

Satyawati Devi Vs. Ram Ji Srivastava

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Court : Allahabad

Decided On : Apr-30-1971

Reported in : AIR1971All575

Judge : S.N. Katju, J.

Acts : [Provincial Small Cause Courts Act, 1887](#); [Hindu Marriage Act, 1955](#) -
Sections 3, 19 and 33

Appeal No. : Civil Revision No. 362 of 1969

Appellant : Satyawati Devi

Respondent : Ram Ji Srivastava

Advocate for Pet/Ap. : G.P. Dikshit, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

S.N. Katju, J.

1. This is a wife's application in revision which arises out of a suit for divorce brought by her husband Ramji Sri-vastava. The suit was instituted in the Court of Judge, Small Cause Court, Varanasi. The learned Judge decreed the suit. The

applicant challenged the decree by way of revision before the 2nd Additional District Judge, Varanasi. The only objection raised before the Court below was that the Small Cause Court Judge had no jurisdiction to entertain the suit. The learned Judge repelled the objection and dismissed the revision. His order has been challenged in revision before me.

2. Learned counsel for the applicant has contended that a suit for divorce is excepted from the cognizance of the Court of Small Causes under Clause (37) of the Second Schedule of the Provincial Small Cause Courts Act (hereinafter referred to as the Act). There is no doubt that a Small Cause Court Judge cannot take cognizance of a suit for divorce.

3. It was held by Oak, C. J. in *Shesh Narain v. Smt. Savitri*, (AIR 1967 All 156), that where a petition under a Hindu Marriage Act is decided by a Small Cause Court Judge it can only be challenged in revision under Section 25 of the Act. In the aforesaid case the petition for judicial separation under Section 10 of the Hindu Marriage Act was dismissed by the Judge Small Cause Court, Kanpur. Section 19 of the Hindu Marriage Act says that every petition under the Act 'shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnised or the husband and wife reside or last resided together.' The expression 'district court' has been defined in Section 3(b) of the Hindu Marriage Act. It says:

'District Court' means, in any area for which there is a city civil court that court and in any other area the principal civil Court of original jurisdiction, and includes any other civil court which may be specified by the State Government by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.'

Learned counsel for the applicant has admitted that, by a Government notification, the Judge, Small Cause Court Varanasi, came within the category of a 'District Court' under the Hindu Marriage Act and he was thus empowered to dispose of the present petition before him. It appears that the provisions of Section 33 of the Act were not brought to the notice of Oak, C. J. in the aforesaid case. Section 33 of the Act runs thus:

'A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall for the purposes of this Act and the Code of Civil Procedure be deemed to be different Courts.'

The Small Cause Court Judge of Varanasi had been empowered to act as a 'District Court' within the meaning of the Hindu Marriage Act and he could take cognizance of a petition for divorce. Such a suit could not have been tried by the Small Cause Court Judge, but when he tried it, as he had been empowered as a District Court within the meaning of the Hindu Marriage Act, he was acting not as a Court of Small Causes but as a Judge taking cognizance of a suit of a civil nature. While acting in such capacity his powers were not restricted by the Act but were governed by the Code of Civil Procedure. Any decision by him as a District Court within the meaning of the Hindu Marriage Act could be subjected to appeal under Section 96 of the Code of Civil Procedure. Even though the Chief Justice in Shesh Narain's case, AIR 1967 All 156 (Supra) took the view that a decision of the Small Cause Court Judge in a petition under the Hindu Marriage Act could only be subjected to revision under Section 25 of the Act and not by appeal it was accepted that the petition was properly filed before the Court of Small Causes. I have no hesitation in holding that the view taken by the Court below is correct. There is no substance in the contention that the Small Cause Court Judge had no jurisdiction to try the suit.

4. Learned counsel has also drawn my attention to the fact that the trial court judge is described as Small Cause Court Judge in his judgment and he has also signed it as such. There is no denying the fact that the learned Judge was a Small Cause Court Judge. Mere description as such does not take away the fact that he was trying the suit as a District Court within the meaning of the Hindu Marriage Act.

5. The application in revision fails and is dismissed. I make no order as to costs in this Court.