

Anna Saheb Vs. Tarabai

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Court : Madhya Pradesh

Decided On : Nov-28-1968

Reported in : AIR1970MP36; 1969MPLJ361

Judge : Shiv Dayal and ;S.M.N. Raina, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 9(1), 10(1) and 23(1)

Appeal No. : First Appeal No. 13 of 1966

Appellant : Anna Saheb

Respondent : Tarabai

Advocate for Def. : P.D. Gupta, Adv.

Advocate for Pet/Ap. : A.R. Naoker, Adv.

Disposition : Appeal allowed

Judgement :

S.M.N. Raina, J.

1. This is an appeal by the husband whose petition for restitution of conjugal rights has been dismissed by the District Judge, Gwalior.

2. The petitioner aged about 30 years is a painter by profession. He was married to the respondent on 17-6-49. The parties are Hindus and the marriage was according to the usual Hindu rites. After the marriage the parties lived together in Lashkar.

3. The case of the petitioner-appellant is that on 15-12-1951 the respondent went away and did not return. He served the respondent with a notice on 7-12-1964 calling upon her to come and live with him but she refused to accept the notice. Thus, according to him the respondent has withdrawn herself, from his society without any reasonable excuse. He, therefore, claimed a decree for restitution of conjugal rights.

4. The respondent contested the suit on a number of grounds. She alleged that the marriage was liable to be annulled as she was a minor at the time of her marriage and the consent of her father was obtained by fraud. She further alleged that it was the petitioner, who had deserted her and that he had also treated her with such cruelty as to give rise to an apprehension in her mind that it would not be safe for her to live with him. She also raised certain other pleas with which we are not here concerned and contended that the petitioner was not entitled to a decree for restitution of conjugal rights.

5. The learned trial Judge held that it has not been proved that the marriage was vitiated by fraud, or that the respondent was treated with cruelty. He further held that it was not proved that the petitioner had deserted her. On other points he held in favour of the petitioner. But he dismissed the petition on the ground that it was inordinately delayed and there was no possibility of the parties making a happy home because wife (respondent) was not willing to live with the husband (petitioner) and efforts at conciliation had failed.

6. The learned counsel for the respondent questioned the finding of the trial Judge on the issue relating to cruelty, We have carefully gone through the evidence on this point and we think that the finding is correct. The burden of proving ill treatment was on the respondent. Her version is that she never lived with the petitioner and even the marriage was not consummated. If so there would be no occasion for the appellant to ill treat her. As we shall point out later her contention

that she never lived with the appellant does not appear to be correct. But on the basis of her own version no inference of ill treatment can be drawn.

7. The only ill treatment about which she spoke in the witness-box is that the petitioner used to visit her and pressed her to accompany him and this gave rise to quarrels. She also asserted that he used to bring with him goondas and also used to beat her. There can be no doubt that the respondent, who does not appear to have much regard for truth was trying to exaggerate and distort facts in order to give a new colour to the ordinary incidents at which the appellant seems to have persuaded her to accompany him. It is significant that the respondent's father stated that on certain occasions the appellant had attempted to take the respondent with him by physically dragging her. Apparently, his knowledge is based on what he was informed by the respondent, because none of these incidents took place in his presence. But it is significant that he did not allege that the appellant had obtained the assistance of the goondas or assaulted his wife.

8. Yashwantrao (P. W. 2) who is the brother of the respondent says that he once witnessed a quarrel in which the appellant asked the respondent to accompany him and the quarrel took place because she was unwilling. Jaisingh Rao (D. W. 4) no doubt asserted that on one occasion he had seen the petitioner assaulting Tarabai, but he was rightly disbelieved by the trial Judge. He appears to be an over-zealous witness having scant regard for truth. The appellant on his part denied using force against the respondent. It is significant that he was not even cross-examined on this point.

9. Thus, all what we can gather from the evidence on record is that the petitioner on certain occasions persuaded the respondent to accompany him and even pressed her for the same, and this gave rise to unpleasantness because she was unwilling to go with him. Such a conduct on the part of the husband is perfectly justified and can by no stretch of imagination be treated as cruelty. We, therefore, confirm the finding of the trial Judge on this point.

10. The other findings of the trial Judge against the respondent were not Questioned before us and it is therefore not necessary to deal with them.

11. The only point that remains for consideration is whether the trial Court was justified in disallowing the petition on the ground of delay and certain other considerations referred to above. It is true that Section 23 of the Hindu Marriage Act lays down that the relief shall not be decreed unless the Court is satisfied that there has not been any unnecessary or improper delay in instituting the proceedings. But in order to disentitle the petitioner to the relief on this ground it has to be shown that the delay was both unnecessary and improper. For this purpose we must take into account the conduct of the parties to see if the delay was really culpable.

12. In the present case we do not find that there was such unreasonable delay in the presentation of the petition as may disentitle the appellant to claim restitution of conjugal rights. From the evidence on record it is clear that Mst. Chhotibai (since dead) was the adoptive mother of the appellant and it was she, who had brought about this marriage. She died about 4 years before the institution of the suit and according to Parwatrao (D.W. 1), father of respondent Tarabai continued to live with Chhotibai until she died. Now while Tarabai was living with her mother-in-law there could be no question of the petitioner instituting any proceedings for restitution of conjugal rights because he was apparently free to go to his mother and enjoy the society of his wife.

13. The learned counsel for the appellant urged that the date 15-12-1951 in paragraph 3 of the plaint is incorrect and that it should have been 15-12-1961. There is some substance in this contention, but the proper course for the appellant was to have the mistake rectified by a suitable application for amendment. However, in this case we find that even the respondent admitted that she lived with Chhotibai until her death. It further appears from the evidence adduced by the respondent herself that after the death of Chhotibai the appellant made several attempts to bring the respondent with him and this even led to some unpleasantness, because she was reluctant to accompany him. In these circumstances, we find that there was no unreasonable delay on the part of the petitioner in filing this petition.

14. The next point for consideration is whether the extreme reluctance of the respondent and her assertion that she cannot live happily with the appellant should be taken into consideration, and on this ground the appellant should be denied the relief prayed for by him. The learned trial Judge in paragraph 20 of the judgment observed as under:--

'Moreover, as I see it, the wife does not at all like to live with her husband. The efforts to bring about a conciliation have failed. (Order-sheet dated 15-9-65). When she appeared in Court, she again declined to go to her husband. She is too smart for agreeing to live with her poor artist husband. There is, thus, no possibility of their ever making happy home. In these circumstances, a decree for restitution of conjugal rights would not be justified.'

We must observe that the approach of the learned Judge was erroneous and apparently based on a misapprehension of law. A petition for restitution of conjugal rights cannot be dismissed merely on the ground that there was no possibility of their ever making a happy home in the absence of any positive evidence to show that the petitioner himself was responsible for creating a situation like this. Under Sub-section (1) of Section 9 of the Act, the relief of restitution of conjugal rights can be decreed, if the court is satisfied that the respondent has, without reasonable excuse, withdrawn from the society of the petitioner. The words 'reasonable excuse' have not been defined. Any excuse which falls within the purview of Sub-section (2) of Section 9 would certainly be a reasonable excuse, but there may be other excuses which though they do not strictly fall within the purview of Sub-section (2) can still be considered as a reasonable excuse so as to disentitle the petitioner to the relief [vide *Tulsa v. Pannalal*, AIR 1963 Madh Pra 5].

15. Thus, if the evidence shows that the petitioner (husband) is guilty of misconduct, which though does not fall within the purview of Sub-section (2), is such as to furnish a reasonable excuse to his wife to withdraw herself from, his society. the petition may be dismissed, and in this connection the court may examine the conduct of the husband to see if there is any possibility of the parties living together happily.

16. In Baburao v. Mst. Sushila Bai, AIR 1964 Madh Pra 73, it was observed as under:--

'Even if it were possible to reach a different conclusion with regard to cruelty, we are satisfied that the relations between the parties have come to such a pass that they can no longer live happily together and it is in the interest of the happiness, health and safety of the wife that she is not forced to be in the company or society of the petitioner by a decree of the restitution of conjugal rights.'

The aforesaid observations were made with reference to the misconduct of the husband. In that case there was positive evidence to show that the wife used to be habitually beaten by the husband and the latter even neglected to provide her with food. The husband was addicted to drinking. In the aforesaid circumstances it was held that the attitude of the husband amounted to legal cruelty and constituted a ground for refusal of the decree for restitution of conjugal rights. It was further held that even if it was possible to reach a different conclusion with regard to cruelty the relations between the parties had come to such a pass that they could no longer live happily together, and, therefore, it was in the interest of happiness, health and safety that she should not be forced to be in the company or society of the husband.

17. But if the husband is not guilty of misconduct, a petition cannot be dismissed merely because the wife does not like her husband or does not want to live with him, because he is too poor or is otherwise not fit to be a proper life companion for her. Once a marriage has been solemnised the husband is entitled to the society of his wife and he cannot be denied such society merely because she does not like him, and for reasons of her own does not feel happy with him.

18. Since in this case it has not been proved that the appellant has been guilty of any misconduct and it appears that the respondent has withdrawn herself from the society of the appellant without any reasonable excuse, he is entitled to a decree for restitution.

19. The appeal is, therefore, allowed and the petitioner is hereby granted a decree for restitution of conjugal rights. However, taking into account all the facts and

circumstances of this case we hereby direct that the parties shall bear their own costs in both the courts.

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