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Hemant Kumar Vs. Ashabai

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Court : Madhya Pradesh

Decided On : Feb-03-1994

Reported in : II(1994)DMC452

Judge : V.S. Kokje, J.

Acts : Hindu Marriage Act, 1955 - Sections 13(1)

Appeal No. : Misc. Appeal No. 372 of 1991

Appellant : Hemant Kumar

Respondent : Ashabai

Advocate for Def. : S.L. Ukas, Adv.

Advocate for Pet/Ap. : S.A. Mev, Adv.

Disposition : Appeal dismissed

Judgement :

V.S. Kokje, J.

1. This is an appeal against the judgment and decree passed in a matrimonial case under the Hindu Marriage Act by the District Judge, Indore.

2. The appellant her in had sought dissolution of his marriage with the respondent under Section 13 of the Hindu Marriage Act on the ground that she is suffering from mental disorder, The opposite party refuted the allegations. The Trial Court after recording evidence came to the conclusion that it had not been proved by the applicant before it that the non-applicant was of unsound mind and had been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

3. I have heard to the parties and have gone through the record. The ground for dissolution of marriage by a decree of divorce under Section 13(I)(iii) which reads as follows :--

'Section 13(1):--Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party :

(i) ... ...

(ii) ... ...

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.'

The explanations (a) and (b) to ground No. (iii) of Sub-section 1 of Section 13 of the Act, define mental disorder and psychopathic disorder in the following terms:--

Explanation (a):--The expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia :

(b) the expression 'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.'

4. The application under Section 13 of the Hindu Marriage Act before the District Court does not plead that the non-applicant has been incurably of unsound mind. The medical evidence led before the District Court also does not show that the applicant was incurably of unsound mind. PW 4 Dr. Labhchaud Yashlaha does not claim to be an expert in the field of mental diseases. He has only attended the non-applicant as a patient in the Out Patients Department when he was Assistant Surgeon in the Mental Hospital, Indore. Thus, the medical evidence in the case is not sufficient to hold that the non-applicant was 'incurably of unsound mind' or has been suffering continuously or intermittently from mental disorder of such a kind and of such an extent that the petitioner cannot reasonably be expected to live with her. Moreover, the learned District Judge, who had the advantage of watching the demeanour of the respondent in the witness-box, has observed in the judgment that she did not appear to be of unsound mind while giving statement. A perusal of her statement recorded in the case also shows that the respondent was not of unsound mind at-least at the time when she was deposing before the Court. On appreciating the material on record, the District Judge has found that the ground of the respondent being of unsound mind has not been proved by the petitioner. After having gone through the record and having heard the learned Counsel. I am also not satisfied that the ground under Section 13(1)(iii) of the Hindu Marriage Act has been made out.

5. The appeal has no force. It is, therefore, dismissed. The appellant shall bear the costs of the respondent. Counsel's fees Rs. 500/-. The appellant shall also pay all the amount due under the interim orders in the original proceedings as well as in this appeal.

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