

Alok Vs. Pushpabai

Alok Vs. Pushpabai

SooperKanoon Citation : sooperkanoon.com/508250

Court : Madhya Pradesh

Decided On : Jul-05-1996

Reported in : II(1996)DMC657

Judge : N.P. Singh, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10

Appeal No. : F.A. No. 105 of 1992

Appellant : Alok

Respondent : Pushpabai

Advocate for Def. : None

Advocate for Pet/Ap. : R.K. Thakur, Adv.

Disposition : Appeal dismissed

Judgement :

N.P. Singh, J.

1. This appeal is directed against the judgment and decree dated 7.3.1992 passed by the IVth Addl. District Judge, Durg in Civil Suit No. 8-A of 1990, granting judicial separation and permanent alimony @ Rs. 200/- per month to the respondent/wife.

2. The respondent/wife made an application under Section 10 of the Hindu Marriage Act, 1954 against the appellant before the IVth Addl. District Judge, Durg for grant of judicial separation and payment of alimony on the ground of desertion and cruelty.

3. On the other hand, the stand of the appellant is that the respondent/wife is the only issue of her parents, therefore, she was not willing to live with the appellant. She had voluntarily left the association of the appellant and started living with her parents. Thereafter she never returned to the association of the appellant, despite the requests made by him. The appellant then married another lady.

4. The Trial Court on consideration of the evidence adduced by both the parties, decreed the suit and granted judicial separation and permanent alimony of Rs. 200/- per month to the respondent.

5. The appeal proceeded ex-parte against the respondent as she did not appear, despite service of notice.

6. Counsel for the appellant has contended that the appellant has been paying Rs. 350/- to the respondent as maintenance under Section 125 of the Code of Criminal Procedure. The appellant receives a meagre salary of Rs. 400/- and there are four dependents on him. Therefore, the appellant has no means to pay permanent alimony to the respondent. The parents of the respondent have sufficient means to maintain the respondent. This aspect of the case was not considered by the learned Trial Court and the learned Trial Court has wrongly decreed the suit.

7. Mr. Thakur, Counsel for the appellant, has very fairly conceded that there is no document to show that the appellant has been paying Rs. 350/- to the respondent as a maintenance under Section 125 of the Code of Criminal Procedure.

8. Admittedly the respondent is the lawfully wedded wife of the appellant. It is also admitted that the respondent has been turned out from her matrimonial home and there is no relationship between them as husband and wife from the year 1983. It is further admitted that the appellant has married another lady during the subsistence of the marriage with the respondent.

9. It is well settled that taking a second wife by the husband during subsistence of the first marriage amounts to cruelty to the wife and she is entitled to live separately and to get permanent alimony.

10. On careful consideration of the case and the evidence available on record, I do not find any reason to interfere with the judgment and decree under appeal. There is no merit in this appeal. It is dismissed accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com