

Rajesh Dass Vs. Mrs. Usha Dass

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Court : Madhya Pradesh

Decided On : Jul-14-1995

Reported in : 1996MPLJ227

Judge : A.K. Mathur, Actg. J., ;S.K. Dubey and ;S.B. Sakrikar, JJ.

Acts : [Divorce Act, 1869](#) - Sections 22

Appeal No. : M.C.C. No. 50 of 1995

Appellant : Rajesh Dass

Respondent : Mrs. Usha Dass

Disposition : Petition dismissed

Judgement :

A.K. Mathur, Actg. C.J.

1. This petition has been placed before this Court for confirmation of decree of judicial separation passed by the Illrd Additional Judge to the Court of District Judge, Hoshangabad, dated 30th April, 1994.

2. Smt. Usha Das filed a petition against Rajesh Das for decree of judicial separation on the ground of adultery and cruelty against her husband that he is living in adultery with one Minakshi and he is also treating her cruelty by beating her. Petition was contested by the other side and the husband dented the

allegations. On the pleadings of the parties about 6 issues were framed and the learned Additional District Judge after recording necessary evidence of the petitioner granted a decree of judicial separation. After filing written statement the respondent did not appear to contest and remained ex parte, therefore, evidence was recorded ex parte and decree of judicial separation was passed and same has been placed for confirmation.

3. Notices were issued to both the parties but none appeared before this Court.

4. This case should not have been sent for confirmation before this Court as in accordance with Section 17 of the Indian [Divorce Act, 1869](#) it is only decree for dissolution granted by the District Judge should be sent for confirmation before the High Court. Since this was not a decree for dissolution but it is only decree for judicial separation passed by the Additional District Judge under Section 22 of the Indian Divorce Act and it does not require any confirmation. Section 17 of the Indian Divorce Act reads as under:

"Section 17.-- Confirmation of decree for dissolution by District Judge.-- Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.'

Section 17 of the Act lays down that decree for dissolution of the marriage passed by the District Judge shall be subject to the confirmation of the High Court. It is only the case of dissolution of the marriage that has to be confirmed by the High Court. But decree of judicial separation does not amount dissolution of marriage. Chapter V deals with the judicial separation. Section 22 of the Act reads as under:

"Section 22.-- Bar to decree for divorce a mensa et toro; but judicial separation obtainable by husband or wife.-- No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.'

Section 22 only says that it is a dissolution of the marriage mensa et toro but it is not a dissolution as contemplated in Section 19. The effect of judicial separation is that though it does not dissolve the marriage but it is suspension of marriage and there is separation of both in bed and board. Though it is a decree of judicial separation but still it is not a total dissolution of the marriage rendering it nullity 'or void. The effect of such judicial separation has been given in Section 24 which reads as under:

'Section 24.-- Separated wife deemed spinster with respect to after acquired property. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continue, be considered as unmarried with respect to property of every description which she may acquire or which may come to or devolve upon her.

Such property may be disposed of by herein all respect as an unmarried woman and on her decease the same shall, in case she dies intestate go as the same would have gone if her husband had been then dead: Provided that, if, any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place be held to her separate use, subject, however, to any agreement in writing made, between herself and her husband whilst separate.'

According to Section 24 a separated wife shall continue separately and shall be treated as unmarried with respect to property of every description as she may acquire which may come to or devolve upon her. Similarly, Section 25 deals with the status of spinster wife with regard to contract and suing etc. In these circumstances the effect of judicial separation is not that of dissolution of marriage and as such it does not require confirmation of this Court. Similar view has been taken by Full Bench of this Court in the case of Benzamin v. Rundbhai, AIR 1989 MP 25 and it is observed that:--

'In other words it is a decree for judicial separation which does not dissolve the marriage but results in suspension of marriage relation and there is a separation of the couple in bed and board. It, therefore, necessarily follows that a decree for judicial separation passed under Sections 22/23 of the Act by a District Judge

needs no confirmation by the High Court; but it comes into effect from the date on which it is passed.'

Similar view has been taken by the Calcutta High Court in the case of Arun Kumar Sinha v. Smt. Manjula Sinha, AIR 1981 Cal 252 (FB), wherein it has been observed that:

'Section 22 is in Chapter V and it provides for neither dissolution nor declaration of the marriage to be null and void. It merely effect judicial separation between the parties to the marriage which such consequence as are provided by the provision itself. Though that provision itself provides that such a decree a mensa et toro, that only means from bed and board in contrast to a decree of divorce, a vinculo matrimonii which means a decree of nullity.'

Further similar view has been taken by the Andhra Pradesh High Court in the case of Smt. Pravimala Sundari Bai v. Guduri Premaratnam, AIR 1981 AP 87 (FB); wherein it has been observed that :

'The decree of judicial separation comes into force from the very day it is passed and it does not require further confirmation by the Court.'

5. Therefore, in these circumstances, this decree of judicial separation does not require for confirmation by this High Court. The District Judge should not have sent this reference for confirmation.

6. Hence the reference is misconceived and same is dismissed as the decree of judicial separation has already come into effect from the date on which it is passed.