

Dayaldas Vs. Latabai

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Court : Madhya Pradesh

Decided On : Jan-16-2001

Reported in : II(2001)DMC247

Judge : V.K. Agrawal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 23(2); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 27

Appeal No. : First Appeal No. 457 of 1996

Appellant : Dayaldas

Respondent : Latabai

Advocate for Def. : None

Advocate for Pet/Ap. : Mani Dubey, Adv.

Disposition : Appeal allowed

Judgement :

V.K. Agrawal, J.

1. This appeal is directed against the judgment and decree dated 21.9.1996, in Civil Suit No. 28-A/94 by First Additional District Judge, Katni, dismissing the appellant's application under Section 13 of the [Hindu Marriage Act, 1955](#)

(hereinafter called the 'Act' for short) seeking divorce from the respondent.

2. The plaintiff/appellant filed an application under Section 13 of the Act, on the ground that his wife - the respondent suffered from mental ailment from before the marriage, which was suppressed from him. It was also averred that the behaviour of respondent/wife was erratic and indicated that she was not a mentally normal person. She had gone back to her parents home in the year 1989, i.e. about six years prior to the filing of application and had not returned back. The plaintiff/appellant, therefore, prayed that the decree of divorce under Section 13 of the Act, be granted.

3. The respondent remained absent and did not turn up despite service of notice of petition as above, hence was proceeded against ex parte. The proceedings of reconciliation under Section 23(2) of the Act, also could not be carried out on account of respondent's absence.

4. The plaintiff/appellant examined himself in support of his petition.

5. The learned Trial Court found that the plaintiff/appellant has not proved that respondent was suffering from any mental disorder and was incurably of unsound mind. It was also held that the appellant failed to prove that the respondent has deserted him. Accordingly, his petition seeking divorce was dismissed.

6. Learned Counsel for appellant submits that the appellant wishes to examine more witnesses in support of his case. He also filed an application under Order 41 Rule 27 of C.P.C. in this appeal. It has been submitted that, though the witnesses were available and could corroborate his statement, he was wrongly advised not to examine them. He prays that opportunity be granted to examine the said witnesses.

7. After considering the said application and the circumstances of the case, it appears, that the prayer deserves to be allowed, and the plaintiff/appellant is permitted to examine witnesses, as has been prayed by him in his application under Order 41 Rule 27 of C.P.C.

8. In view of above, the appeal is allowed. The judgment and decree of the Trial Court is set aside. The case is remanded back to the Trial Court for trial afresh after giving the plaintiff/ appellant an opportunity to lead further evidence. However, in the interest of justice, it is directed that the Trial Court before proceeding with the suit, shall issue fresh notice of the suit to the respondent/wife and also make an endeavour for reconciliation, as provided under Section 23(2) of the Act.

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