

Arvind Kumar Verma Vs. Smt. Suman

Arvind Kumar Verma Vs. Smt. Suman

SooperKanoon Citation : sooperkanoon.com/483457

Court : Allahabad

Decided On : Feb-24-1995

Reported in : I(1996)DMC331

Judge : N.B. Asthana, J.

Acts : [Family Courts Act, 1984](#) - Sections 15 and 16; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Cr. R. No. 1364 of 1994

Appellant : Arvind Kumar Verma

Respondent : Smt. Suman

Advocate for Def. : Vijay Bahadur, Adv.

Advocate for Pet/Ap. : Subodh Kumar, Adv.

Disposition : Revision allowed

Judgement :

N.B. Asthana, J.

1. The Opposite Party filed an application under Section 125 Cr.P.C. before the Principal Judge, Family Court, Kanpur Nagar which was registered as Misc. Case No. 571 of 1993 claiming maintenance allowance at the rate of Rs. 500/- per

month stating herself to be legally wedded wife of the revisionist and alleging that she remained with the revisionist from 19.11.91 the date of marriage to 21.7.92 on which date she was given a beating by the revisionist and his parents and was turned out of the house as her father was unable to satisfy their dowry demands. She was pregnant at that time by seven months. The child, subsequently born, died. It was further said that in order to save himself from giving the maintenance the revisionist had filed a suit for divorce with false allegations, It was also alleged that the revisionist is working with Lohia Machines and was earning Rs. 2,500/- per month. The revisionist did not dispute her marriage with the Opposite Party. He denied the other allegations made in the application and stated that the Opposite Party failed to fulfil her marital obligations. She and her father and mother insisted that he should live in another house separate from his father and since he did not agree to the Opposite Party along with all clothes, ornaments and other articles went with her father on 22.1.92. Since then she is residing there. It was further-said that at the time of marriage she was pregnant and was having illicit relations with another person and for that reason he had filed the petition under Section 24 of Hindu Marriage Act.

2. The Court below believed the version of the Opposite Party and granted the applicant awarding Rs. 500/- per month as maintenance allowances from the date of order.

3. I have heard the learned Counsel for the parties and have perused the record.

4. From the judgment of the Family Court it would be clear that it accepted evidence of the parties in the form of affidavits and on the basis of consideration of those affidavits decided the matter.

5. Under Section 15 of the [Family Courts Act, 1984](#) 'In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall record or cause to be recorded, a memorandum of the substance of what the witness deposes and such memorandum shall be signed by the witness and the Judge and shall form part of the record. Section 16 of the aforesaid Act lays down :-

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions be read in evidence in any suit or proceeding before a Family Court.

(2) . The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.'

6. From the above two sections it is clear that the evidence of witnesses of fact was to be recorded either by the Judge himself or caused to be recorded by him and a memorandum of the substance of what the witnesses depose has to be kept and signed by the witnesses and the Judge. The evidence of a formal character can be taken on affidavit but on the application of any of the parties the Family Court may summon and examine any such person as to the facts contained in his affidavit. It is thus clear that witnesses of fact have to be examined by the Family Court. Their evidence cannot be taken on affidavit. The Trial Judge committed a patent error in accepting the evidence of factual witnesses on affidavit and then relied upon it while delivering Judgment.

7. In view of the above the judgment of the Family Court cannot be sustained. The revision has, therefore, to be allowed.

8. The revision is allowed. The judgment and order in question of the Family Court are set aside. The matter is remanded to the Trial Court with the direction that it shall go through the provisions of the [Family Courts Act, 1984](#) carefully, would give an opportunity to the parties to adduce evidence by producing witnesses in Court and then would decide the matter afresh in accordance with law.