

Daljit Singh Vs. Manjeet Kaur

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Court : Allahabad

Decided On : Aug-28-1995

Reported in : I(1996)DMC615

Judge : R.B. Mehrotra, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : Second Appeal No. 2191 of 1981

Appellant : Daljit Singh

Respondent : Manjeet Kaur

Advocate for Def. : V.S. Jauhari, Adv.

Advocate for Pet/Ap. : L.P. Naithani, Adv.

Disposition : Appeal dismissed

Judgement :

R.B. Mehrotra, J.

1. The present appeal has been filed by plaintiff/ appellant. The necessary facts for adjudication of the appeal are as under : Daljit Singh plaintiff filed a suit under Section 13 of Hindu Marriage Act for before the Civil Judge, Dehradun, claiming the relief for decree of divorce. The plaintiff has alleged in the plaint that the

plaintiff was married with the defendant in October, 1967 in District Dehradun and both resided together and during their wedlock two daughters were born. The plaintiff made an imputation in the plaint that despite being wife, Manjit Kaur did not care for the needs and comforts of the plaintiff and the defendant on the insinuation of her parents used to harass the plaintiff and continually perpetrated cruelty towards the plaintiff, on account of which it has become difficult for the plaintiff to live with the defendant. In the plaint the allegation has also been made that the defendant used to indulge in misbehaviour towards the plaintiff and did not perform her duties as an accomplished wife. According to the plaintiff on 24.7.1972 the defendant without the permission of the plaintiff and without any reason left the above of the plaintiff and took away with her total clothes and ornaments. The plaintiff went to the defendant in year 1974-75 and 1976 and made repeated attempts that the defendant should return to the place of plaintiff, however, the defendant refused to come back with the plaintiff. It has also been alleged in the plaint that the parents of the defendant want that defendant should reside with them to service and lookafter them. It has also been alleged in the plaint that the parents of the defendant desire that the plaintiff should go on sending his salary to them and spend his pay for lookingafter them. On the above allegations, the plain tiff has claimed the relief of divorce in the plaint.

2. The defendant contested the case and alleged in the written statement that the allegations made in the plaintiff are incorrect rather the reality is that the plaintiff perpetrates cruelty towards her. The defendant has denied also the allegations that she has come after abandoning the plaintiff residence with all the clothes and ornaments received in the marriage. The reality is that she was compelled to leave the house of plaintiff without any cloth and ornaments. The defendant has also alleged in the written statement that in November, 1971 she was having ill health and the defendant's father went to see her then the defendant was brought by her father to his house with the consent of her mother-in-law. Thereafter the plaintiff has never tried to take the defendant with him to his house nor the plaintiff tried to help the plaintiff and give necessary expenses to her.

3. On this pleading of the parties the following issue was framed by the Trial Court.

(1) Whether the defendant without any reasonable cause is living separately from the plaintiff for more than 2 years. On evaluating the evidence, the Trial Court recorded a finding that the allegations made by the plaintiff against the defendant are baseless and there is no evidence available in his support and also recorded a finding that the contention of the defendant is correct that the plaintiff has indulged in cruelty towards her, on account of which the defendant is entitled to live separately from the plaintiff. On the basis of above findings of facts the Trial Court dismissed the suit of plaintiff. Aggrieved by the above judgment the plaintiff filed Civil Appeal No. 14/89 in the Court of District Judge, Dehradun under the Hindu Marriage Act. The said appeal was dismissed by the Additional District Judge, Dehradun by judgment dated 10.6.1981 and confirmed the judgment of the Trial Court, and recorded a clear finding in appeal that the plaintiff has wholly failed to establish that the defendant has indulged in any cruelty towards the plaintiff, rather arrived at the conclusion that the plaintiff himself is guilty of cruelty towards the defendant. In connection with the allegation of the plaintiff that the defendant wants to reside separately from the plaintiff for doing service and earn money, the lower Appellate Court rejected this contention and held that the plaintiff was not sending any amount for the maintenance of the wife and education of the two daughters nor he ever cared to know about the welfare of wife and the two daughters by writing any letter, it is clear from this that the plaintiff has no intention to maintain his wife and the two daughters.

4. Considering the entire facts, the lower Appellate Court recorded finding of fact that in reality the plaintiff does not want to keep and compel the defendant to live separately. In this connection, the lower Appellate Court has mentioned about the application given by the defendant in which the defendant has clearly alleged that if the plaintiff wants to keep the defendant with her she is prepared to live with him. The plaintiff objected to this application and refused to keep the defendant with him. On the basis of the above conclusion the lower Appellate Court dismissed the appeal of plaintiff. Aggrieved by the said judgment the plaintiff instituted the present second appeal in 1981 in this Court. It is an unfortunate situation that the said appeal remained pending for a span of 14 years. This appeal was admitted by the Court on 19.11.1981 for hearing and while admitting the appeal the Court found the substantial question of law arising in the appeal, whether the

conclusions of both the Courts below that the defendant has not deserted the plaintiff, is in accordance with law The order of the Court is reproduced here.

'Issue notice. The substantial questions of law involved in the case are : Whether the findings of the two Courts below that the respondents could not be said to have deserted the appellant is violated in law The notice should be served simultaneously by registered post as well as by the ordinary process of Court and shall be made returnable at an early date. The office shall send for the record immediately and the appeal shall be listed for fixing a date for hearing the appeal as soon as the notice is served on the respondents.'

5. The aforesaid appeal was listed before Court for hearing on 27.1.1995. On the request of Mr. L.P. Naithani learned Counsel for the appellant that the hearing of appeal was adjourned for a month so that attempt for compromise between the parties may be made. The Counsel was present on behalf of the defendant. Possibly owing to the long lapse of pendency of appeal the defendant had accepted it to be her fate, and stopped taking interest in appeal. By order dated 21.1.1995, I ordered the appellant to deposit Rs. 500/- to secure attendance of defendant. As a result on 6.3.1995 the defendant appeared before me. However unfortunately the appellant did not present himself that day and the appellant's Counsel has prayed for time to contact his client so that the dispute between husband and wife may be settled by private arrangement. On the request of appellant's Counsel I granted one month's time to appellant's Counsel. On 6.4.1995 none appeared for appellant, consequently the appeal was again adjourned. On 26.4.1995 the appeal came up for hearing before me. Appellant's Counsel failed to contact his client and the learned Counsel for appellant was heard on merits.

6. The learned Counsel for the appellant, mainly relying on decision of Hon'ble Supreme Court in Ramesh Chandra v. Savitri, 1995(2) Supreme Court Cases 7 = 1(1995) DMC 231 (SC), argued that it is the admitted position that both the parties cannot live together. Therefore for the maintenance of wife and marriage of his two daughters, the appellant shall deposit a fixed amount and on that basis, the suit of divorce should be decreed. In the present appeal no such assurance has been

given by appellant, rather even despite repeated time having been granted, the appellant has not appeared in Court. It is clear from this that the appellant has no desire for any sort of compromise in this appeal, nor the appellant present in any way for his conduct nor prepared to transfer any property in favour of respondent, it is not possible to grant any relief to the appellant on the basis of the above judgment. In essence the appellant has achieved his object by compelling the respondent/defendant to live separately and this fact by itself proof positive of the position that the plaintiff/appellant has behaved cruelty towards the defendant.

7. Both the Courts below has recorded the finding of fact on the basis of appreciation of evidence and there is no error in the same, nor any substantial question of law arises for determination. Accordingly the appeal liable to be dismissed on this Court. Both the Courts below have on the basis of evidence recorded the finding that the plaintiff has wholly failed to establish that the defendant has deserted him for a period more than 2 years. Rather both the Courts below have held that the plain tiff himself compelled the defendant to live separately and the plaintiff having made no arrangement for her maintenance committed gross cruelty on her.

8. On the above basis the appeal of the appellant deserves to be dismissed with cost. On account of the pendency of the appeal before this Court for 14 years, the defendant has suffered irreparable loss. When the defendant appeared in this Court she was in a passive mood and she stated that her whole life has become meaningless due to the cruelty of the plaintiff, the responsibility for tine marriage of two daughters which was on the plaintiff has to be discharged by her and the plaintiff/appellant is taking no interest in this regard. It is admitted position that the plaintiff is employed in military and it is appropriate to hold that during his service tenure he must have been receiving sufficient salary.

9. Under the circumstances the appeal is liable to be dismissed with special cost. What should be the special cost to be awarded in the circumstances of the present appeal In this connection the point for consideration is that the parties were married in 1967 and upto 1972 the plaintiff and defendant lived together and during their wedlock 2 daughters were born. The maintenance of the two

daughters in the responsibility of both the plaintiff and defendant. It is admitted position that the plaintiff has not paid even a paisa for maintenance of the daughters since 1972. 23 years have passed since 1972 and in this long span of 23 years the defendant has borne the responsibility of maintenance and education of the two daughters. In the year 1979 the plaintiff has admitted that the defendant has to spend at least Rs. 40-50 for maintenance of the daughters. The plaintiff has also admitted that he is employed in military and his pay in 1979 was Rs. 475/- per month, apart from this the plaintiff gets ration for food from military. The continuously soaring prices since 1979 and having regards to the advancing stage of the daughters the plaintiff should at least bear proportionate expenditure of Rs. 200/- per month for the maintenance and education etc. of the said daughters.

10. After having given birth to the daughters, the plaintiff cannot escape liability of their maintenance. In the span of 23 years if the plaintiff is made to bear the responsibility of maintenance at the rate of Rs. 200/- per month then the plaintiff should approximately be liable to bear responsibility for Rs. 55,000/- as regards the maintenance of the two daughters for a period of 23 years and should pay that amount. Proceedings High Court Act (U.P. Act No. 13/69) Section 3 is as under:

'3. Power to award costs on petitions etc.-

Whenever any petition/application or motion is made in any matter coming before the said Court in the exercise of its civil or other jurisdiction, the Court shall have power to award and apportion costs in any manner it may think fit.'

11. In the above circumstances and under the above provision I determine special cost to the tune of Rs. 50,000/- on the plaintiff. Accordingly the appeal of the plaintiff is dismissed with Rs. 50,000/- cost and it is directed that alongwith English translation of the certified copy of the Judgment be transmitted to the Trial Court within a month and the Registrar of the Court should ensure the receipt of the judgment with English translation to the respondent/defendant through a personal messenger within a month. If within a month from today, the plaintiff- appellant does not deposit Rs. 50,000/- in the Trial Court then on the application of the defendant the above special cost be realised by the Trial Court by attaching the pay of the plaintiff/appellant at the rate of Rs. 300/- per month and the payment be

ensured to defendant.

12. Under the mandatory provision of Section 7 of the Official Language Act, the Registrar of the Court is directed to get English Translation of a copy of this Judgment done through a competent person, within a month, after approval of the Court copies be issued to concerned parties on receipt of regular application. Without annexing English Translation the copy of this Judgment be no supplied to the parties.

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