

Sandhya Vs. Vijaysingh

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Court : Madhya Pradesh

Decided On : Jan-19-2004

Reported in : II(2004)DMC768

Judge : A.K. Awasthy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9

Appeal No. : First Appeal No. 447 of 1997

Appellant : Sandhya

Respondent : Vijaysingh

Advocate for Def. : S.C. Agarwal, Adv.

Advocate for Pet/Ap. : Garvesh Badjatya, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. Appellant/defendant has filed this appeal under Section 28 of the Hindu Marriage Act against the judgment and decree dated 3.4.1997 in Civil Suit No. 16-A/94 passed by the learned 3rd Additional District Judge, Ujjain, whereby the decree of conjugal rights was passed.

2. Admitted facts of the case are that the marriage in between the appellant and the respondent was performed on 18.2.1980 according to the Hindu rights and customs at Ratlam and after the marriage the appellant lived few days in the matrimonial house and now she is living separately with her parents.

3. The case of the petitioner is that the defendant was in habit of leaving the matrimonial house without the knowledge and the permission of the petitioner and her behaviour with the petitioner and his family members is not desired and cordial. That the defendant has left the matrimonial house with jewellery and cash and on 24.1.1994 when the petitioner went to the house of the parents of the defendant at Ratlam to bring her back, she refused to come back and her parents have insulted and misbehaved with the petitioner. The petitioner has prayed that the decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act be passed against the defendant.

4. The defendant has denied that her behaviour with the petitioner and his family members was improper or insulting. She has denied that she was in habit of leaving the matrimonial house or she has left the matrimonial house with her jewellery and cash. It is alleged by the defendant that the parents of her husband were greedy in nature and they wanted her to bring money from her parents. That in the month of June, 1990 the petitioner under the intoxication has gave vulgar abuses to her and she was thrown away from the house in the mid-night and a fracture was caused in her left hand on account of push given by her husband while ousting her from the house. The defendant has further alleged that she has filed a petition under Section 125, Cr.P.C. against her husband and he has filed the petition for restitution of conjugal rights in order to avoid payment of maintenance.

5. The learned Trial Court, after framing the issue, has examined Vijaysingh (P.W.1) and Shivnarain (P.W. 2) and from the opposite side Shyamsingh (D.W. 1), Badrilal (D.W. 2), Peetar (D.W. 3), Laxmansingh (D.W. 4) and Sanjay (D.W. 5) were examined. The learned Trial Court has held that the appellant/defendant is living separately without any rhyme or reason and as such the decree of restitution of conjugal rights be passed against the appellant.

6. The appellant assailed the impugned judgment and decree on the ground that the evidence is not properly appreciated by the learned Trial Court and it has erred in holding that the respondent/petitioner is not guilty of causing mental and physical cruelty. Petitioner Vijaysingh (P.W. 1) and his father Shivnarain (P.W. 2) have stated that they have gone to Ratlam to bring the defendant back to live in the matrimonial house, but she has refused to live with the petitioner. Vijaysingh (P.W. 1) and Shivnarain (P.W. 2) have denied that the defendant was ill-treated or beaten or the dowry was demanded by the petitioner from the defendant.

7. The defendant has examined Shyamsingh (D.W. 1), Badrilal (D.W. 2) and Peetar (D.W. 3) to corroborate her statement that one day her husband came to the house after taking liquor and under the influence of intoxication he started abusing her and threw her on the ground and due to fall on the ground her left hand was fractured. It is clear that the defendant has not lodge any report against her husband. The solitary instance against her wife by the petitioner that too under the influence of liquor is not sufficient to show that the petitioner is in habit of ill-treating or physically assaulting his wife. Learned Trial Court has not committed any error in holding that the appellant has no justification in living separately from her husband. The petition for restitution of conjugal rights was rightly allowed by the learned Trial Court.

8. The appeal is devoid of any substance and is hereby dismissed.