

Satish Kumar Jain Vs. Usha Jain

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Court : Madhya Pradesh

Decided On : Aug-13-2014

Judge : S.K. Gangele & S.K. Palo

Appeal No. : First Appeal No. 431 of 2006

Appellant : Satish Kumar Jain

Respondent : Usha Jain

Judgement :

S.K. Palo, J:

1. Feeling aggrieved by the judgment pronounced on 1st November, 2006 by the District Judge, Bhind, in Civil Suit No.10/06 (Hindu Marriage Act) by which the petition under Section 13 of the Hindu Marriage Act, 1955, filed by the husband/appellant was rejected, the appellant has filed this appeal under Section 28 of the Hindu Marriage Act, 1955.

2. Before the learned Trial Court it was not disputed that appellant married the respondent on 09.05.1983 according to Hindu rites. The parents and younger and elder brothers are also residing with the appellant. It is also not disputed that before filing of the petition, an effort was made by the relatives to keep the respondent separately in the parental house of the appellant and for some time 500/- rupees per month was being given to her as maintenance by the appellant. No child is born due to the wedlock of the appellant and respondent.

3. The appellant/husband filed the petition before the learned District Judge, Bhind, on the ground that after their marriage in the year 1983, they lived together for two years. The respondent often used to visit her maternal home. She started quarelling with the appellant and was pressurizing him to live separately. The appellant did not succumb to her pressure. But she was bent upon and was not prepared to live with the appellant's family. To avoid any untoward situation, the appellant made arrangements in his parental house so that the respondent can live separately in a portion. This arrangement was made as back as 18-19 years. Even then, she was not happy and she used to leave the house and visit her uncle (Mausa) Gyanchand Jain and to her maternal home.

4. After making arrangements for the respondent to live separately and giving all the articles received during the marriage she deprived the appellant of his marital life.

5. The appellant submitted an application before the Superintendent of Police, Bhind. In this regard, on the respondent appeared before the Superintendent of Police on 28.09.1998 and admitted that she has no complaints against her husband and she expressed her willingness to live with the appellant and lived in the matrimonial home. But again no change has been seen in the nature of the respondent. She was also pressurizing the appellant to get his share of his parental property and live with her in her parental house. Few members of his Samaj suggested the appellant to let her live as she wants to live. The appellant from 1st March, 1999, provided her 500/- rupees per month as maintenance. Till 16.12.2002, it was being paid. The respondent wife lodged a report against the appellant and his family members. A criminal case was registered. The respondent quarreled with "Renu" the wife of the younger brother of the appellant on 06.05.2002. She deprived the appellant his marital life since 1989 and is not willing to live with him, whereas the appellant has been willing to keep her as his wife. On 1st August, 2004, she refused to live with the appellant, therefore, the appellant has filed this petition for divorce.

6. Per contra, the respondent-wife, except the admitted facts denied all averments and has submitted that she lived in her matrimonial home performing her duties.

Parents and brother-in-law, sister-in-law of the appellant harassed her demanding dowry. She started living separately in the front portion of the parental house of the appellant on the promise that separate toilet, bath room, kitchen would be constructed and separate connection of water and electricity would be given. But these facilities were not provided and she was feeling uneasiness in the small room. The family members of the appellant beaten her so many times for demand of dowry. After two years of paying maintenance, the appellant stopped paying the maintenance. When she left to village Porsa to attend the marriage of her sister, a false report was lodged by Renu (sister-in-law of the appellant)) to harass her. The appellant himself has been living separately without any reasonable cause.

7. On the basis of these averments, the learned District Judge allowed both the parties to adduce their evidence and pronounced the impugned judgment on 1st October, 2006. The learned District Judge has found that the appellant has failed to prove his case.

8. The appellant has assailed this judgment on several grounds. It is urged by the appellant that on the basis of "cruelty", the learned Trial Court did not appreciate the evidence. The respondent withdrew herself from the society of the appellant, depriving him of his marital life constituting "cruelty". This aspect has also been not dealt with. The false report lodged by the respondent against the appellant and his family members alleging demand of dowry etc. also amounts to "cruelty". Though, their marriage was solemnized in the year 1983, no child has been born as the respondent has been living separately. The marriage of the appellant and the respondent has been irretrievably broken. Therefore, prayed to allow this appeal and grant decree of divorce.

9. We have given thoughtful consideration on the submissions made by the learned counsel for the appellant and perused the record. In our considered view that the learned Trial Court has erred in appreciating the evidence.

10. The appellant has examined himself and has reiterated that the respondent has left the matrimonial home as back as 19-20 years. On her report a crime was registered at Police Station Kotwali, Bhind, which was registered as Criminal Case No.44/01. She also filed an application for maintenance before A.C.J.M., Bhind.

She has been given separate room since 1983. Manoj Kumar Jain (PW-2), the brother of the appellant has also narrated the applicant's version. The non-applicant/wife has admitted that she has no issues. She was living in a separate portion in the house of the appellant. She has also admitted that a case with regard to her assaulting the wife of Manoj (younger brother of the applicant) is also pending. A Panchayat was called 8-9 years back. Exhibit NA-1C and Exhibit NA-2C were executed by her. During the course of her statement in the Trial Court she was not answering the questions timely. After a pause she was replying to the questions. The demeanor of the respondent was also noted by the Court. Exhibit NA-1C and Exhibit NA-2C are reproduced for better understanding of the matter.

"eSa ?kj esa lq[kh gwWaa eSaus tks Hkh fd;k KkupanZ ds dgus ij fd;kA ngst dk dksbZ ekeyk ugha g SA eSaus tks Hkh fd;k vutkus esa fd;kA vc dksbZ xyrh ugha gksxhA eSaus tks Hkh fd;k Hkwo'k fd;k-----ds dgus esa ugha pysaxsA vU; yxsxksa ds dgus esa fd;kA eSaus tks Hkh fd;k KkupUnZ ihijh okys rqe ?kj esa lq[kh gS eSa ckgj ds yxsxksa ds dgus ij tSlS gekjs ifr j[ksaxs oSlh gh jgwWaxhA eSaus tks Hkh fd;k Hkwy cl fd;kA eSa ek;ds okyksa dh dksbZ ckr ugha ekuawxhA eSa vius llqjky esa lq[kh gwWaa eSaus tks Hkh fd;k bu yxsxksa ds dgus ij fd;kA esjk llqjky i{k dksbZ ysuk nsuk ugha g SA eSa lq[kh gwWaa

"gesa buls dksbZ f'kdk;r ughaA esjs ifr ftl gky esa j[ksaxs] tgka j[ksaxs] eSa jgus dks jkth gw WA tks dqN gqvk"-----eqs Fkkus esa tcjnLrh ys tk;k x;k ;g esjh uknuh FkhA tks Hkh fd;k ifjokjokyksa ds dgus ij fd;kA vxj eSa vius ifr ds lkFk tkrh gwWaa rks eSa izse ls jgwaxhA ek;ds ds fy;s ftn ugha d:axhA esjs ifr esjk ykyu iks" k.k djus esa l{ke gSaA eqs ftl gkyr esa j[ksaxs eSa jgus dks rS;kj gwWaa blesa esjs llqjky okyksa dk dksbZ gkFk ughaA vkSj eqs dqN ugha pkfg;SA eqs dsoy ifr dk lkFk pkfg;A esjs llqjky okyksa us ngst dh dksbZ ekax ugha dhA eSa yxsxksa ds dgus ij vk xb ZA eSa vius Hkwy is iNrk jgha gwWaa ,slh xyrh nqckjk ugha d:axhA"

11. DW-2 Pramod Kumar Jain, is the brother of respondent. He has admitted that till 17-18 years after the marriage, there was no report regarding any harassment or any maltreatment to her sister. In the Panchayat, it was decided that the appellant would pay 500/- per month to her sister as maintenance and it was also

decided that she would be living in a separate portion in the parental house of the appellant. He has also admitted that a criminal case is pending against the respondent for beating her sister-in-law "Renu".

12. All these goes to show that there has been strained relationship between the respondent and the family members of the appellant. The respondent's cruelty behaviour can be ascertained by the following:-

(1) She was not performing her duties.

(2) She pressurized the appellant to live separately from his parents and other family members.

(3) She lodged a false report against the appellant and his family members in the year 2001 regarding demand of dowry.

(4) Needless to say that the marriage was performed in the year 1983, the allegation of demand of dowry was made in the year 2001.

13. In Smt. Shakuntala Kumari v. Om Prakash Ghai, AIR 1981 Delhi 53, it has been held thus:

"A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill health on the part of one of the spouses, it may or may not amount to cruelty depending on the circumstances of the case. But wilful denial of sexual relationship by a spouse when the other spouse is anxious for it would amount to mental cruelty, especially when the parties are young and newly married".

14. In Smt. Maya v. Brij Nath, AIR 1982 Delhi, 240, while dealing with the concept of "cruelty" it is observed that,

"Cruelty has not been defined in the Act. But it is now well settled that the conduct should be grave and weighty so as to make cohabitation virtually unendurable. It must be more serious than the ordinary wear and tear of marriage. The cumulative conduct taking into consideration the circumstances and the background of the parties has to be examined to reach a conclusion whether the act amounts to

cruelty. The petitioner in a divorce petition has to prove that he was treated with cruelty. The burden of proving the cruelty lies on him".

15. In the case of Bipin Chander v. Prabhawati, reported as AIR 1975 SC 176, the Apex Court has summarized desertion referring in Halsbury's Laws of England regarding desertion:

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.

Desertion is not the withdrawal from a place but from the state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated.

The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion."

16. When the respondents left matrimonial home for her parents house and does not join her husband for more than two years, without any reasonable excuse then she is guilty of desertion.

17. "Desertion" means the intentional permanent forsaking and abandonment of one spouse by the other without other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In the present case also the respondent leaving matrimonial home constitute "desertion".

18. The statement of the respondent is contradictory and her lodging a false report of harassment in the year 2001 under Section 498-A IPC, against the appellant and his family members almost 17 years after the marriage amounts to "cruelty". It

is apparent that the respondent is responsible for the mental agony of the appellant and that amounts to "cruelty".

19. Thus, the grounds under Section 13 (1) (1-A) and 13(1) (1-B) of Hindu Marriage Act, 1955 as regarding 'cruelty' and 'desertion' has been made out.

20. Consequently, the appeal succeeds. The judgment and decree passed by the learned District Judge is hereby set aside. The petition filed by the appellant is hereby allowed under Section 13(1) (1-A) and 13(1) (1-B) of the Hindu marriage Act, 1955. Accordingly, the marriage solemnized between the parties on 09.05.1983 is hereby dissolved by the decree of divorce.

21. Keeping in view the peculiar circumstances in this case, parties to bear their own costs.

Appeal allowed.

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