

Luxmi Devi Vs. Ajit Singh

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Court : Punjab and Haryana

Decided On : Jan-13-1995

Reported in : I(1996)DMC569

Judge : Sarojnei Seksena, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 13(2)

Appeal No. : F.A.O. No. 224-M of 1987

Appellant : Luxmi Devi

Respondent : Ajit Singh

Advocate for Def. : Rameshwar Malik, Adv.

Advocate for Pet/Ap. : R.S. Chahar, Adv.

Disposition : Appeal dismissed

Judgement :

Sarojnei Seksena, J.

1. Appellant-Luxmi Devi has preferred this appeal against the judgment and decree of the Trial Court delivered in Hindu Marriage Act Case No. 1 of 1987 decided on 13.8.1987 by Mr. Baru Ram Gupta, Additional District Judge (I), Rohtak.

2. The petitioner's case in the lower Court was that she was married with the respondent-husband according to Hindu rites in May, 1978. At that time, she was aged only ten years. Her marriage is voidable. She went only thrice to her matrimonial home in village Dubaldhan Kirman. On each occasion, the respondent levelled false allegations against her that she is a woman of loose character. He maltreated her and thus, behaved cruelly towards her. She told the respondent several times to get the marriage declared voidable and not cause physical and mental torture to her, but he always declined. Hence on these grounds, she filed a petition for dissolution of marriage under Section 13 of the Hindu Marriage Act (hereinafter referred to as the Act).

3. Respondent admitted the factum of marriage but denied that at time of marriage, the appellant was aged only ten years. According to him at that time, she was fifteen years old and the marriage was performed with the consent of her legal guardian. Hence their marriage is not voidable. He specifically denied that he made allegations that she is a woman of loose character or he ever maltreated her. On six-seven occasions, she came to the matrimonial home, he always extended all love and affection to her every time. He had given ornaments to her at the time of marriage and they are in her possession. He spent Rs. 8,000/- on her studies and gave a loan of Rs. 9,000/- to her father to purchase a truck. She was getting training of a nurse in Civil Hospital, Rohtak, and that is the main reason of her desertion. In the replication, the appellant denied the contention raised by the respondent- husband but admitted that the ornaments which were given to her in the marriage by him are her Istri Dhan. Her parents had also spent about Rs. 21,000/- on her marriage.

4. Trial Court framed three issues. The appellant examined herself and her mother. The respondent examined himself and his neighbour. On a minute scanning of the parties evidence, the Trial Court came to the conclusion that the appellant has failed to prove the alleged ground of cruelty. The Trial Court further held that the point of her age has no effect in terms of Section 13(2)(iv) of the Act because after attaining the age of fifteen years and before attaining the age of eighteen years, she has not repudiated her marriage with the respondent. On these findings, the petition was dismissed.

5. Appellant's learned Counsel vehemently contended that the appellant has proved by adducing cogent ocular evidence of herself and of her mother that at the time of marriage she was only aged ten years. Section 13(2)(iv) of the Act is not attracted when she marriage is solemnised at the age of ten years.

6. Respondent's Counsel contended that she has admitted that she passed her Matriculation examination in 1984, she and her mother have not given her date of birth. The documentary evidence about her date of birth is positively in the possession of die appellant. Since the same is not produced, an adverse inference is required to be drawn against her. Hence, it cannot be believed that at the time of marriage her age was only ten years. On above facts, I find that she has utterly failed to prove that at the time of marriage, her age was only ten years. According to respondent at the time of marriage, her age was fifteen years. After attaining the age of fifteen years, she has not repudiated that marriage under Section 13(2)(iv) of the Act. Hence on this ground she cannot seek dissolution of marriage.

7. Appellant's learned Counsel stressed that for the first time, when the appellant went to her matrimonial home, the respondent and his mother levelled false allegations against her that she is a lady of loose character. This by itself, amounts to mental cruelty. Apart from that, the appellant has stated on oath that she was maltreated by the respondent. There was no reason to disbelieve her this sole testimony which is not controverted by the respondent and which is duly corroborated by the statement of her mother PW-2. She wrote a letter to her mother also about this behaviour of the respondent and his mother. She refused to go to her matrimonial home but her parents always sent her there. Respondent's Counsel contended that she has admitted that since May, 1987 she was lived only for one month and sixteen days in the matrimonial home on three different occasions. Her sister Brahma Devi also lived in the same house with her children. According to her, she made a complaint to Brahma Devi about the cruel behaviour and false allegation made by the respondent and his mother. Counsel. Brahma Devi or her husband are not examined to corroborate her. Had it been so, she would have talked to the respondent and his mother about the said allegation. Even her mother Sarupi-PW2 has admitted that she never made a complaint to respondent and his mother about the said cruel behaviour or false allegation. She

never asked Brahma Devi about this allegation. They never took any panchayat. Sarupi has admitted that after third time, the appellant did not go to the matrimonial home but respondent had been coming to take her and she always declined to go. They did not verify the correctness of the allegations made by the appellant. Respondent's father also brought a panchayat for settlement. She has denied that the respondent has borne the expenditure of her education or she gave a loan of her husband to purchase a truck.

8. Respondent's Counsel pointed out that on oath, the appellant has stated that the respondent and his mother suspected that she was having illicit relations with the husband of Kamla-her sister, but this fact has not been pleaded in this petition. She was not given any account of alleged cruel behaviour of the respondent. She and her mother have categorically stated that now the appellant does not want to go to the matrimonial home. Thus, it is evident that without any justification, she has forsaken the company of the respondent. She cannot take advantage of her own wrongs and ask for dissolution of marriage on the alleged ground of cruelty which she has utterly failed to prove. According to him, the real cause of her not joining the respondent is that now she has become a trained nurse and respondent is educated only up to seventh class. This disparity in the educational qualifications of the two is the real stumbling block in the peaceful matrimonial life of the parties. The Trial Court is also of the same view.

9. After going through the evidence of the parties, I find that the Trial Court has correctly weighed the evidence on record and has come to the correct conclusion that the appellant has utterly failed to prove the alleged ground of cruelty mental as well as physical. No doubt, even in day-to-day life, husband can be cruel to his wife and thus peace and harmony can be disturbed to such an extent that the wife may not be in a position to live in the company of her husband, but the wife if required to prove such behaviour of the husband by adducing evidence with regard to actual facts and circumstances leading to that illation. In this case, except her bald statement about the cruelty and levelling of false allegations about her character, there is no cogent and reliable evidence on record to prove the alleged mental and physical cruelty. Hence, the Trial Court has rightly disallowed the appellant's petition under Section 13 of the Act.

10. Accordingly, affirming the judgment and decree of the Trial Court, the appeal is hereby dismissed with costs.

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