

Amrat Vs. Thagibai

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Court : Madhya Pradesh

Decided On : Sep-04-2002

Reported in : I(2003)DMC441

Judge : A.K. Gohil, J.

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

Appeal No. : First Appeal No. 29 of 1995

Appellant : Amrat

Respondent : Thagibai

Advocate for Def. : S.L. Ahiwasi, Adv.

Advocate for Pet/Ap. : B.L. Pavecha, Sr. Adv., i/b., Sadhana Pathak, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Gohil, J.

1. This appeal is directed against the judgment and decree dated 23rd November, 1994 passed in Regular Civil Suit No. 22-A/92 by Additional Judge to the Court of District Judge, Sendhwa whereby Court dismissed the suit filed Under Section 13 of the Hindu Marriage Act for grant of divorce.

2. The brief facts of the case are that the husband filed petition Under Section 13 of the Hindu Marriage Act on the allegation that the marriage took place between the plaintiff and the defendant 17 to 20 years before, out of this wedlock the defendant is having 3 children. Eldest daughter Sangeeta is 13-years; son Vijendra is aged about 10 years, and younger son, Jitendra is aged about 7 years. For last some years both are residing separately. The daughter Sangeeta and son Jitendra are residing with the defendant-wife and another son Vijendra is residing with the plaintiff-husband. Plaintiff filed the petition on the ground that the behaviour of the wife is not decent and she is always quarrelling. She had also insisted the husband to live separately with his family members and on not doing so she had threatened to commit suicide. It was further alleged that in the year 1987 he separated from his brother and started living in village Atroli. At village Atroli the respondent-wife had kept her parents with her. Thereafter it was submitted that in the year 1989 she left the house of her husband and went to village Masawad to her parents and started living with her parents. The suit was denied by the wife. Issues were framed and evidence was recorded. Plaintiff examined himself as PW-1 and also examined Lotan (PW-2) and Jangu (PW-3). Respondent-wife also examined herself as DW-1 and also examined Uttam (DW-2). After appreciating the evidence of both the parties, the Trial Court found that neither the behaviour of the respondent was cruel nor she had separated herself from her husband and on the contrary found that the plaintiff has himself deserted the defendant from 1989 though she is willing to come and live with the husband but husband himself has not brought her back and dismissed the suit for divorce. Against the said judgment and decree, the appellant/husband has filed this appeal.

3. I have heard Mr. B.L. Pavecha, learned Senior Advocate instructed by Mrs. Sadhiia Pathak, for appellant and Mr. S.L. Ahiwasi, learned Counsel for respondent.

4. I have also perused the evidence. PW-1 Amrat has admitted in his statement that he had not lodged any police report about threats given by his wife for committing suicide and he admits that he is prepared to keep the respondent-wife with him and also admitted in Para No. 9 of his cross-examination that the respondent-wife has never given any threat to him. PW-2 Lotan has also admitted

that he does not know what is the dispute between the husband and wife and he also does not know why wife is living separately. PW-3 Jangu has also given similar statement. DW-1 Thagibai stated that the husband himself has deserted her and she has further stated that she is willing to live with husband but the husband never came to take her back. She is residing with her father and she has not given any threats at any time. She has also stated in cross-examination that she had never insisted her husband to live separately with his brother and parents. It is the husband and mother-in-law who had poured kerosene oil on her and thereafter other persons have saved her. DW-2 Utlam has also supported this statement that husband never came to take Thagibai and Thagibai is residing with her father. She herself had gone to the house of the husband to live but she was not allowed to live in the husband's house then she came back. After appreciating the evidence on record, the Trial Court recorded a finding that it is the husband who has practised cruelty on the wife and the husband could not prove this fact that the wife had given any threats either to take poison or to commit suicide and dismissed the application on the ground that the husband has failed to prove the cruelty.

5. Learned Counsel for appellant could not satisfy me that how the plaintiff was able to prove cruelty practised by the respondent-wife. It has been admitted by the husband himself that no threats were given by the wife. Therefore, on the question of threats for committing suicide, the Court has rightly recorded a finding and on the basis of this admission it cannot be found proved that the respondent-wife has deserted the husband. From the entire evidence it is found proved that it is the husband who has deserted the wife and he had also removed the wife from his house and he never went to take her back, when the wife is willing to live with the husband. Husband has also stated in the statement that he is also willing to keep his wife with him.

6. In view of the aforesaid evidence on record it is found that both are willing to live together and there is admission of the husband that she has not practised any cruelty and has not deserted her husband, it has clearly come in the evidence that it is the husband who has deserted her without any reason. Therefore, I do not think that any interference is required by this Court in the findings recorded by the

lower Court. The lower Court has rightly appreciated the evidence on record and has rightly recorded the findings and conclusions. Learned Counsel for appellant could not point out any ground for reversal of the findings recorded by the Court below. Accordingly I do not find that any case for interference in the findings recorded by the Court below is made out or there is any merit in this appeal.

7. Thus, this appeal fails and is hereby dismissed with costs. Record be returned.

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