

**Smt. Mango Vs. Prem Chand**

**Smt. Mango Vs. Prem Chand**

**SooperKanoon Citation :** [sooperkanoon.com/458501](http://sooperkanoon.com/458501)

**Court :** Allahabad

**Decided On :** May-17-1961

**Reported in :** AIR1962All447

**Judge :** Mithan Lal, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 10, Rule 2; [Hindu Marriage Act, 1955](#) - Sections 9, 9(1), 9(2) and 10 to 13

**Appeal No. :** First Appeal No. 574 of 1958

**Appellant :** Smt. Mango

**Respondent :** Prem Chand

**Advocate for Def. :** J.N. Chatterjee, Adv.

**Advocate for Pet/Ap. :** Janardhan Swaroop Gupta, Adv.

**Judgement :**

**Mithan Lal, J.**

1. This first appeal filed by Smt. Mango defendant arises out of the judgment and decree passed by the Civil Judge, Moradabad, in the suit of the husband-respondent filed under Section 9 of the [Hindu Marriage Act, 1955](#).

2. The admitted facts of the case are that the appellant was married to the respondent in Asarh, 1955, and a few months after, the Gauna ceremony took place in Phagun. The parties lived as husband and wife, at the husband's residence in Amroha for a few days. Sometime in the month of Bhadon, 1956, the uncle of the appellant, Chuttan Singh came to the respondent's house and fetched the appellant away. In spite of several attempts made on behalf of the respondent the parents of the appellant did not permit her to go to her husband's house, and it was stated that the wife was keeping away from the husband without any reasonable excuse and the plaintiff had a right to obtain a decree for restitution of conjugal rights.

3. The appellant contested the suit, inter alia, on the grounds that the plaintiff was not the author of the suit and that the same had been instituted at the instance of his father. The plaintiff-respondent was said to be a man of weak intellect, who was sexually impotent, who deserted the appellant and treated her with cruelty. It was further stated that the father of the respondent had an evil eye on the respondent and as he was bent upon outraging the modesty of the appellant, it was not safe for the appellant to live in the house of the husband. Allegations of mal-treatment and indescient behaviour both on the part of the respondent as well as his father were also made.

4. The learned Civil Judge, who heard the petition, overruled the defence and passed a decree for restitution of conjugal rights, and it is against this order that the present appeal has been instituted by the wife.

5. The arguments in the case were partly heard on 6th April, 1961, when the respondent's learned counsel proposed that it was a fit case in which an attempt at reconciliation of the relations should be made by calling both the husband and wife to Court at the cost of the respondent. This suggestion was accepted and thereafter the wife attended the Court on 27th, April, 1961, but on that date the respondent could not come, as he was said to be bed-ridden and unable to come to Court. The case was listed for hearing on 2nd May, 1961, and on that date the respondent put in appearance, who was put a few questions, which could not be answered satisfactorily. The arguments in the case were again heard today.

6. It has been contended by the appellant's learned counsel that the lower Court has erred in brushing aside the statement of the plaintiff-respondent recorded under Order 10, Rule 2 Civil Procedure Code and in placing reliance upon the evidence and that if the court had given due weight to the statement of the plaintiff under Order 10 Rule 2, Civil procedure Code it would have been found that the plaintiff was a man of weak intellect who was unable to keep and support his wife; and in any case, when the wife is now living apart (with her parents) there exists a reasonable excuse for her living apart. It is also his contention that the plaintiff has no legal right to obtain a decree and in fact lie is a person of weak sexual potency, who allows approaches to be made to his wife by others including his father. It is also his submission that the respondent has been guilty of legal cruelty and that the respondent is in no way entitled to a decree for restitution of conjugal rights.

7. Sri J.N. Chatterji, learned counsel for the respondent has on the other hand submitted that a statement recorded under Order 10, Rule 2, Civil Procedure Code cannot take the place of evidence. It is simply a statement in clarification of pleadings and when, the plaintiff-respondent has given, a statement on oath, that statement is entitled to have a greater weight than the statement under Order 10, Rule 2 Civil Procedure Code, which, according to the own statement of the respondent, was given under the influence of some other interested person. He has contended that there is no reasonable excuse for wife to live apart and as the appellant has failed to make out any of the grounds, which entitled the wife of judicial separation or nullity of marriage or divorce the appeal should be dismissed.

8. I have heard learned counsel for the parties at some length. It may be stated at the very outset that the respondent, when he appeared before the Court, did not leave a good impression on the mind of the Court and evidently (as even the learned counsel for the respondent had to admit) he was a person of weak intellect or at least was not a person who possessed ordinary intellect as could be expected from a person of his position and education. However it cannot at the same time be said that he is an idiot. It having been admitted as well as proved that the wife is now living separate from the husband since Bhadon, 1956, it has to be seen whether she has any reasonable excuse for doing so. It has further to be seen whether in a case of this type a plaintiff is entitled to a decree for restitution

of conjugal rights, if none of the grounds in Sections 10 to 13 is made out.

9. So far as the oral evidence in the case goes, the plaintiff-respondent examined himself, his father Fakir Chand and one Bishambhar Nath (P. W. 4) as witnesses of fact, while on behalf of the defendant-appellant, the appellant Smt. Mango and one Jagua were examined as witnesses. The plaintiff-respondent also examined the Civil Surgeon Dr. S.K. Mukherji to prove that he was not impotent as alleged. Learned counsel for the appellant has not taken the ground of respondent's impotency in this appeal and so the whole matter is now limited either to legal cruelty on the part of the husband or the reasonable excuse on the part of the wife to live apart from the husband. In this behalf, the only material evidence is that of the husband or the wife. The other evidence is neither satisfactory nor does it give any help in the determination of the real question.

Taking the statement of Prem Chand, husband, it seems that the deposition which he gave before the Court at the time of the evidence was a fully tutored statement and does not show the outcome of his own mind. This appears to be so because it is in direct conflict with his statement which had been recorded by the learned Civil Judge under Order 10 Rule 2, Civil Procedure Code on 21st August, 1958. In the latter statement, the respondent after stating about the marriage and Gauna and the going away of the appellant to her fathers house stated. 'I (have read upto 5th standard. I am a Chaprasi in Municipal School Amroha. I get Rs. 45/- per month, I am not suffering from leucoderma. My father teases me and my wife-(Note by the. Judge given at this stage--The plaintiff began weeing). My father tells me and has ordered me not to speak to my wife. I want to give food to my wife but my father does not allow me to do so. My father wants to keep me as a dog and give to him all the money. I have not filed any objection against the respondent. I have not signed the plaint. I am illiterate. I have not filed any suit against my wife.' As the respondent made a contradictory statement in his deposition he was asked the explanation, which he gave in the following words :-

'Pichhli tareekh men mera bayan hua tha. Men halat us din bhi theek thi aj bhi theek hai. Ratan Lal ne hamse kah diya tha ki kahna ki dastkhat hamne nahin kare. Hamse yeh bhi kaha tha ki kah do ki hamare pita ka 'chalchalan kharab hai.'

Towards the close of his cross-examination he also denied his former assertion against his father that he wanted to keep him as a dog. The appellant in her deposition made out that her husband was not possessed of sufficient intelligence and was unable to keep a wife; his father had an evil eye on her and that the husband also wanted that she should be avail, able to others as well. She further made out in her cross-examination that the husband was not allowed to live with her at the time of Gauna and that he also used to bring others inside the house in order to show his wife.

10. A plain reading of the deposition of the husband given at the time of the evidence goes to show that the statement given: was materially different than the clarification given by him in his statement under Order 10, Rule 2, Civil Procedure Code. Obviously this was so, because he had been made wiser by that date by his father and other interested persons. The respondent gave an explanation that he gave the statement under Order 10, Rule 2, C. P. C. under the influence of Ratan Lal and even if it is so, obviously he is a person, who can be prevailed upon by others; but it again does not appear to be correct, because if this statement is true and Ratan Lal had also asked him to state about the bad character of his father, then this statement, the respondent did not make under Order 10, Rule 2, C P. C.

To me it seems that the plaintiff-respondent was taken unawares on the date when his statement was recorded under Order 10, Rule 2 C. P. C. and he made a clean breast of the whole thing and had to admit that his father was responsible for teasing him as well as his wife and wanted to keep both of them like dogs. The respondent also started weeping before the Court, which again shows that he is a man of weak intellect or a person, who appears to have been made a tool in the hands of others. No doubt the statement made by the respondent under Order 10, Rule 2 G. P. C. was only a clarification of the pleadings, yet that statement clearly shows that the respondent's father is responsible for all this trouble; and further that the respondent is unfit to resist other people.

11. Learned counsel for the respondent relied upon the authority of Manmohan Das v. Mt. Ramdei and contended that the statement under Order 10, Rule 2 C. P. C. is intended Only for the purpose of clarification of pleadings relating to the suit

and should not be allowed to supersede the evidence. Nobody can deny the principle of law laid down by the Privy Council, but at the same time the value of a statement recorded under Order 10, Rule 2 C. P. C. cannot also be set at naught by any subsequent tutored statement given in evidence. One of the material points in the case was whether the husband was or was not of weak intellect and whether the father of the respondent was or was not responsible for doing something towards the wife, which was below the moral plane, and so the statement of the respondent recorded under Order 10, Rule 2 C. P. C. was not such as to be unconnected with the material points involved in the case. That statement gives an inkling as to what the truth was and supports the case of the wife to a very great extent that the respondent plaintiff was a person of weak intellect and was under the thumb of his father and that the intentions of the father did not appear to be above board. The statement of the respondent recorded under Order 10, Rule 2, C. P. C. further shows that he was not responsible for filing the suit which evidently means that he was not keen to keep the wife. It seems there were others including his father, who were the moving spirit and who made a tool of the plaintiff-respondent to institute the suit. I am not prepared to accept the plaintiff's denial in his deposition, that he himself had filed the suit and that it had not been filed under the influence of others. This again is a factor which shows that the husband is not a fit person to keep a wife.

It the learned Civil Judge had given due weight to the statement made by the plaintiff under Order 10, Rule 2 C. P. C., I am sure he would have come to a different conclusion. After giving due consideration to the statement of the plaintiff recorded under Order 10, Rule 2 C. P. C., his deposition and the deposition of the appellant-defendant in the suit, the only conclusion which can be drawn is that the suit for restitution of conjugal rights should be dismissed. As I stated earlier, the statements of other witnesses in the case cannot be relied upon because the father of the plaintiff is an interested person and the other witness is a stranger, who cannot have personal knowledge. The statement of the wife, who is the appellant before me, appears to be more convincing and consistent. She has made out that her husband and father-in-law, are both guilty of maltreatment as well as legal cruelty. It also appears to be a fact that the appellant's father-in-law had bad intentions and that the husband himself wanted his wife to be available to others.

All these are good grounds for living separately from the husband. Having regard to the evidence of the parties produced in the case as well as the circumstances. It must be held that the plaintiff respondent has no legal right to obtain a decree for restitution of conjugal rights, while the wife has a reasonable excuse to live apart.

12. The question of law raised in this case by the respondent's learned counsel depends upon the interpretation of Section 9 of the Hindu Marriage Act. According to his argument, a suit for restitution of conjugal rights should be decreed if none of the grounds given in Sections 10 to 13 have been made out. This, to my mind, is not a correct proposition of law, because although Sub-section (2) of Section 9 confines the pleas in defence only to those grounds which have been given in Sections 10 to 13 yet Sub-section (1) itself lays down certain conditions which must be fulfilled before a suit for conjugal rights can be decreed. It has to be seen by the Court firstly, whether the husband or wife has withdrawn from the society of the other without any reasonable excuse; secondly, whether the Court is satisfied of the truth of the statement made in the petition and thirdly, whether there is no legal ground to refuse a decree for restitution of conjugal rights. In this case the wife is living apart from her husband since 1956 and as stated earlier she has every reasonable excuse for living apart. The grounds which have been given in the petition under Section 9 charging the relations of the wife in not allowing the appellant to go to the respondent's house are incorrect because obviously the wife has withdrawn herself from the society of the husband on her own accord due to the reasonable excuse. There is no authority on the point of this Hon'ble Court.

There are however two cases of the Punjab High Court, which have placed interpretation, on Sub-sections (1) and (2) of Section 9 of the Hindu Marriage Act. In the case of Mst. Gurdev Kaur v. Sarwan Singh the appeal was filed by the wife and allowed. Grover, J. laid down

'although Sub-section (2) of Section 9 of the Hindu Marriage Act confines pleas in defence only to those grounds which can be taken in Sections 10 12 and 13 of the Act, Sub-section (1) itself lays down certain conditions, which must be fulfilled before a decree can be granted.' Thereafter he has given three grounds; reasonable, excuse to live apart; satisfaction of the court about the truth of the

statement made in the petition; and legal ground for the husband to obtain a decree. This was later on followed in the case of Gurcharan Singh v. Sink Waryam Kaur, AIR 1960 Punj 422. This case was filed by the husband and dismissed. The question of legal cruelty was also discussed in this case. Another case cited by the learned counsel is In re : T. Eswaramma : AIR 1960 AP66 . In this case the only question which was referred for decision related to the right of appeal. It has no application inasmuch as no interpretation was placed upon Sub-sections. (1) and (2) of Section 9. It has already been stated earlier that besides the ground given in Sections 10 12 and 13 of the Act, the Court has further to see whether the person, who is living apart, has a reasonable excuse to do so; and in, this case it having been found that the wife had such an excuse, the appeal must succeed.

13. In the result, the appeal is allowed. The judgment and decree of the court below are set aside. Plaintiff's suit is hereby dismissed. But under the circumstances of the case I would make the parties to bear their own costs throughout.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**