Jyotsna Ram Vs. Subhash Ram

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Court : Madhya Pradesh

Decided On : Jul-17-1991

Reported in : I(1993)DMC382; 1992(0)MPLJ9

Judge : S.K. Seth, Faizanuddin ; and K.M. Agarwal, JJ.

Acts : Indian Divorce Act, 1869 - Seetions 18 and 19(1)

Appeal No. : M.C.C. No. 43 of 1991

Appellant : Jyotsna Ram

Respondent : Subhash Ram

Advocate for Def. : Vivek Tankha, Adv.

Advocate for Pet/Ap. : S.L. Kochar and ; Arun Kochar, Advs.

Judgement :

S.K. Seth, J.

1. It is not in dispute that Scat. Jyotsna Ram and Shri Subhash Ram had been married according to Christian rites at the Disciples of Christ Church at Bilaspur on 30.5.1984. It is also not in dispute that after the solemnisation of the marriage they lived together only for a couple of months and thereafter Smt. Jyotsna Ram returned to the house of her parents at Bilaspur and lived separately from her

husband. On 13.3.1985, she presented a petition to the District Court, Bilaspur under Section 18 of the Indian Divorce Act praying that her marriage with the respondent be declared to be a nullity on the ground that the respondent had been impotent not only at the time of the marriage but at the time of the institution of the suit. The (C. S. No. 79-A of 1990) was resisted by the respondent. It was contended by him that the allegations made by the petitioner in her petition in regard to he being impotent were false. After recording oral evidence of the parties and hearing them on the points arising for determination in the case, it was found by the Fifth Additional Judge to the Court of District Judge, Bilaspur in favour of the petitioner that the respondent had been impotent not only at the time of marriage but also at the time of institution of the suit. Accordingly, the said Court vide its judgment dated 31.12.1990, passed a decree of nullity of marriage as prayed for by the petitioners. The present reference has been made by the said Court for confirmation under Section 20 of the Act.

2. At the hearing, the finding given by the Trial Court with regard to the respondent being impotent at the time of the marriage and at the time of the institution of the suit was not seriously challenged before us by the learned Counsel for the respondent. Otherwise also, from the medical and other evidence produced in the case we are satisfied that the said finding was rightly reached by the Trial Court and did not call for interference by us in this reference. The only thing which we could say in favour of the respondent is that from the evidence produced in the case of possibility of his being impotent only in relation to the petitioner but being otherwise potent was not ruled out. But, then, in our opinion, the fact of his being impotent in relation to the petitioner was sufficient for entitling her (i.e. the petitioner) to a decree of nullity of marriage against him. The fact that the respondent was otherwise potent was of no avail to him.

3. In the facts and circumstances of the case, from a perusal of the reference, we are satisfied there was no collusion between the petitioner and the respondent in the matter relating to the presentation of the petition. Accordingly, we find no reason why the reference in question be not accepted and the decree passed by the Trial Court be not confirmed.

4. In the result, the reference made by the Fifth Additional Judge to the Court of District Judge, Bilaspur is accepted and the decree of nullity passed by him in favour of the petitioner vide his judgment dated 31.12.1990 passed in Civil Suit No. 79-A of 1990 is made absolute.

5. We direct in the circumstances of the case there shall be no order as to costs.