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Devendra Singh Thakur Vs. Beena Bai

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Court : Madhya Pradesh

Decided On : Mar-27-1998

Reported in : II(1998)DMC585

Judge : V.K. Agarwal, J.

Acts : Hindu Marriage Act, 1955 - Sections 9 and 28

Appeal No. : First Appeal No. 368 of 1996

Appellant : Devendra Singh Thakur

Respondent : Beena Bai

Advocate for Def. : Sanjay Agrawal, Adv.

Advocate for Pet/Ap. : P. Diwakar, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Agarwal, J.

1. The appellant/husband being aggrieved by the judgment and decree dated 11.7.1996 in Civil Suit No. 6A/90 of IVth Additional Distt. Judge Bilaspur, whereby the petition under Section 9 of Hindu Marriage Act of the respondent/wife for Restitution of Conjugal Rights, was allowed; has filed this appeal under Section 28

of the Hindu Marriage Act.

2. The facts no longer in dispute are that the parties are Hindu and were married in May, 1984 at Village Padaria, District Bilaspur, in accordance with Hindu religious rites and customs. The respondent/ wife Beena Bai thereafter, went to her matrimonial home at Tamerpara, District Durg and stayed there for a few days. Thereafter, she went to her parental home and returned back after some time again to her matrimonial home in the month of 'Chaitra' 1985. However, the respondent/wife was sent back two days thereafter to her parental home to Padaria, and the parties continued to live separately.

3. The respondent/wife Beena Bai filed an application under Section 9 of Hindu Marriage Act praying for Restitution of Conjugal Rights. It was alleged therein that the family members of the present appellant/husband were dis-satisfied and critical about the inadequacy of dowry given in the marriage of the parties. However, on being pursuaded by the father of the respondent/wife and their other relations, the appellant/husband had taken her back in the month of 'Chaitra' 1985. However, there was again criticism regarding the inadequacy of dowry and only after two days the respondent wife-Beena Bai was again sent back to her parental home. In the year 1987, the father of the appellant/husband died, but no intimation in that regard was sent to the respondent Beena Bai. However, on getting the information, she went alongwith her brothers to her matrimonial house and took part in the post cremation ceremonies. On account of refusal by the appellant/husband to keep her in his house, she was forced to return back to her parental home at Padaria. An offer for reconciliation was made by her father, and thereafter a petition in the Caste Panchayat was also filed by him. Caste-Panchayat gave decision in favour of respondent-Beena Bai and the appellant/husband was directed to take her back. Since the appellant/husband did not do so, an application under Section9 of Hindu Marriage Act for 'Restitution of Conjugal Rights' was filed by the respondent/wife Beena Bai.

4. The appellant/husband denied the above allegations. He denied that there was any dis-satisfaction or criticism by his family members regarding the dowry given in his marriage. According to him his marriage was performed with the

respondent/wife by playing fraud. She was suffering from mental ailment from before the marriage which was not disclosed by her parents and other family members. Moreover, though she was said to be educated upto Matriculation Standard but it was infact not so. It was further averred that the respondent Beena Bai behaved abnormally from the very beginning after the marriage and despite request by appellant/husband avoided to perform her marital obligations. It was also averred by the appellant/husband that on account of the fraud played on them as above, his father suffered a shock and died on 5.3.1987. The appellant/husband further alleged that the decision of the Caste Panchayat was given as a result of undue pressure exerted by persons who were favourably inclined to the father of his wife Beena Bai. It has been averred by appellant/husband that in view of the mental sickness of his wife Beena Bai, it is not possible for him to have marital relations with her. He also averred that his marriage with Beena Bai should be declared null and void. He prayed that the petition under Section 9 of the Hindu Marriage Act for 'Restitution of Conjugal Rights' filed by his wife Beena Bai be dismissed.

5. The learned Trial Court framed issues as to whether the respondent/wife was suffering from mental ailment and her marriage with the appellant/husband was performed by playing fraud and by suppressing the above fact. An issue as to whether the family members of the appellant/husband refused to keep the wife/ respondent with them on account of inadequacy of dowry, was also framed. On appreciation of evidence, it was found that the appellant/husband has failed to lead satisfactory and cogent evidence to establish that the respondent Beena Bai was suffering from mental ailment. It was also held by the learned Trial Court that there was criticism by the family members of the appellant/husband regarding the insufficiency of dowry given in the marriage of the parties. Accordingly, the petition under Section 9 of Hindu Marriage Act of respondent/wife for 'Restitution of Conjugal Rights' was allowed and decree was granted in her favour.

6. In the present appeal, the learned Counsel for the appellant/husband has mainly urged that the appellant/husband had adduced cogent evidence and placed material on record from which it is evident that the respondent/wife behaved abnormally immediately after the marriage and that she was suffering from mental

illness, from before the marriage; and thus there was reasonable excuse for the appellant/husband to withdraw from the society of the respondent/wife Beena Bai. It has further been urged that in view of the mental ailment of the respondent/ wife as above, it is not possible for the appellant/husband to have marital relations with his wife Beena Bai, and that the marriage between the parties deserves to be annulled on the ground of fraud which was played by suppression of the above ailment.

7. As against this, the learned Counsel for the respondent/wife has urged that it was for the appellant/husband to prove that there was reasonable excuse to withdraw from the society of his wife / the respondent Beena Bai, while he has failed to do so. Therefore, the decree for 'Restitution of Conjugal Rights' in favour of respondent/wife was rightly granted by the learned Trial Court.

8. Decree for Restitution of Conjugal Rights can be granted under Section 9 of the Hindu Marriage Act when either of the spouse withdraws from the society of the other without reasonable excuse, on a petition made by the aggrieved party. In the explanation added later to Section 9 of Hindu Marriage Act, it has been specifically provided that where a question arises as to whether there was reason- able excuse for withdrawal from the society of the other spouse, the burden of proving reasonable excuse would be on the person who withdraws from the society.

9. In the instant case, it is not in dispute that the parties were married with each other in May, 1994, and it is further not in dispute that the appellant/husband has withdrawn from the society of the respondent/wife. The averments made by the appellant/husband itself as well as evidence led in the Trial Court amply prove the above facts. Therefore, it was the burden of the husband /appellant to have proved that there was reasonable excuse for him to withdraw from the company of his wife Beena Bai.

10. The appellant Devendra Singh (NAW 1) besides examining himself has also examined one Jawahar Singh Thakur (NAW 2) in the Trial Court. Appellant Devendra Singh (NAW 1) has stated that the respondent/wife behaved abnormally from the very beginning after the marriage. He also stated that the father of the respondent/wife was informed about the above abnormal behaviour, but he did not

take serious note of the fact and said that she would be all right within a short time; upon which they had left the respondent Beena Bai with her father. Appellant Devendra Singh has also stated that 7-8 days thereafter a relative of the respondent/ wife had come to him and had informed him that she was being treated by Psychiatrist Dr. Shukla at Raipur. However, appellant Devendra Singh (NAW 1) has not examined any other witness in support of his statement. No household member of the appellant/husband or any neighbours, etc. or even the relative who allegedly informed him about the mental ailment of his wife Beena Bai, have been examined by him.

11. Though the appellant/husband has stated that Dr. Shukla treated his wife but he has also not been examined in support of his version. The learned Trial Court has noted that though opportunities have been granted for examination of Dr. Shukla but he was not produced by the respondent in support of his statement. It is also mentioned by the learned Trial Court that the medical certificate given by Dr. Shukla indicated that the respondent/wife was treated by him in April 1985 i.e. about after a year after the marriage between the parties. Thus, the learned Court concluded that there was nothing on record to indicate that the respondent/wife Beena Bai suffered from mental illness from before her marriage. Accordingly, it was held that there was no suppression of facts and fraud played by the parents of the respondent/wife Beena Bai, in performing the marriage between the parties.

12. So far as another witness of the appellant/husband Jawaharlal Singh Thakur (N AW 2) is concerned, he only stated about the Caste Panchayat. He has told that Panchayat was approached by the father of the respondent Beena Bai and has produced copy of the minutes book (Ex. D/3) which indicates that the appellant/ husband was directed by the Panchayat to take back his wife Beena Bai within six months, and on his not doing so, her father was given permission to take recourse to law. It would thus appear from the statement of Jawahar Singh Thakur that the father of the respondent/wife Beena Bai made an attempt to bring about a re-union between the parties but his efforts failed. Moreover, he has not stated that Beena Bai suffered from mental sickness.

13. It may also be noticed that the respondent/wife Beena Bai (AW/1) has examined herself in Court and has clearly stated that she did not suffer from any mental ailment. She has been subjected to long cross-examination but she appears to have withstood the same very well. This would go to show that she is not suffering from mental ailment. The respondent/wife has also examined Kachra Bai (AW/3) who has stated that there was criticism about the dowry that was given in the marriage of the parties. She has denied the suggestion that Beena bai was mentally ill. There appears to be no reason to discredit the evidence as above, led by the respondent Beena Bai.

14. Thus, on appreciation of evidence, as about, it would appear that the appellant/husband Devendra Singh has failed to establish that there was reasonable excuse for him to withdraw from the society of his wife/respondent Beena Bai. Hence the decree for restitution of conjugal rights under Section 9 of Hindu Marriage Act granted by the impugned judgment cannot be faulted with and the same calls for no interference.

15. Therefore, the appeal has no merit and deserves to be and is hereby dismissed. The parties shall however bear their own costs. Counsel fee Rs. 1,000/-, if pre-certified.

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