

Akila Vs. Shafi Mohammed

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Court : Madhya Pradesh

Decided On : Nov-17-1992

Reported in : I(1993)DMC581; 1993(0)MPLJ175

Judge : R.C. Lahoti, J.

Acts : Dissolution of Muslim Marriage Act, 1939 - Sections 2

Appeal No. : S.A. No. 33 of 1984

Appellant : Akila

Respondent : Shafi Mohammed

Advocate for Def. : Swami Saran, Adv.

Advocate for Pet/Ap. : B. Kaushisk, Adv.

Disposition : Appeal allowed

Judgement :

R.C. Lahoti, J.

1. The plaintiff/appellant is aggrieved by the judgment and decree of the lower appellate Court dismissing her suit for dissolution of her marriage with the respondent, in reversal of the decree of the Trial Court which had decreed the suit.

2. Vide order dated 13-3-1984, this Court admitted the appeal for hearing parties on the following substantial questions of law :

'(i) Whether it was an admitted fact that, at the time of her marriage with the respondent, the appellant was aged 14 years and, therefore, it was not open to the first appellate Court to find that she was aged 15 years on that day ?

(ii) Whether, even if it is assumed that the appellant was aged 15 years on the date of her marriage with the respondent, the marriage is void for the reason that the consent was given not by her but her father ?'

3. Parties are Muslims. Marriage was performed between them on 5-4-1977. Mehr settled was Rs. 20,000/-.

4. According to the plaintiff, she was given in marriage by her father when she was 14 years of age. She stayed with the defendant for a period of eight days merely, during which period she was treated with cruelty by the defendant, also by the mother-in-law and the sister-in-law. She returned to her father, not to unite with her husband any more. She repudiated her marriage by filing the suit on 11-9-1979.

5. The defendant in his written statement, denied the plaintiff having been treated with cruelty. He took the plea that the marriage was consummated and hence was not liable to be dissolved.

6. Two material features of the case may be noticed. Vide para 1 of the plaint, as it originally stood, it was alleged that the marriage between the parties had taken place on 5-4-1977, the mehr having been settled at Rs. 20,000/-. This averment was admitted in the written statement. Vide application dated 17-1-1980, the plaintiff amended the plaint. In para 1, the averment added was that the plaintiff was 14 years of age at the time of her marriage and given so by her father. The application for consequential amendment dated 27-2-1980 moved by the defendant specifically admitted this additional averment. Vide para 2, the averment added was that the plaintiff had repudiated the marriage by exercising her opinion immediately on attaining the age of puberty but before attaining the age of 18 years. The additional plea taken in the written statement para 2 was that the

marriage having been consummated after the plaintiff having attained the age of 15 years, the plaintiff could not have repudiated the marriage.

7. It is strange to note that contrary to the admitted facts, the lower appellate Court has recorded a finding that the plaintiff was above 15 years of age at the time of her marriage and as such, the exercise of option of repudiation was not available to the plaintiff. This finding of the lower appellate Court being contrary to the facts admitted in the pleadings is perverse and cannot be upheld for a moment.

8. Section 2 (relevant part thereof) of the Dissolution of Muslim Marriage Act, 1939 provides as under :

'2. A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds namely :

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years : Provided that the marriage has not been consummated;'

9. In Mr. Ghulam Sakina v. Falak Sher Allah Bakhsi, AIR 1950 Lahore 45, it has been held that consummation should be proved by the defendant as a fact. It has also been held therein that consummation, to deny the Muslim wife's right to repudiate the marriage, should have taken place after her attaining the age of 15 years and consummation if alleged to have taken place at any time when the wife was still below 15 years, would not destroy her right to repudiate the marriage after she had attained the age of 15. I find myself in respectful agreement with the view so taken.

10. The facts and circumstances of the case, as deducible from the evidence adduced by the parties, leave no manner of doubt in holding that the plaintiff did not stay for long with the defendant/respondent. It was hardly for a period of about 8 days, as alleged by the plaintiff, that he had stayed with the defendant. Whatever might have been the reasons assuming that the charge of cruelty levelled against the husband and the in-laws of the wife, has not been proved to hilt, the plaintiff did return to her parents soon on expiry of about 8 days from the date of her

marriage. On the point of consummation, there is the uncorroborated testimony of the husband defendant alone which has been challenged in cross-examination. The defendant's statement was disbelieved by the Trial Court. The plaintiff denied the marriage having been consummated. It was a case of oath against oath. Unless there be weighty reasons, (none having been assigned by the lower appellate Court), the Court below should have been slow to interfere with the view taken by the Trial Court. Assuming that the marriage was consummated, it was irrelevant for the purpose of proviso to Clause (vii) of Section 2 of the Dissolution of Muslim Marriage Act, 1939 as having taken place before the plaintiff having attained the age of 15 years.

11. The lower Appellate Court, therefore, committed a serious error of law in reversing the finding of the Trial Court on the question of availability of ground of dissolution of marriage to the plaintiff.

12. It is not necessary to examine and discuss the evidence available in proof of other grounds for dissolution of marriage relied on by the plaintiff.

13. The fact that the plaintiff has entered into another marriage subsequent to the passing of the decree of the Trial Court is not controverted.

14. For the foregoing reasons the appeal is allowed. The judgment and decree of the lower Appellate Court are set aside and those of the Trial Court are restored. The marriage performed between the parties on 5-4-1977 at Baroda, Tahsil Sheopurkalan stands dissolved. Costs are left to be borne by the parties as incurred throughout. Counsel's fees, as per schedule if certified.