

**Asgarali Vs. Reshma**

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**Court :** Karnataka Dharwad

**Decided On :** Dec-18-2014

**Judge :** H.G. Ramesh

**Appeal No. :** Regular Second Appeal No. 5526 of 2013

**Appellant :** Asgarali

**Respondent :** Reshma

**Judgement :**

(Prayer: This appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.03.2013 passed in R.A. No.14/2011 on the file of the Senior Civil Judge, Hukkeri, dismissing the appeal filed against the judgment and decree dated 14.01.2011 and the decree passed in O.S. No.48/2009 on the file of the Civil Judge and JMFC, Hukkeri, decreeing the suit filed for restitution of conjugal rights.)

Oral Judgment:

**H.G. Ramesh, J.**

1. The question raised in this appeal is, whether a muslim wife is entitled to seek restitution of conjugal rights?

2. This second appeal is by the defendant-husband. The trial Court decreed the suit filed by the respondent-wife for restitution of conjugal rights. The said decree of restitution of conjugal rights is affirmed by the first Appellate Court by dismissing the husband's appeal. Being aggrieved, the husband has filed this appeal. The parties to the suit are muslims.

3. I have heard learned counsel appearing for the parties and perused the judgments of the two Courts.

4. The sole contention urged by the learned counsel for the appellant is that, Mahommedan Law does not confer any right on a muslim wife to seek restitution of conjugal rights and hence, the wife's suit for restitution of conjugal rights should have been dismissed.

5. In the context of the question raised, it is useful to refer to the following observations at page 1503 in Ameer Ali's "Mahommedan Law", 5th Edition:

Suit for restitution of conjugal rights.- In the case of *Moonshee Buzioor Ruheem v. Shumsoonnisa Begum* [(1867) 11- Moo IA 551; *Husaini Begum v. Muhammad Rustam Ali Khan*, (1906) IL 29 All 222], the Judicial Committee dealt in broad terms with the principles of Mahommedan Law which regulate the relations between husband and wife, and its enunciations are so conformable with the spirit of the Islamic system that they deserve careful study. In substance, it held that a suit for restitution of conjugal rights will lie in a Civil Court by a Mahommedan husband to enforce his marital rights; and that in such a suit he would be entitled to a decree for the return of the wife. But if there be cruelty to a degree rendering it unsafe for her to return to his dominion, or- if there be a gross failure on his part to perform the obligations imposed on him by the marriage contract for the benefit of the wife, if properly proved, it would afford sufficient grounds for refusing the husband any relief in the suit (See *Abdu! Kadir v. Solima*, (1886) IL 8 All 149). In a suit for restitution of conjugal rights, the Kazi is authorised to constrain the recalcitrant party to resume connubial relationship....

[Note: Underlining supplied. Kazi means a judge in a muslim community]

The observation underlined above would indicate that both husband and wife are entitled for restitution of conjugal rights. We may examine the question without relying on the above observation.

6. Marriage, undoubtedly, confers conjugal rights on both husband and wife. Hence, both are entitled for restitution of conjugal rights. However, the right to restitution of conjugal rights is not absolute but is subject to lawful excuses. Under Mahommedan Law; there is no prohibition for a muslim wife to seek restitution of conjugal rights in Court. A muslim wife, like a muslim husband, is entitled to take legal recourse for restitution of conjugal rights, if her husband lives away from her without a lawful excuse. The contention of the appellant's counsel that a muslim wife is not entitled to seek restitution of conjugal rights is not supported by any law, and hence, is unacceptable. The question raised in this appeal is accordingly answered in the affirmative.

Appeal dismissed.

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