

Susanna Vs. Yeshwanth

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Court : Karnataka

Decided On : Oct-12-1984

Reported in : ILR1984KAR1108; 1985(1)KarLJ93

Judge : G.N. Sabhahit, ;A.K. Laxmeshwar and ;S.R. Rajasekharamurthy, JJ.

Acts : [Divorce Act, 1869](#) - Sections 10, 12, 13, 14 and 47

Appeal No. : Civil Referred Case No. 2 of 1984

Appellant : Susanna

Respondent : Yeshwanth

Advocate for Pet/Ap. : G.G. Shastry, Adv.

Judgement :

Sabhahit, J.

1. This is a reference by the Civil Judge, Bidar, seeking confirmation of a decree passed by him for dissolution of marriage on the ground of adultery coupled with cruelty.
2. It is seen from the order that the learned Civil Judge has recorded a compromise petition filed by the parties and has passed a decree for dissolution of marriage on that basis. This is what he has written in the course of his order:

'The petition is allowed in terms of the compromise petition and decree nisi be drawn declaring that the marriage of the parties is dissolved subject to the provisions and limitations in Sections 16 and 17 and it is not made absolute till six months period is over. Put up after six months.'

3. Thus, it is seen that the learned Civil Judge has taken the matter very lightly. He has obviously, not attached the importance with which the Legislature has clothed it.

4. Marriage among Christians is considered to be solemn and sacred. That is why so many safeguards are provided in the Indian Divorce Act in Sections 11, 12, 14, 16 and 17.

5. It is no doubt true that Section 45 of the Indian Divorce Act speaks of the procedure and it states :

'Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.'

6. The learned Counsel appearing for the petitioner no doubt submitted that the Code of Civil Procedure contemplates compromise by the parties under Order XXIII. But it has to be noted that the Section begins with a clause 'Subject to the provisions herein contained' and the provisions contained in the Indian Divorce Act make it clear that the Court shall be satisfied on the evidence about the contentions raised before it and it shall take precaution with regard to colluding, conniving at and delaying etc., by the parties. In such circumstances, the very fact that parties entered into a compromise for dissolution of marriage would cast serious doubts about their bona fides and it cannot be said that they have proved that there is no collusion between the parties, to the satisfaction of the conscience of the Court.

7. The question whether a decree for dissolution of marriage could be passed on admission or by compromise of parties, came up for consideration before a Special Bench of the Lahore High Court in the case, Alla Rakha v. Mt. Barkat Bibi AIR 1930 Lahore 77 1. Their Lordships, inter alia, observed:

'By S. 7 of the Act Courts in India are required to give relief on principles and rules which are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief. One of these principles is that a decree for dissolution of marriage cannot be made merely on admission and without recording evidence: see in this connection *Bai Kanku Shiva Toya* (1893) ILR 17 Bom 624 (FB).

Again under S. 12 it is for the Court to itself so far as it reasonably can, not only as to the fact alleged but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same and shall also enquire 'into any counter-charge which may be made against the petitioner.'

8. In the Special Bench decision of the Nagpur High Court, in the case, *Kishore Sahu v. Mrs. Snehprabha Sahu* AIR 1943 Nag 185, the Bench consisting of Pollock, Vivian Bose and Digby, JJ., observed:

'The mere fact that the other side admits the facts, or does not contest, is not in itself enough, though that may be taken into consideration along with other matters. Admissions in these cases are not unlike admissions by a defendant or a respondent on a question of Court-fees. The State is the party primarily interested, and though it may not be formally represented either on the record or in Court, an admission by one or both of the contestants is not strictly evidence against it.'

Proceeding further, their Lordships observed:

'This Court has consistently set its face against attempts to minimise the importance of matrimonial proceedings by relegating them to the classes of cases in which alone a civil Court would act on affidavit evidence in a contested matter, and though these decisions have not been reported, Special Benches have had occasion in the past to remand cases for a more thorough investigation when that has occurred. We think it desirable that this should be better known and that this practice in the lower Courts should cease'

19. Again, in the case, *Mrs. Agnes Cecillia Gome (Gannon) v. Lancelot Ashley Gome* : AIR1964 Cal28 it is pointed out by the Full Bench of the Calcutta High

Court that while exercising its discretion in matrimonial causes, it must have regard not only to the rights and liabilities of the matrimonial person wronged and wrongdoer respectively inter se but also to the interest of society and public morality, and to discourage vice and immorality.

10. Thus, it becomes clear that a matrimonial proceeding is something more than a mere adversary proceeding between the parties. The Court has a special responsibility to uphold public morality and to discourage vice and immorality. It has to scrutinise the evidence to find out whether there is collusion, there is connivance, there is undue delay and the like. The Court should bear in mind the solemnity and the sacred nature of the marriage tie.

11. It is for those reasons that the High Court of Rajasthan, in the case, *Fazal Masih v. Smt. Patience*,³⁰ by a Full Bench, has observed that in view of the provisions of Sections 12, 13, 14 and 47 of the Indian Divorce Act, A decree for divorce on consent of the parties is not permissible. Speaking on the aspect, in para 3 of the judgment, the Court has observed:

'It appears to us that the learned District Judge who passed the consent decree for divorce under the Act had not taken the trouble of studying the relevant provisions of law. In view of the provisions of the Act a divorce on consent is not permissible and it is only possible if the misconduct as envisaged under Section 10 of the Act is established by either spouse. Section 12 of the Act requires that the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at the adultery, or has condoned the same and shall also enquire into any counter-charge which may be made against the petitioner. Section 13 lays down that if the Court finds that the petitioner has, during the marriage, been accessory to or connived in the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, the Court shall dismiss the petition. It is only if the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or conniving at the adultery of the other party to the marriage, or has condoned the

adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, the Court shall pronounce a decree declaring such marriage to be dissolved under Section 14 of the Act. Section 47 of the Act requires that every petition under the Act for a decree of dissolution of marriage or of nullity of marriage or of judicial separation shall state that there is not any collusion or connivance between the petitioner and the other party to the marriage. These provisions, in our opinion, clearly forbid a decree for divorce on consent of the parties. It is only on the proof of misconduct as envisaged by Section 10 of the Act that a decree for divorce is permissible subject to the restrictions contained in Sections 16 and 17 of the Act. Those systems of jurisprudence which emphasise that the matrimonial relations should not be on fragile foundations insist that one spouse must prove the misconduct of the other spouse if divorce is claimed and the reason is that the mere disagreement and the consequent separation may as well be prevented by some care and self-sacrifice if the spouses think that there is no other choice in the matter.'

12. Thus, in our considered view, proof regarding dissolution of marriage ceases to be a simple lis between the petitioner and the respondent. What, generally, is an adversary proceeding becomes in such cases a matter of the Court's conscience and then the true question which arises for consideration is whether the evidence led by the petitioner is such as to satisfy the conscience of the Court. It is impossible to reach such satisfaction unless the petitioner offers cogent and convincing evidence not only proving the ground on which dissolution of marriage is sought but also proving that there is no collusion, connivance, unnecessary delay and the like and that the dissolution of marriage is necessary in the interest of justice to uphold the public morality.

13. That being so, we are constrained to observe that the order passed by the learned Civil Judge is not in accordance with law. It is and it cannot be confirmed

14. Therefore, we send back the concerned records to the learned Civil Judge with a direction that he shall now examine the parties and the witnesses before Court and arrive at his conclusions on merits and if he comes to the conclusion that the marriage is to be dissolved, he shall submit his opinion with the records for

confirmation to this Court.

15. Order accordingly.

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