

Pramilabala Barik Vs. Rabindranath Barik

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Court : Orissa

Decided On : Nov-15-1976

Reported in : AIR1977Ori132; 43(1977)CLT98

Judge : S. Acharya, J.

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

Appeal No. : First Appeal No. 48 of 1972

Appellant : Pramilabala Barik

Respondent : Rabindranath Barik

Advocate for Def. : D.S. Nanda and ;H.K. Jena, Advs.

Advocate for Pet/Ap. : P. Palit, ;J. Patnaik, ;R.N. Mohanty and ;S. Biswal, Advs.

Disposition : Appeal allowed

Judgement :

S. Acharya, J.

1. The defendant, who admittedly is the legally married wife of the plaintiff, has preferred this appeal against the judgment and decree for restitution of conjugal rights passed by the court below.

2. The plaintiff-respondent filed an application under Section 9 of the [Hindu Marriage Act, 1955](#) praying for a decree against the defendant for restitution of conjugal rights. The plaintiff alleged that he and the defendant lived together as husband and wife in the ancestral house of the plaintiff in village Bartana, and on 13-7-1969 she went away to her father's house, and since that time she is not returning therefrom to the house of the plaintiff on some false pretexts in spite of repeated requests of the plaintiff. It is further alleged that the defendant, without returning to the plaintiff's house in village Bartana, is insisting on the plaintiff to go to her father's house at Sarupal, and to give money to her father for her sustenance in her father's house,

3. The defendant-appellant, in her written statement, denied all the plaintiff's allegations against her. According to her, she, after marriage, lived in the plaintiff's paternal house at Bartana for a long time and performed all domestic works. The plaintiff mostly remained absent from Bartana, and the mother-in-law of the defendant all along ill-treated and abused the defendant on the allegation that the defendant's father cheated the plaintiff and his family members by not giving the promised dowry to the latter. The mother-in-law of the defendant also poisoned the plaintiff's ears, whenever he used to come home by making false allegations against the defendant. Due to the ill-treatment and torture some behaviour meted out to the defendant, she lost her health and suffered badly from nervous debility, and so she had to come away from her father-in-law's house to her own father's house for treatment. While she was at her father's house, she requested the plaintiff on various occasions to take her to a suitable place for her treatment, but the plaintiff did not respond to the same. After some time, the defendant-appellant also requested the plaintiff to take her to the place where he was serving so that they could live together, but her request to this effect also was not heeded. The plaintiff wrote many harsh and unkind letters to the defendant insisting on her return to his parents' house though he himself was not staying at that place on the above averments she prayed for the dismissal of the plaintiff's prayer for restitution of conjugal rights.

4. The court below has arrived at the findings that the defendant has not been able to substantiate her case of coming away to her father's house due to her illness or

establish her allegation of ill-treatment by her mother-in-law; and that the husband (plaintiff) has discharged the legal burden that lay on him to get a decree for restitution of conjugal rights.

5. On a perusal of the impugned judgment and the evidence on record I find that the court below has neither appreciated the evidence on record or the questions involved for consideration in the correct perspective.

6. The petitioner, for restitution of conjugal rights, must show that there is a bona fide desire on his part to resume matrimonial cohabitation and to perform his duties of matrimonial life. The petitioner has to show that he is sincere in the above direction. Moreover, before passing a decree for restitution of conjugal rights the court must be satisfied that the respondent has, without reasonable excuse, withdrawn from the society of the petitioner and there is no legal ground why the decree should not be passed. Ill-treatment or cruelty, so as to make it impossible for the wife to live with her husband or in her husband's house, is, apart from other grounds, sufficient to dismiss the husband's petition for restitution of conjugal rights.

It is well settled that cruelty in the legal sense need not necessarily be physical violence. A course of conduct or treatment which tends to undermine the health of the wife on that account or affects the reasonable happiness of her life, and ill-treatment both physical or mental, would constitute valid defences against a prayer for restitution of conjugal rights. In this connection the decisions reported in AIR 1965 J and K 95 (Sh. Jogendra Kaur v. Shivcharan Singh); AIR 1927 Nag 139 (Mst. Kurshid Begum v. Abdul Rashid); (1876) ILR 1 Bom 164 (Yamunabai v. Narayan Moreshwar Pendse); ILR 46 Mad 791: (AIR 1924 Mad 49) (Kondal Rayal Reddiar v. Ranganayaki Ammal) and AIR 1963 Pat 93 (Smt. Putul Devi v. Gopi Mandal) may be seen.

7. The defendant in her written statement has specifically asserted that her mother-in-law is an ill-tempered lady and she very often abused and rebuked the defendant in very objectionable language on some pretext or other and also on the ground that the parents of the defendant did not pay the promised amount of dowry. She also poisoned the ears of the plaintiff against the defendant whenever

he used to come to the house. She has further asserted that due to such constant rebukes and abuses hurled at her she fell ill and suffered from mental depression and nervous debility. In her deposition in court she has reiterated her above averments in the written statement. The defendant's case to the above effect has not been successfully assailed. Her averments and assertions to be above effect in the written statement and oral evidence are amply supported by the documentary evidence on record.

8. Admittedly, the plaintiff is serving as a school teacher at different places away from his village and that was so even when his wife was staying with his parents in his village. The defendant allegedly left her father-in-law's house and went to her parents' house on the 13th July, 1969. Ext. A dated 29-9-69 appears to be the first letter from the plaintiff to the defendant wherein the plaintiff, in a very curt and dry commanding language, directed the defendant to go back to her father-in-law's house without any delay whatsoever. By that letter he, in the same tone, asked the defendant to send her reply to the said letter by registered post within 3 days of the receipt of the same. Ext. A/1 dated 18-10-69 is the second letter from the plaintiff to the defendant. The tone of that letter is equally terse, demanding an immediate reply of the same by registered post within 3 days of the receipt of the same. Ext. A/3 dated 10-11-69 is another letter from the plaintiff to the defendant wherein the plaintiff in the same tone repeatedly mentioned that he would not go to see the defendant at Sarupal, and that the defendant must come back to her father-in-law's house at Bartana without fail. Ext. A/4 is another letter which is couched in a language of affront and arrogance. The next letter Ext. A/2 dated 23-2-70 appears to be the last letter written by the plaintiff to the defendant directing the defendant to come to Bartana on 9-3-70, failing which legal action would be taken against her.

From the language in the abovementioned letters it is quite evident that the plaintiff was not treating his wife, the defendant, with the love, affection and courtesy which a wife would expect from her husband. The language in all the letters and the tone in which they are written very clearly indicate that the plaintiff was very keen in exerting his will against his wife in a very stiff and stern manner without bothering about her cares, anxieties and distressful condition in her father-in-law's

house. All the letters bear an imprint of defiance and arrogance on the part of the husband, the plaintiff, and indicate his insolent attitude towards his wife. His above attitude towards his wife assumes special importance in view of his mother's torture some behaviour towards the defendant, and both the above are relevant considerations and repelling and resisting factors for the relief prayed for in this case,

9. The defendant in her deposition stated that she wrote several letters to her husband to take her to the place where he was serving so that both of them could live together for the good and well being of both. The plaintiff in his cross-examination has admitted that from his wife he received some replies to his letters. The defendant though called for her letters to her husband those letters were not produced, and he stated that he lost those letters. So the defendant-appellant filed copies of some of her letters to her husband, and they were exhibited as Exts. B, B/1 and B/2. All these three letters indicate that while she was living in her father-in-law's house she was subjected to ill-treatment meted out to her by her mother-in-law due to which she suffered from mental depression and physical illness. In all her said letters to her husband she implored her husband to come soon to Sarupal to take her along with him to his place, of service and get her properly treated for her ailments. Her said letters clearly indicate that she had no objection whatsoever to stay with her husband, but because of her abovementioned troubles and difficulties she did not like to stay in her father-in-law's house during the absence of her husband at that place. In her letters dated 31-1-70 and 25-2-70 she also indicated her dislike to stay any further in her father's house and to be maintained by him any more. There is nothing objectionable in the language and the tone in which these letters were written. 'She has rather put things in a very solicitous manner, requesting her husband to appreciate her difficulties and to come to her rescue as soon as possible. She, either directly or indirectly, never indicated in those letters her disinclination to stay with her husband. On the contrary, as stated above, she appealed to her husband in an entreating manner to take her along with him very soon so that she could stay with him wherever he was posted. When the wife wrote so many letters requesting her husband, the plaintiff, to come and meet her at her father's house so that he could know and appreciate things for himself and could take her along with him to his place of posting, that plaintiff

should have taken proper steps in that direction so that he could at least have properly assessed the bona fides of his wife's suggestions in her letter and the correctness of the reasons on which she expressed her unwillingness to go back to her father-in-law's house to stay there especially during the absence of her husband. Without taking any such step or bestowing any consideration to all that was written in her (wife's) letters, the plaintiff directed his wife in a curt dry and arrogant manner to go to her father-in-law's place and stay there, or else legal action against her would follow. There is no indication in the husband's letter that he was prepared to look after his wife's well-being and discharge his marital duties and matrimonial obligations towards her when she could come back to her father-in-law's place as commanded by her husband, While the wife repeatedly expressed her desire, for reasons stated in the letters, to stay with her husband wherever he stayed, the husband was apathetic towards such entreaties of the wife, and he was only insistent on her coming back to her father-in-law's house even though the husband was admittedly not mostly staying at that place.

10. On the oral and documentary evidence on record I am inclined to believe the case put forward by the defendant appellant that during her stay in her father-in-law's house, her mother-in-law ill-treated her and made her stay in that house a miserable proposition. From the tone of the husband's letter to his wife it is quite evident that the mother-in-law of the defendant was also successful in poisoning the ears of her son, the plaintiff, against his wife. On the above premises one cannot find fault with the defendant's disinclination to go back to her father-in-law's house especially, when her husband was not staying at that place. On the materials on record I am also inclined to take the view that the plaintiff, instead of being particular about leading a matrimonial life with his wife, the defendant-appellant, was only insisting on the defendant to return to her father-in-law's house possibly only to satisfy the wishes of the plaintiff's parents. Consideration to satisfy the wishes of the parents without expressing and/or indicating a sincere and genuine desire for restitution of conjugal rights, with all its legal trappings, obligations and duties, cannot enable a person to get a decree as prayed for in this suit.

11. In course of the hearing of this appeal, the appellant and the respondent both appeared before the Court, and the counsel appearing for the respondent stated in the presence of and to the understanding of the respondent that the respondent would arrange a suitable house at the place of his posting in service within a short time and he would take the appellant to that house where they both would live in peace. The appellant's counsel also stated before me that as soon as the respondent would find out a suitable house, she would go and live there with him, but the respondent's parents should not stay with them at least for a few months to come. At the request of the respondent's counsel a month's time was granted to the respondent to enable him to find out a suitable house at the place of his posting. On 3-9-1976 when the case was again posted for hearing, the learned counsel for the respondent filed a memo stating that the respondent till then could not get a suitable house to live with his wife, and on that score Mr. Nanda, the learned counsel for the respondent, prayed for further adjournment of the case. At last on 14-10-76 an affidavit was filed in this Court on behalf of the respondent stating therein that in spite of best and sincere efforts the respondent could not get a suitable rented house in the village where he was serving as a teacher, and so the appellant must go to her father-in-law's house at Bartana and stay there till a suitable rented house was available at the place of his posting. By the said affidavit the husband reiterated his previous stand and command. His plea of non-availability of a suitable house, when considered in the perspective of his previous stern attitude not to take his wife to his place of posting, smacks of suspicion. Thus, the expected conciliation, to effectuate which time was granted, ended merely in wishful thinking.

12. Admittedly, the husband was and is staying away from his own house at Bartana. As found above, the mother of the respondent was not well disposed towards the appellant who is an educated girl, and in the past as well as in this Court she always expressed her willingness to stay with her husband. I have no doubt about the genuineness of her above willingness. But that never found favour with the husband. It is difficult to believe that since 1969 till now the husband failed to arrange a suitable accommodation where he and his wife could have stayed together at least for some time in any of the places where he was posted. The facts and circumstances of this case indicate that the respondent was and is not at

all sincere to exercise his right of restitution of conjugal rights, but was and is only insistent on his wife's return to his parents' house so that his mother's whims and wishes would be satisfied and the appellant would render household service in her parents-in-law's house under torture-some surroundings and circumstances. The appellant's admission about her father's failure to pay sufficient dowry to the respondent might be the cause for such attitude of the respondent and his parents towards the appellant, which is not an unusual phenomenon till today in spite of the fact that dowry is despised in the most scornful term.

13. Husband and wife are partners in life. They live together for their common good. Each one must appreciate the difficulties of the other and must try to solve the same in the best possible manner. Their living together must be a harmonious proposition and with a spirit to accept each other with concord, love and affection. The wife is not a slave or an inferior member of the family and so she cannot be compelled to stay in her parents-in-law's house against her wishes under adverse circumstances amounting to cruelty. Restitution of conjugal rights cannot be asked for with the spirit of a despot or of a commander, for the said right is a 'conjugal right' and can be exercised, or better to say enjoyed, only under congenial conditions and circumstances, each one accepting, dealing and behaving with the other with the true spirit of marital love and affection. In this case, for reasons stated above, I find that the prayer for restitution of conjugal rights has not been made with the proper spirit and attitude and the same does not also appear to have been made with genuine, intentions.

14. On the above findings and conclusions the prayer for restitution of conjugal rights cannot be allowed. Hence the decree of the court below has to be and is hereby set aside, and this appeal is allowed with costs.