

Tika Ram Vs. Sobha Ram

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Court : Allahabad

Decided On : Apr-05-1935

Reported in : AIR1935All855

Appellant : Tika Ram

Respondent : Sobha Ram

Judgement :

Ganga Nath, J.

1. This is a defendant's appeal and arises out of a suit brought against him by the plaintiff-respondent for damages for mental worry anxiety and disgrace caused by the defendant's enticing away the plaintiff's wife. The plaintiff claimed Rs. 1,800 as damages for disgrace and mental pain. The defendant contended that the plaintiff had no cause of action and that the suit was time barred. The trial Court found that the defendant enticed away the plaintiff's wife and gave the plaintiff a decree for Rs. 400 with full costs. The decree was confirmed by the Subordinate Judge on appeal.

2. As already stated, the plaintiff has claimed damages for only mental pain and disgrace. In an action for seduction, the plaintiff must prove : (1) that the female seduced was in his service actual or constructive, at the time of seduction, otherwise there is no injuria; (2) that by reason of the act complained of or otherwise he was deprived of her services, otherwise there is no damnum, and

both injuria and damnum are necessary to support this action : Mayne on Damages, Edn. 10, (vide p. 486), says:

The action for seduction, properly so called, is an anomalous one. In form it purports to be merely an action for the consequential damage arising from the loss of service, resulting from the act complained of. Hence the action will fail unless some loss of service can be shown.

3. No Indian authority has been produced on this point, but the English cases are clear. In *Grinnell v. Wells* (1844) 66 R.R. 835, it was held that an action for seduction cannot be maintained without loss of service. At p. 842, it was observed:

The foundation of the action by a father to recover damages against the wrong-doer for the seduction of his daughter has been uniformly placed, from the earliest time hitherto, not upon the seduction itself, which is the wrongful act of the defendant, but upon the loss of service of the daughter, in which service she is supposed to have a legal right or interest. It has therefore always been held that the loss of service must be alleged in the declaration, and that loss of service must be proved at the trial, or the plaintiff must fail : see *Bennet v. Alcott* (1864) 2 T.R. 166.

4. Mr. Ramaswamy Ayyar in his law of Torts at p. 56 says with reference to an action of a husband for loss of society of his wife caused by enticement that:

In all these cases the action lies only on proof of loss of service. The service may be actual or constructive.

5. As regards the damages for mental pain or anxiety, the plaintiff is not entitled to damages for mere mental pain or anxiety. In *Lynch v. Knight* (1861) 9 H.L.C. 577, at p. 598, it was laid down:

Mental pain or anxiety, the law cannot value and does not pretend to redress when the unlawful act complained of causes that alone, though where a material damage occurs, and is connected with it, it is impossible that a jury, in estimating it, should altogether overlook the feelings of the party interested. For instance, where a daughter is seduced, however deeply the feelings of the parent may be

affected by the wicked act of the seducer, the law gives no redress, unless the daughter is also a servant; the loss of service is a material damage which a jury has to estimate; when juries estimate that, they usually cannot avoid considering the injured honour and wounded feelings of the parent

6. As regards limitation, the seduction took place in October 1930. The suit was brought in March 1932. The lower Court has applied Article 36. Article 36 does not apply. It is Article 22 which applies. Article 22 is for compensation for any other injury to the person for which the period is one year from the time the injury is committed. This view is supported by *Arhat Misir v. Baldeo Ahir* (1909) 5 I.C. 124. There it was held that a suit for damages or compensation for injury caused to a person's reputation and for mental pain arising out of an assault is governed by Article 22, Schedule 2, Limitation Act. The suit having been brought more than one year after the injury was caused is time barred. It is therefore ordered that the appeal be decreed with costs, and the decree of the lower Court be set aside and the plaintiff's suit be dismissed with costs.

7. Permission to file a Letters Patent appeal is granted.

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