

Ramsiya Sharma Vs. Meera Devi

Ramsiya Sharma Vs. Meera Devi

SooperKanoon Citation : sooperkanoon.com/505220

Court : Madhya Pradesh

Decided On : Feb-07-1995

Reported in : I(1995)DMC614

Judge : A.S. Tripathi, J.

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

Appeal No. : Civil F.A. No. 20 of 1993

Appellant : Ramsiya Sharma

Respondent : Meera Devi

Advocate for Def. : None

Advocate for Pet/Ap. : Anil Shrivastava, Adv.

Disposition : Appeal dismissed

Judgement :

A.S. Tripathi, J.

1. This appeal is preferred against the judgment and decree dated 8th of Feb., 1993 passed by the 1st Additional District Judge of Bhind, whereby the suit of the plaintiff/appellant for dissolution of marriage with the defendant/respondent was dismissed.

2. The plaintiff/appellant had filed a civil suit for dissolution of marriage on the ground that the respondent/defendant was living in adultery with his own elder brother Kishnu. The allegation was denied by the respondent in the written-statement filed by her in the Trial Court. The Trial Court had framed necessary issues on the point as to whether the respondent was living in adultery with the elder brother of the plaintiff appellant Kishnu for quite sometime and two children were born on account of her adulterous conduct with Kishnu.

3. Heavy burden was upon the plaintiff/appellant to prove this fact of adultery. To prove this fact, the plaintiff had examined himself as P.W. 1 and his sole interested testimony was rejected by the Trial Court. P.W. 2 Chandrakanti is the wife on the younger elder brother of the plaintiff. She was found to have connived with the plaintiff and the Trial Court had rejected her statement which was based on hearsay and suspicion only. P.W. 3 Suresh Chand Sharma is the real brother-in-law of the plaintiff. He was also in connivance with the plaintiff. The Trial Court has examined his statement and found that by his own statement it was borne out that off and on the plaintiff was visiting his village and the respondent was living with him whenever he used to come back from Bhopal from service. The fact is also admitted that one of the elder brother of the plaintiff Ramkumar Sharma who was in the Police service had fallen ill. The plaintiff was living with him for quite some time for treatment at Bhopal. Ramkumar died and the plaintiff got service in his place. The witness admitted that for quite sometime the respondent had gone to Bhopal to live with the plaintiff, from where she went back to her parents house. Similarly P.W. 4 Surendra Kumar Sharma is the younger brother of the plaintiff. He tried to say that he had seen the respondent living in adultery with his own eldest brother Kishnu. In the cross-examination, he had admitted that he himself had taken the respondent to Bhopal to live with the plaintiff where she lived for quite sometime. This admission itself demolishes the credibility of the plaintiff's witness.

4. On the other hand, respondent Smt. Meera Devi had denied the allegation of adultery. She admitted that she was living with her husband, the plaintiff for quite sometime in peace and harmony. Later on the plaintiff started misbehaving with her. Even the family members had arranged a Panchayat. Even she was living with the plaintiff at Bhopal where she lived for considerable time. Two children

were born in the wedlock with the plaintiff. She denied the charge of adultery at any point of time with the elder brother of the plaintiff Kishnu.

5. The plaintiff tried to draw inference from the fact that the respondent was not living with him throughout at Bhopal and she was visiting her parents off and on. She was living alone with her own eldest brother-in-law Kishnu who was unmarried. From this guess-work and suspicion, the plaintiff tried to believe that the respondent was living in adultery with Kishnu. There is no positive evidence to show that the respondent was living in adultery with Kishnu at any point of time. The Trial Court had rightly assessed the evidence on record and came to the correct conclusion that there is absolutely no reliable evidence to prove that the respondent was living in adultery with the elder brother of plaintiff Kishnu. It is no doubt true that Kishnu was unmarried, but that itself is no evidence to show that he was having adulterous relation with respondent. Heavy burden was upon the plaintiff to prove the charge of adultery in which he had miserably failed :

6. Reference was made to the case of Dr. N.C. Dastane v. Mrs. S. Dastane, AIR 1975 SC 1534. The Hon'ble Supreme Court in that case had laid down the principles of assessment of evidence in such a case in the following words :

'if the High Court takes upon itself the duty to determine an issue of fact its power to appreciate evidence would be subject to the same restraining conditions to which the power of any Court of facts is ordinarily subject. The limits of that power are not wider for the reason that the evidence is being appreciated by the High Court and not by the District Court. While appreciating evidence, inferences may and have to be drawn by Courts of facts have to remind themselves of the line that divides an inference from guess-work.'

7. While dealing with the facts of the case referred above, the Supreme Court clearly cautioned the Appellate Court in respect of drawing inferences and the guess-work to be taken as a proof of any fact.

8. In this particular case, the obnoxious charge of adultery was levelled against the respondent by her own husband the plaintiff with his own elder brother. This obnoxious charge required a positive prove nonetheless, there are no facts is

leading inference to draw that the respondent must have been living in adultery with the elder brother of the plaintiff. All these ingredients are lacking in this case. There is absolutely nothing on record to draw an inference that the respondent was living in adultery with Kishnu at any point of time. Mere guess-work or suspicion of the plaintiff will not help him to establish the charge of adultery. The Trial Court had cautiously and with utmost wisdom assessed the evidence on record and rightly rejected the witnesses produced by the plaintiff to prove the charge of adultery.

9. There is a clear denial by the respondent herself regarding this obnoxious charge and even she went to the extent to state that she was living with the plaintiff at Bhopal for quite sometime and only when the plaintiff started misbehaving with her and even went to the extent of burning her hands by gas and kicked her out, then only she was compelled to go to her parents' house. This statement of the lady could not be overlooked in the facts and circumstances of the case. The plaintiff had failed to discharge his burden to prove the charge of adultery and his suit was rightly dismissed by the Trial Court.

10. This appeal has absolutely no merit and is dismissed with costs.