

Dnyaneshwar Sitram Soholkar Vs. Surekha Dnyaneshwar Soholkar

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Court : Mumbai

Decided On : Nov-07-1983

Reported in : [1985]57CompCas443(Bom); 1984MhLJ17

Judge : Chandurkar, Ag. C.J. and;Rege, J.

Acts : [Divorce Act, 1869](#) - Sections 3(1), 18 and 19; [Constitution of India](#) - Article 214

Appeal No. : Appeal No. 508 of 1983 in M.J. Petn. No. 45 of 1983

Appellant : Dnyaneshwar Sitram Soholkar

Respondent : Surekha Dnyaneshwar Soholkar

Advocate for Def. : S.B. Keluskar, Adv.

Advocate for Pet/Ap. : P.K. Singhvi and;Gita Ganapathy, Adv.

Judgement :

Chnadurkar, Ag. C.J.

1. The appellant, who is the husband of the respondent has filed this appeal challenging the judgement of the learned single Judge holding that this court on the original side has no jurisdiction to entertain a petition for decree of nullity of marriage under Section 18 of the Indian [Divorce Act, 1869](#) (hereinafter referred to as 'the Act').

2. It is not necessary to refer to the details of the grounds on which a decree of nullity is sought by the appellant and it is sufficient to mention that according to the petitioner, the respondent having refused to allow him to consummate the marriage and having refused to come to the marriage and having refused to come back to him even after repeated requests, an inference that the respondent was impotent at the time of marriage and was still impotent was evidence on the facts of the case and, therefore, the facts of the case and, therefore, the appellant filed the petition praying that he was entitled to a declaration that the marriage between the appellant and the respondent, which had taken place on 11th May 1980 at St. Phillips Church at Nasik Road was null and void under Section 18 read with Section 19(1) of the Act.

3. When the petition was called out for hearing before the learned single Judge the respondent - wife was absent. The evidence of the appellant was recorded. He had stated that he and his wife both had professed Protestant Christian religion. He referred to facts and circumstances on which he wanted an inference of impotence of the respondent to be drawn. The learned Judge, however, on his own found that he had no jurisdiction to entertain the petition because the evidence of the appellant showed that the parties had at no time intended to make Bombay their matrimonial home and that the parties had last resided and cohabited together at Nasik. Before the learned Judge it was conceded by the learned counsel for the appellant husband that the parties had at no time cohabited and resided at Bombay. But the contention raised before the appellant had a choice of two courts and under the Act for a declaration of nullity of marriage either in the High Court or in the District Court within the jurisdiction of which the parties had resided. High Court in its original jurisdiction extends only up to the local limits of Greater Bombay and no further and though the High Court and the District Court had concurrent jurisdiction under the Act, the only Court which had jurisdiction to entertain the petition for nullity was the Court within whose jurisdiction the parties reside or had last resided together. The learned Judge, therefore, found that the parties not having resided within the limits of the original jurisdiction of the Bombay High Court, the Court was not competent to try the petition. The petition was, therefore, dismissed.

4. Mrs. Singhvi appearing on behalf of the appellant petitioner has strongly relied on Section 18 of the Act and, according to the learned counsel, a petition for decree for nullity can be presented under Section 18 to the district court or to the High Court. The finding recorded by the learned single Judge that the parties had not resided at any time within the original civil jurisdiction of this Court has not been challenged before us. But the learned counsel contends that having regard to the definition of 'High Court' in clause (1) of s. 3 of the Act, even though the parties had resided at Nasik, they were residing within the area of the High Court at Bombay and, therefore, the High Court had jurisdiction to entertain the petition and the learned judge was in error in dismissing the petition on the ground that this Court on its original side had no jurisdiction to entertain the petition. Mrs. Singhvi has also referred to clause 35 of the Letters Patent and another limb of the argument is that in view of the provisions of clause 35 of the Letters Patent, the matrimonial jurisdiction which was originally vested in this Court by clause 35 still continues notwithstanding the provisions of the Act and since that jurisdiction extends to the entire State of Bombay, the petition should have been entertained by the Court on the original side.

5. It is necessary at the outset to make a reference to a few relevant provisions of the Act. Section 18 of the Act reads as follows : -

'Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void,'

Undoubtedly if one goes by the mere words of the section, not much argument is required to be advanced to hold that this section contemplates that the petition may be presented either to the District Court or to the High Court. But when reference is made in s. 18 to the District Court or to the High Court, we must go back to the definition section where the District Court and the High Court have been defined. In clause (1) of s. 3 of the Act, in the definition of 'High Court' reads as follows:-

'High Court means with reference to any area :-

in a State, the High Court for that State;

(b) , (bb), (c), (b), (e) and (ee).....

and in the case of any petition under this Act, High court means the High Court for the area where the husband and wife reside or last resided together'.

Clause (3) of Sec 3 defines the 'District Court' as follow:-

'District Court means in the case of any petitions under this Act, te Court of the District Judge within the local limits of whose ordinary jurisdiction , or of whose ordinary jurisdiction or of husband and wife reside or lasts resided together'.

6.It is also necessary to make a referenceee to Chapter II of the 'Act which deals with jurisdiction and S. 4, which is the relevant section. Reds as follows :-

'The jurisdiction now exercised by the High Court in respect of divorce a menses thor, and in all other causes, suits and matters matrimonial , shall be exercised by such Courts and by the District Courts subjects to the provision in this Act contained, and not otherwise: except so far as relates to the granting of marriage licensee, which may be granted as if this Act had not been passed'.

Section 5, 6 and 7 are not relevant for our purpose . Section 8 deals with the extraordinary jurisdiction of th High court vested in it by that provision enabling the High Court in a proper case, to remove and try and determine as the court of original jurisdiction of the High Court of any District Judge within the limits of its jurisdiction under this Act. In the latter part of s. 8 power is given to the High Court to withdraw any suit or proceeding under the Act from the Court of one District Judge for trial or disposal to the Court of any other district Court to refer any question of law on its own motion or on the applicaiton of any of the parties, to the High Court.

7. Now, it is well known that prior to the enactment oof the Act, the jurisdiction in the case of marriages between persons professing Christian religion vested exclusively in the High court and the ?District Courts had no jurisdiction to entertain matrimonial maters in respect of Christian marriages. This matrimonial jurisdiction, so far as Bombay High Court was concerned, was regulated by clause 35 of the Letters Patent of 1865. Clause 35 read as follows:-

'And we do further ordain that the said High court of Jurisdiction at Bombay shall have jurisdiction within the Presidencery of Bombay in matters matrimonial between our subject professing the Christian religion : Provided always that no thing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Character within the said Presidencery lawfully possessed thereof'.

though according to Mrs. Singvi, clause 35 of the Letters patent will still enable the High Court to entertain the petition for nullity of marriage, as in the present case because both the parties to the marriage profess Christian religion, it is obvious to us that the question of jurisdiction of the Court where a petition for nullity of for the matter of that a petition for any of the reliefs permissible under the Act could be filed will now have to be determined on the express provisions of the Act.

8. Section 4 of the Act vests matrimonial jurisdiction in the High court and in the District Courts. When a reference is made to the High Court and District Court in s. 4 and a similar reference is made to the High Court and District Court in S. 18, we must necessarily go back to the definition of the 'High Court' and the 'District Court', there are two factors which have to be considered on the definition. A reference to the High court in the above mentioned provisions, namely, S. 4 and S. 18 of the Act will , so far as maharashtra is concerned, undoubtedly mean the High Court for the State of Maharashtra which is the High Court at Bombay . But that itself is not conclusive because there clause which provided that in the case of any petition under the Act, the High Court means that High court for the area where the husband and wife reside or last resided.

9. The argument of Mrs. Singvi is that Naski where both the parties have resided falls within the area of jurisdiction of the High Court and therefore, the High Court is the forum where a petition under s. 18 could properly be filed. This argument overlooks the fact that the area referred to in the definition of 'High Court' is not equivalent to the State itself. Article 214 of the [Constitution of India](#) provides : 'There shall be a High Court for each State'. Undoubtedly the jurisdiction of the High Court for each State extends to the whole of such State. But in the definition the area is a smaller unit because the definition says :

'High Court means with reference to any area ; -

in a State, the High Court for that State'.

It is not possible, therefore, to equate the area of the High Court for the entire State to the territorial limits to which the jurisdiction of the High Court extends and necessarily the area must be a smaller concept. When the requirement is that the parties, namely, the husband and wife reside or last resided together in the area of the High Court, it cannot be construed as meaning that they reside or last resided within the State for which the High Court has been constituted. We cannot lose sight of the fact that even when the District Court has been defined as the forum where a petition under the Act can be filed, the District court or the Court of the District Judge where the petition is to be filed is to be determined with reference to the jurisdiction within which the husband and wife reside or last resided together. Construing the word 'are' in the definition of the 'High Court' as equivalent to the State will mean that even the latter area where the jurisdiction of the District Court is defined will be included in the area of the High court also. This will obviously bring about uncertainty or a choice where a petition could be filed under the Act and will defeat the very obvious purpose of the enactment, namely, that the power to deal with the matrimonial matters under the Act was Court. Once emphasis is laid on residence within a particular jurisdiction, whether it is the jurisdiction of the District Court to it is the area within which the High court had jurisdiction, then there is really no question of any two parallel forums where a petition could be filed. Having regard to the scheme of the Act and having regard to the requirement of residence within the area of the High court and not within the State it is obvious that what was intended by the Parliament was a reference to the original civil jurisdiction of the High court, so far as the High Court was concerned, and the jurisdiction of the District Court, so far as the District Court was concerned. On the admitted position that none of the parties resided within the limits of the original civil jurisdiction of this Court it is obvious that they were not residing within the area of the High court as contemplated by the definition of the High Court and consequent the petition could not have been entertained by the High court.

10. Mrs. Singvi has drawn our attention to the decision of the Karnataka High court in *B. Ignatius Anthony jayaraj v. Immy Maragaret Floernce*, : AIR1978 Kant69 . The main question which fell for consideration in that decision was whether a decree of nullity of marriage on the ground of force or fraud could be obtained from the District Court and having regard to the provisions of s. 19 of the Act, the Special Bench of the Karnataka High Court took the view so far as the decree of nullity of marriage on the ground of force or fraud is concerned, the same could be obtained only by presenting a petition to the High Court which has residuary jurisdiction to deal with a petition for dissolution of marriage on the ground that consent of either party was obtained by force or frauds and the District Court had no jurisdiction to entertain a petition for declaration of nullity of marriage on the ground that consent of either party to the marriage was obtained by force or fraud. In that judgement the Special Bench has no doubt taken the view that under Ss. 18 and 19 of the Act, the District Court and the High Court had concurrent jurisdiction for entertaining a petition for nullity of marriage on the grounds stated in sub-secs. (1) to (4) of s. 19 . Now, it is undoubtedly true that the view taken by the Special Bench the jurisdiction under S. 18 can be exercised both by the High court and the District Court. It is, decision does not seem to make a reference to the requirement of residence within the limits of the jurisdiction of the High Court , probably because that question was not at all relevant for decision of the question which the Special Bench was called upon to deal with. The latter part of S. 19 is an independent provision by itself and while S. 19 in its first part deals with the ground on which a decree with the grounds on which a decree of nullity of marriage could be made, in the second part it provides as follows: -

'Nothing in this section shall affect the jurisdiction of the High Court to make decree of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.' It is this latter part of s. 19 which has been considered by the Special Bench and in the context of the provisions of that section, the question as to whether the requirement of residence within the area of the High Court as contemplated by s. 3 either did not fall for consideration or was not raised. The Special Bench has referred to a decision of the learned single Judge of the Andhra Pradesh High Court in *T. Saroja Devid v. Christie Francis*, , : AIR

1966 AP178 . We have gone through this decision which is extremely brief and if it is clear that that was also a case where a decree of nullity was sought on the ground that the wife was forced into marriage and against her wishers when she was still a girl and the finding recorded was that the marriage which she had entered into had been entered into on account of force. Undoubtedly while referring to grounds on which dissolution of marriage and nullity of marriage could be sought under S. 19. The learned Judge of the Andhra Pradesh High Court and observed that both the District Court and the High Court have concurrent jurisdiction and when the case is one for declaration of nullity of marriage on the ground of force or fraud, the exclusive jurisdiction of the High Court was saved. But it does not appear from the judgement that the question as to how the requirement of residence laid down in the definition of the 'High Court' as well as in the definition of the 'District Court' could affect the question of jurisdiction was considered.

On a consideration of the relevant provision we are clearly of the view that the learned Judge was right when he took the view that since none of the parties resided within the limits of the original civil jurisdiction of this Court, this Court had no jurisdiction to entertain the petition under S. 19 . In the view which we have taken, this appeal must fail and is dismissed.

11. The learned counsel has stated before us that it may be that the petitioner may now approach the District Court and, therefore, leave to file that petition may be granted.

12. It is obvious counsel has stated before us that it may be that the petitioner cannot come in the way of the petitioner appellant from filing a petition in a proper forum.

13. There will be no order as to costs.

14. Appeal dismissed.