

Usha Devi Vs. Vinod Kumar Jain

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Court : Madhya Pradesh

Decided On : May-08-2003

Reported in : II(2004)DMC253

Judge : A.K. Awasthy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 28

Appeal No. : First Appeal No. 98 of 1997

Appellant : Usha Devi

Respondent : Vinod Kumar Jain

Advocate for Def. : Dharmesh, Adv.

Advocate for Pet/Ap. : Hansa Agrawal, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. The appellant defendant has preferred this appeal under Section 28 of the Hindu Marriage Act against the judgment and decree dated 7.12.1996 passed in Civil Suit No. 15-A/1994 by Additional District Judge, Panna, wherein the marriage between the parties is annulled by decree of nullity on the ground of impotency of

the wife.

2. The admitted facts of the case are that the marriage between the appellant and the respondent was performed on 3.6.1987 in accordance with the Hindu rites and customs.

3. The case of the respondent/plaintiff is that the appellant is frigid and impotent and it is not possible for the respondent or anybody else to perform the sexual intercourse with the appellant/defendant. It is further pleaded that his father-in-law took the appellant for the medical treatment to cure her impotency but her condition did not improve at all. The respondent has prayed that his wife is impotent from the time of their marriage and she is not capable of procuring the child and as such the marriage between the parties be annulled by the decree of nullity.

4. The appellant/wife has denied that she is incapable of sexual intercourse. It is alleged that the respondent has several times sexual mating with her and she became pregnant. That respondent/husband has not taken her to any doctor for treatment. The appellant has alleged that the respondent has performed the second marriage and the appellant has filed criminal case under Section 494, IPC against the respondent in the Court of Chief Judicial Magistrate at Panna. The appellant has taken the plea that this petition for annulling the marriage filed after three years of the marriage and as such it is barred by time.

5. The learned Trial Court, after framing the issues, has examined the respondent Vinod Kumar Jain and his witnesses Komal Prasad and Santosh Kumar. That the appellant/wife has not examined her nor any evidence was adduced for her. Learned Trial Court has concluded that the appellant/wife was impotent at the time-marriage and he has annulled the marriage by the decree of nullity.

6. The appellant has assailed the decree on the ground that the appellant and the respondent reached to the compromise to withdraw this petition and other cases but the respondent/husband has betrayed the appellant and did not withdraw this petition. That the opportunity be granted to the appellant to adduce the evidence. The impugned decree is assailed on the ground that the evidence is not properly

appreciated by the learned Trial Court and under the wrong notion of law the impugned decree is passed.

7. Vinod Kumar Jain (P.W. 1) has stated that just after the marriage he knew that his wife was impotent and incapable of performing the vaginal intercourse. Komal Prasad (P.W. 2) has stated that the mother-in-law of appellant and other family members were saying to his wife that the appellant is frigid and not fit for the sexual intercourse. Dr. Santosh Kumar (P.W. 3) has stated that the respondent/ husband told him that the vaginal hole of his wife is very small and it is not possible to have the vaginal intercourse with her. Dr. Santosh Kumar (P.W. 3) has further stated that he got the appellant examined by a nurse named Sulochana and lady Dr. Megha and both of them found that the vaginal hole of the appellant was very narrow and she was not having uterus (womb).

8. The appellant/wife has not examined herself on oath and she has not produced any witness. The sufficient opportunity for adducing the evidence was provided to her by the Court. The appellant was directed by the Trial Court and even in a revision filed by her, she was directed on 4.7.1996 by the High Court that for the purpose of potency she should get herself examined by the lady doctor in the District Hospital, Panna on 1st August, 1996. The appellant/ wife did not comply the order and did not go to the District Hospital to get herself medically examined for her sexual potency, she has flouted the order dated 4.7.1996 passed in Criminal Revision No. 1515/1994 by the High Court of Madhya Pradesh at Jabalpur. In these circumstances, the learned Trial Court has rightly drawn the adverse inference against the appellant/wife. In the aforesaid backdrop the fact that appellant has not examined herself on oath or adduced any medical evidence before the Court fortifies the adverse inference against her. Thus, it is clear that the findings of the learned Trial Court that the marriage between the appellant and the respondent has not been consummated owing to the impotence of wife is just and proper. The appellant has failed to show that how the petition of the respondent is barred by limitation.

9. Consequently, the impugned judgment and decree is hereby confirmed. The appeal is without merit and it is dismissed. Parties to bear their own costs.

