in their community. It is not in dispute that the parties cohabited after marriage and were blessed with two sons.

4. According to the husband, the marital relationship was cordial for about three years, thereafter disputes arose between the parties. It is his case that the wife left the matrimonial home and started residing with her parents, taking along the custody of the children. Despite repeated requests made by him, she did not resume cohabitation. The husband, who was in service and posted at different places, contends that the wife consistently refused to join him.
5. It is further stated that the husband had earlier filed a petition under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights, whereas the wife had initiated proceedings under Section 125 of the Code of Criminal Procedure for maintenance. The wife is stated to be employed as a Principal in a school and residing at her parental home.
6. The husband further alleged that the wife made false and defamatory accusations against him, including allegations of an illicit relationship with another woman and that he was suffering from HIV/AIDS. It



is also alleged that the wife and her father abused him and refused to send her back to the matrimonial home. On these grounds, the husband sought dissolution of marriage.

7. The appellant-wife entered appearance and filed her statement of objections denying the allegations. While admitting the marriage and birth of two children, she contended that it was the husband who subjected her to ill-treatment and developed an illicit relationship with another woman, thereby compelling her to leave the matrimonial home and reside with her parents.
8. She further contended that the husband neither cared for her nor for the children and failed to maintain them, which necessitated initiation of proceedings under Section 125 of Cr.P.C. The petition filed by the husband for restitution of conjugal rights in M.C. No.7/2007, it is stated, came to be dismissed. The wife also alleged that the husband had assaulted her, demanded money and a motorcycle, and continued to harass her despite intervention by her parents. It is further alleged that the husband, while working as a Statistical Inspector in the Tahsil Office at Bhalki, was residing with



another woman and maintaining an illicit relationship.

9. In support of his case, the husband examined himself as PW.1 and did not produce any documentary evidence. The wife examined herself as RW.1 and similarly did not mark any exhibits.
10. The Family Court, on appreciation of the pleadings and evidence on record, has held that the allegations made by the wife imputing that the husband was suffering from HIV/AIDS and the use of abusive and vulgar language would constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955.
11. The Family Court further observed that the wife had failed to substantiate her allegations that she was driven out of the matrimonial home on 18.02.2007 or that the husband had demanded a motorcycle and a sum of Rs.50,000/-. In the absence of any supporting evidence, these allegations were disbelieved.
12. The filing of a petition by the husband under Section 9 of the Hindu Marriage Act in M.C. No.7/2007 seeking restitution of conjugal rights was construed



by the Family Court as indicative of his intention to resume cohabitation.

13. Insofar as the allegation of the husband maintaining an illicit relationship with another woman is concerned, the Family Court found that no material evidence had been placed on record to substantiate the same.
14. The Family Court also took note of the fact that the husband had been transferred to Bhalki and held that the wife's refusal to join him at the place of posting, in the absence of justifiable cause, amounted to desertion within the meaning of Section 13(1)(ib) of the Act.
15. On the aforesaid reasoning, the Family Court allowed the petition filed by the husband under Section 13(1)(ia) and (ib) of the Hindu Marriage Act and dissolved the marriage solemnised between the parties on 16.06.2002. Aggrieved by the same, the wife is before this Court in the present appeal.
16. Sri Hanamanthraya Sindol, learned counsel appearing for the appellant-wife, contends that
 - 16.1. The Family Court has adopted a double standard in appreciation of evidence. It is



submitted that while the allegations made by the husband have been accepted, those made by the wife have been rejected on the ground of absence of documentary evidence.

16.2. Both parties having admittedly not produced any documentary evidence, it is contended that the Family Court could not have accepted the husband's version in the absence of independent or corroborative evidence.

16.3. It is further submitted that there is no third-party evidence on record to substantiate the allegations of cruelty attributed to the wife, including the alleged use of abusive or vulgar language. In such circumstances, the finding of cruelty, according to the learned counsel, is unsustainable.

16.4. Learned counsel further submits that the husband was residing with another woman by name Sridevi even prior to the institution of M.C. No.10/2009. It is contended that this material aspect has not been properly appreciated by the Family Court.



16.5.If the husband was indeed cohabiting with another woman, the refusal of the wife to reside with him cannot be construed as desertion. On the contrary, such conduct on the part of the husband would constitute a valid and reasonable ground for the wife to live separately.

16.6.It is further submitted that an application under Section 151 of the Code of Civil Procedure has been filed before this Court seeking permission to produce additional documents. Along with the said application, an admission abstract pertaining to one Sai Prasad, shown as the son of Rajashekar and Sridevi, with date of birth recorded as 02.12.2008, has been placed on record. In the supporting affidavit, it is further asserted that there is another child by name Sangamesh Prasad.

16.7.On the strength of the aforesaid material, learned counsel contends that the husband and the said Sridevi were residing together and have entered into a marital relationship. Reference is also made to photographs produced along with the application,



purportedly depicting the husband along with the said children. It is therefore submitted that if these aspects are taken into consideration, the findings recorded by the Family Court on cruelty and desertion cannot be sustained, and the decree of divorce ought not to have been granted.

17. Notice has been duly served on the respondent and he is represented by counsel, none has appeared on his behalf at the time of hearing on several dates. Despite sufficient opportunity, the learned counsel for the respondent has remained absent. Accordingly, this Court has proceeded to hear and dispose of the matter in her absence.
18. We have heard Sri Hanamanthraya Sindol, learned counsel for the appellant-wife and perused the papers.
19. The short but important questions that would arise for our consideration are:
 - i. **Whether an allegation made by the husband of cruelty could have been accepted by the Family Court without any independent evidence being adduced in that regard?**



- ii. **Whether the Family Court could have come to a conclusion that the wife has deserted the husband when the husband was allegedly living with another woman?**
- iii. **Whether the decree of divorce passed by the Family Court suffers from any legal infirmity?**
- iv. **What order?**

20. We answer the above points as under:

21. **Answer to Point No.1: Whether an allegation made by the husband of cruelty could have been accepted by the Family Court without any independent evidence being adduced in that regard?**

21.1. The case of the husband is that the wife and her parents subjected him to ill-treatment, used abusive and vulgar language, and further imputed that he was suffering from HIV/AIDS. These allegations, if established, would undoubtedly fall within the ambit of mental cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955, particularly having regard to the serious and stigmatic nature of such imputations.



21.2. However, the critical question is not the nature of the allegation but whether such allegation has been proved in accordance with law. In support of his case, the husband has examined himself as PW.1. No documentary evidence has been produced. No independent witness has been examined. There is no contemporaneous material, such as complaints, correspondence, or testimony of persons who may have witnessed the alleged conduct, to lend assurance to the version of the husband.

21.3. Thus, the finding of cruelty rests solely on the uncorroborated and interested testimony of the husband.

21.4. It is no doubt true that matrimonial proceedings are civil in nature and the standard of proof is that of preponderance of probabilities. It is equally well settled that cruelty, particularly mental cruelty, may in appropriate cases be inferred from the conduct of the parties even in the absence of direct evidence. However, such inference must be drawn from proved facts and surrounding circumstances and cannot rest on



mere allegations or assertions which remain unsubstantiated.

21.5. Where the allegation is of a serious nature, such as imputing a grave illness or engaging in abusive conduct, the Court must seek some degree of corroboration or supporting circumstances before recording a finding of cruelty. Acceptance of such allegations in the absence of any supporting material would render the adjudicatory process vulnerable to subjective satisfaction rather than objective judicial determination.

21.6. In the present case, there is a complete absence of any corroborative material. The husband has not examined any person, including neighbours, relatives, or colleagues, who could have spoken to the alleged conduct of the wife. No complaint, either contemporaneous or subsequent, has been placed on record. Even the pleadings do not indicate any specific instances with sufficient particularity so as to enable the Court to assess the gravity and impact of the alleged conduct.



21.7. In these circumstances, the Family Court, in accepting the bare assertions of the husband, has effectively shifted the evidentiary threshold from proof to mere allegation, which is impermissible.

21.8. Equally significant is the manner in which the Family Court has dealt with the allegations made by the wife. The wife has alleged that the husband was living with another woman and that she was driven out of the matrimonial home. These allegations have been rejected on the ground that no evidence has been adduced in support thereof.

21.9. While such rejection, in isolation, may not call for interference, the inconsistency arises in the differential standard applied: the absence of evidence is held fatal to the wife's case, but is overlooked in accepting the husband's allegations. The judicial process mandates uniform application of evidentiary standards to both parties. A finding cannot be sustained where one party's uncorroborated testimony is accepted, while the other's is rejected for want



of corroboration, without any rational basis for such distinction.

21.10. The burden of establishing cruelty squarely lay upon the husband, who approached the Court seeking dissolution of marriage. In the absence of cogent, reliable, and at least minimally corroborative material, the said burden cannot be said to have been discharged. The Family Court, in proceeding to record a finding of cruelty on such slender material, has committed an error in appreciation of evidence.

21.11. In view of the above, we are of the considered opinion that the finding of the Family Court that the wife subjected the husband to cruelty by abusing him or making false allegations regarding his health is unsustainable in law.

21.12. Accordingly, we answer Point No.1 by holding that the finding of cruelty recorded by the Family Court is not supported by the evidence on record.

22. **Answer to point No.2: Whether the Family Court could have come to a conclusion that the wife has deserted the husband when the husband was allegedly living with another woman?**



22.1. The Family Court has recorded a finding of desertion primarily on the premise that the wife failed to join the husband at his place of posting and continued to reside separately without sufficient cause. The specific defence of the wife that the husband was living with another woman, by name Sridevi, has been rejected solely on the ground that no evidence was adduced in support thereof.

22.2. At the outset, it is necessary to reiterate that desertion, within the meaning of Section 13(1)(ib) of the Hindu Marriage Act, 1955, is not merely a matter of physical separation. It is a composite concept comprising two essential elements: (i) the factum of separation, and (ii) the animus deserendi, namely, the intention to permanently bring cohabitation to an end. Equally, the law requires that such separation must be without reasonable cause and without the consent of the other spouse. Where a spouse establishes that there existed a just and reasonable cause for living separately, the element of animus deserendi stands negated.



22.3. In the present case, the wife has consistently pleaded that her separate residence was not voluntary but was compelled by the conduct of the husband, including his alleged relationship with another woman. If such a plea is substantiated, the legal consequence is significant: the separation would cease to be desertion and would instead amount to justified withdrawal from cohabitation. The law does not require a spouse to remain in a matrimonial relationship when the other spouse's conduct renders cohabitation unreasonable, unsafe, or undignified.

22.4. Thus, the determination of desertion in the present case is intrinsically linked to the factual question as to whether the husband was, in fact, maintaining a relationship with another woman during the subsistence of the marriage.

22.5. The Family Court has rejected this defence on the ground of absence of evidence. However, before this Court, an application has been filed seeking to produce additional evidence, including an admission abstract relating to one Sai Prasad, described as the son of Rajashekar



and Sridevi, with the date of birth recorded as 02.12.2008. The affidavit filed in support of the application also refers to another child born from the said relationship.

22.6. A prima facie consideration of this document reveals that the date of birth of the child is subsequent to the year 2007, which is the period during which, according to the husband himself, the wife had allegedly deserted him and proceedings for restitution of conjugal rights had been initiated. If the contents of the document are established, it would indicate that during the subsistence of the marriage and contemporaneous with the alleged desertion, the husband was cohabiting with another woman and fathering children through such relationship.

22.7. The evidentiary significance of such material cannot be understated. Allegations of an extra-marital relationship, if proved, have a direct and substantial bearing on the issue of desertion. A spouse cannot be compelled, either in law or in equity, to cohabit with a partner who is simultaneously maintaining a



relationship with another person. In such circumstances, the refusal of the wife to join the husband would not only be justified but would also negate any inference of animus deserendi.

22.8. Conversely, a finding of desertion in favour of such a spouse would result in placing a premium on conduct which the law does not countenance.

22.9. That said, it is equally necessary to bear in mind that the aforesaid material has been produced for the first time at the appellate stage. The admissibility of such evidence is governed by the parameters of Order XLI Rule 27 of the Code of Civil Procedure, 1908. Additional evidence may be permitted where the appellate Court requires such material to enable it to pronounce judgment, or where the party seeking to produce such evidence establishes that, notwithstanding due diligence, the evidence could not be produced at the stage of trial.

22.10. In the present case, it is the specific assertion of the wife that she came to know of the said



facts only subsequently, and therefore could not place the material before the Family Court. Whether such explanation satisfies the requirement of due diligence is a matter to be considered; however, given the nature of the document and its potential bearing on the core issue of desertion, it would not be appropriate to summarily discard the same without affording an opportunity to the opposite party.

22.11. Further, the principles of natural justice require that the husband be afforded an opportunity to contest the said material, including by way of cross-examination and by leading rebuttal evidence. The photographs produced along with the application, which are stated to depict the husband with the said children, similarly require formal proof in accordance with law. At this stage, therefore, such material can only be taken note of prima facie, without recording any conclusive finding thereon.

22.12. Even otherwise, the timeline of events assumes relevance. The marital tie between the parties subsisted at least until the decree of divorce was passed in the year 2016. If, during this



subsistence, the husband had entered into or continued a relationship with another woman, it would have a direct bearing not only on the issue of desertion but also on the equities of the case. A spouse who is himself in breach of matrimonial obligations cannot be permitted to found a claim for divorce on the alleged desertion of the other.

22.13. In light of the above discussion, we are of the considered opinion that the finding of the Family Court on desertion is vitiated by an incomplete appreciation of the material issues and requires reconsideration. The plea raised by the wife, coupled with the additional material sought to be produced, goes to the root of the matter and cannot be brushed aside without a proper evidentiary inquiry.

22.14. Accordingly, we answer Point No.2 by holding that the finding of desertion recorded by the Family Court cannot be sustained in its present form and warrants reconsideration after affording an opportunity to the parties to adduce evidence, including with respect to the



additional material sought to be placed on record.

23. **Answer to point No.3: Whether the decree of divorce passed by the Family Court suffers from any legal infirmity?**

23.1. In view of the findings recorded on Point Nos.1 and 2, it is evident that the judgment of the Family Court is vitiated by errors in both appreciation of evidence and application of legal principles. The finding of cruelty has been recorded in the absence of cogent and corroborative material, resting solely on the unsubstantiated testimony of the husband. As held while answering Point No.1, such a finding does not meet even the threshold of preponderance of probabilities required in matrimonial proceedings.

23.2. Insofar as the finding on desertion is concerned, the Family Court has failed to properly consider the defence of the wife that her separate residence was justified on account of the conduct of the husband. The issue of alleged cohabitation of the husband with another woman, which goes to the root of the question of animus deserendi, has not been adequately



examined. As observed while answering Point No.2, this aspect requires a proper evidentiary inquiry, particularly in light of the additional material now sought to be placed on record.

23.3.The approach adopted by the Family Court also reflects an inconsistency in the application of evidentiary standards, inasmuch as the husband's uncorroborated allegations have been accepted, while similar deficiencies in the wife's case have been held against her. Such an approach renders the findings vulnerable to appellate interference.

23.4.It is trite that an appellate Court would be slow to interfere with findings of fact; however, where such findings are based on no evidence, or where relevant material has been ignored, or where the conclusions are such that no reasonable judicial mind could have arrived at, interference is not only warranted but necessary to prevent miscarriage of justice.

23.5.In the present case, the cumulative effect of the aforesaid infirmities persuades this Court to hold that the judgment and decree of the



Family Court cannot be sustained and are liable to be set aside.

24. **Answer to Point No.4: What order?**

24.1. In view of our answers to point Nos.1 to 3, the judgment and decree passed by the Family Court is not sustainable. The application in I.A.No.1/2026 for additional documents is required to be allowed, requiring the said judgment and decree to be set aside and the matter being remanded to the Family Court for fresh consideration.

25. As such, we pass the following:

ORDER

- i. The appeal is allowed.
- ii. The judgment and decree dated 05.12.2016 passed by the Principal Senior Civil Judge and CJM, Bidar, in M.C.No.10/2009 is set aside.
- iii. The matter is remitted to the Family Court for fresh consideration in accordance with law.



- iv. The application filed by the appellant–wife under Section 151 of the Code of Civil Procedure, 1908, for production of additional evidence is allowed, subject to proof and admissibility in accordance with law.
- v. The Family Court shall:
 - a. Afford adequate opportunity to both parties to adduce further oral and documentary evidence;
 - b. Permit cross-examination on the additional material produced;
 - c. Reconsider the issues of cruelty and desertion afresh, uninfluenced by any observations made in the earlier judgment; and
 - d. Pass a reasoned judgment in accordance with law.
- vi. The Family Court shall endeavour to dispose of the matter expeditiously, preferably within a period of six months from the date of first appearance of the parties.



- vii. All contentions of both parties are kept open.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

**Sd/-
(DR.CHILLAKUR SUMALATHA)
JUDGE**

NB
List No.3 Sl.No.1
Ct: Vk

Shoneekapoor.com