

Nirmoo Vs. Nikka Ram

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Court : Delhi

Decided On : Mar-14-1968

Reported in : AIR1968Delhi260

Judge : Jagjit Singh, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1), 13(2) and 23(1)

Appeal No. : Misc. First Appeal No. 141 of 1967

Appellant : Nirmoo

Respondent : Nikka Ram

Advocate for Def. : H.S. Thakur, Adv.

Advocate for Pet/Ap. : K.D. Sood, Adv

Judgement :

(1) This is an appeal against the order of the Senior Sub Judge, Mahasu, dismissing a petition of Nirmoo for dissolution of her marriage with Nikka Ram by a decree of divorce. The petition, under section 13(2) of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act') was presented in the Court of the Senior Sub Judge on March 21, 1966. It was dismissed on March 30, 1967.

(2) The appellant was married to Nikka Ram Rajput of village Nihari, Tehsil Kasumpti, nearly twenty-five years before she applied for divorce. For about four

years they lived as husband and wife but as there was no issue of the marriage Nikka Ram married a second wife name Tholi. After the second marriage also Nirmoo lived with her husband for another four or five years. According to her she had then to leave her husband's house as he, at the instigation of Tholi, started beating and maltreating her. She, therefore, started living at the house of her father, Thokria, in village Jar.

On her application she was allowed maintenance at the rate of rupees fifteen per month. Her husband filed a revision and at that stage there was a compromise in the Court of then Judicial Commissioner, Himachal Pradesh. She gave up her right to maintenance and agreed to live with her husband without insisting that he should turn out the second wife. The compromise was recorded on July 27, 1954 before the Act had come into force.

(3) It was stated by the appellant that after the above referred to compromise she could live with her husband for a period of a few months and was thereafter turned out after being given beating. It was further mentioned that her father had also died leaving behind some property and with a view to grab that property her husband had again started harassing her.

(4) The petitioner has impleaded Nikka Ram and Tholi as respondents. Out of them Nikka Ram (hereafter called the respondent) defended the petition by pleading that it was not maintainable as it was presented after unnecessary and improper delay. He did not deny that he had married a second wife but took the plea that the second marriage was contracted by him at the instigation and persuasion of the petitioner and, therefore, the petitioner could not be permitted to take advantage of her own wrong.

In view of the compromise between the parties it was asserted that the petitioner was estopped from objecting to his having a second wife. Another averment made by him was that the petitioner had gone to her father's house only on his death and that the property left by him was being jointly managed by both of them. The petitioner was alleged to have been instigated by certain persons, who wanted to be benefited from her property, to file the petition.

(5) The learned Senior Sub Judge framed issues regarding the petition have been presented without unnecessary or improper delay, the petitioner taking advantage of her own wrong, the respondent having married Tholi on the persuasion and at the instance of the petitioner and the petitioner being estopped from filing the petition on account of the compromise dated July 27, 1954. On the issues it was held that the petition had not been presented without unnecessary and improper delay, that Nikka Ram had married Tholi on the persuasion and at the instance of the petitioner and that the petitioner was estopped from filing the petition. No finding was given on the issue regarding the petitioner having taken advantage of her own wrong. In the result the petitioner was not held entitled to the dissolution of her marriage by a decree or divorce and her petition was dismissed.

(6) It was a common ground between the parties that the marriage of the appellant to the respondent had taken place about twenty-four or twenty-five years ago and that after some years, the respondent married a second wife, who is related to the petitioner being a cousin, however, be produced by the respondent in support of his plea that the second marriage was on the 'instigation and persuasion' of the appellant. The appellant denied having in any way persuaded her husband to take a second wife. It is too much to believe that a woman would compel her husband to marry another woman. It is a different matter that before monogamy was introduced by the Act, a married Hindu woman was helpless and could hardly do anything if her husband wanted to take another wife.

(7) Section 13(2) of the Act reads as under

'A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the grounds--

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner.

Provided that in earlier cases the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has since the solemnization of the marriage; been guilty of rape, sodomy or bestiality.'

(8) On the coming into force of the Act, which was on May 18, 1955, a Hindu wife whose marriage was solemnized before the commencement of the Act got the right to seek dissolution of her marriage by a decree of divorce. This right is only subject to the limitation that the husband has married again before the commencement of the Act and the other wife is alive at the time of the presentation of the petition.

(9) The right of divorce given to the first wife by section 13(2)(i) does not depend on her conduct prior to the commencement of the Act. In *Smt. Lalithamma v. R. Kannan*, Air 1966 Ker 178, the following observations were made:--

'This provision for divorce on the mere fact of the existence of another wife at the commencement of the Act is directly related to or must be read in connection with one of the principal points in the policy of the statute, viz., the enforcement of the principle of monogamy. Section 5 of the Act sets out one of the conditions for a valid marriage to be that neither party should have a spouse living at the time of the marriage. Under S. 11, one of the grounds which makes a marriage totally void ab initio is the contravention of this condition for the validity of the marriage. The result, therefore, is that if the second marriage had taken place after the commencement of the Act, that marriage would have been totally void, but because this condition of monogamy was for the first time introduced by this Act, bigamous marriages contracted before the commencement of the Act do not become ipso facto void, but continue to be valid. At the same time, the right is given to the wife to seek divorce under section 13(2)(i) of the Act. It will be noticed that in the case of a bigamous marriage contracted after the commencement of the Act, the invalidity of the second marriage does not to any extent depend upon any conduct or disability on the part of the first wife. By parity of reasoning therefore, a husband who is the respondent in a wife's petition for divorce under S. 13(2)(i) cannot plead any conduct or disability on the part of his first wife as a bar to her claim for divorce on the ground of second marriage.'

(10) In holding that the petition was presented after unnecessary or improper delay the learned Senior Sub Judge was influenced by the fact that the appellant admittedly continued to live with her husband for some time after the second marriage and even after an order of maintenance was passed in her favor she again agreed to live with him without insisting that he should turn out the second wife. The fact that the second wife was related to the appellant was also taken into consideration. From these facts it was inferred that the appellant had condoned the second marriage and acquiesced to it. Her entering into a compromise with the respondent was further considered the operate as estoppel.

(11) Obviously the compromise between the appellant and the respondent before the commencement of the Act could not take away the appellant's right under section 13(2)(i). There was no question of that compromise operating as estoppel and the issue on that point (NO. 4) was wrongly decided against the appellant. The finding that Nikka Ram respondent married Tholi on the persuasion and at the instance of the appellant was equally wrong and was not based on any evidence worthy of credence. Nikka Ram and one person of this brotherhood, Kewel Ram, did state that the second marriage took place with the consent of Nirmoo. The appellant denied having given her consent. The only reasonable inference to be drawn, it seems to me, is that Nikka Ram must have married another wife because he wanted to and the first wife was helpless in stopping him from taking that step. The issue on this point (NO. 3) was also wrongly decided by the Court below.

(In paragraph 12 the judgment holds that the issue (NO. 2) relating to the appellant having been advantage of her own wrong must have been decided against the respondent. The judgment then proceeds:).

(13) The determination of the question as to whether there has been any unnecessary or improper delay in instituting the proceedings by the appellant is important in view of the provisions of Section 23 of the act. The learned Senior Sub Judge while holding that there was condonation of the second marriage by the appellant proceeded on the assumption that clause (b) of sub-section (1) of section 23 was also applicable according to which decree is not to be passed where the petition is based on the ground specified in clause (i) of sub-section (1)

of Section 13 and the petitioner has in any manner been accessory to or connived at or condoned the act or acts complained of. Probably it was lost sight of that the ground specified in clause (i) of sub-section (1) of Section 13 relates to adultery, while the appellant's petition was under sub-section (2) of section 13. The only clause of section 23(1) which was relevant was clause (d), Under that clause in any proceedings under the Act, whether defended or not, if the Court is satisfied that there has not been any unnecessary or improper delay in instituting the proceedings, then, but not otherwise, the relief has to be decreed.

In *S. V. R.*, : AIR1968 Delhi79 recently decided by a Division Bench of Delhi High Court, clause (d) of Section 23(1) of the Act came in for consideration. It was held that the period preceding the coming into force of the Act could not be taken into consideration in dealing with the question of delay in presenting the petition and the question whether in a given case there had been unnecessary or improper delay in instituting the proceedings has to be decided on its own facts, and no hard and fast rule could be applied. It was also pointed out that the Act had not prescribed any period of limitation for presenting a petition and in considering whether there was unnecessary or unreasonable delay in seeking the relief the conditions of the society in which the parties lived, the traditions of the family to which they belonged and the fact that even today considerable sections of the Hindu society look with disfavor the idea of dissolving the marriage had to be kept in view.

Khanna, J. in *A. V. B.*, took the view that under the Indian law, delay would stand in the way of granting relief to a petitioner under the Act only if it is unnecessary or improper and not otherwise, and thus when dealing with the question of delay one should not be oblivious of the background and tradition of Hindu Society and the instinctive reluctance amongst the women to come to Court and seek redress of their grievances against the husband. In *Smt. Leela v. Dr. Rao Anand Singh*, , it was held that the more modern trend was to exercise a liberal discretion in cases where formally a decree would have been refused on the ground of unnecessary delay.

(14) The stand taken by the appellant in her statement before the Court below was that after the compromise she only stayed at the house of her husband for some months and was thereafter turned out. The respondent's version was that she continued staying with him till the death of her father. Kewal Ram, a witness of the respondent supported him by saying that the petitioner had left only about two and half years ago. From the side of the petitioner Daulat Ram and Tulsi Ram witnesses deposed about the appellant living at the house of her father for about twelve years before the presenting of the petition.

(15) There is nothing to choose between the witnesses who appeared for the respondent and the appellant. The circumstances of the case, however, go to show that in all probability the version of the appellant was correct. Generally a man after marrying a second wife becomes indifferent to the first wife. Admittedly the parties could not pull on well for a long time after the second marriage by the respondent and the appellant had even to resort to proceedings for claiming maintenance.

Thus even before the proceedings for maintenance started the respondent was living separately with his second wife, while the appellant was living at the house of her parents at another place. When the appellant succeeded in obtaining the order of maintenance in her favor the respondent persuaded her to come back to him may be with the idea of not paying the maintenance. It cannot be believed that if the appellant had been living with the respondent for many years after the compromise, which was effected in July 1954, then she would think of leaving him on the death of her father. Normally a woman would need protection of her husband to a greater extent when her father is no longer alive to look after her. In my opinion, the appellant did not live with the respondent for more than a few months after the compromise and from then onwards had been living at the house of her husband (father) uncared for by the respondent. The fact that the respondent became interested in her when she inherited some property from her father is evident from the fact that he wanted to assert his right of managing that property along with the appellant by taking such a plea in his written statement.

(16) Right to apply for divorce did accrue to the appellant on May, 18, 1955, when the Act came into force, but as she belongs to Hindu Society she must have been reluctant to immediately start proceedings. When on the death of her father her husband, with an eye on her property, started to harass her, she presented a petition for divorce. The marriage between the appellant and the respondent for all practical purposes had come to an end long ago. They had been living separately. There is no issue of the marriage and the respondent has the benefit of the company of his second wife, with whom he is living at present. Dissolution of the marriage would be in the interest of the opposite parties and it would hardly be proper to insist on the maintenance of a union which had utterly broken out long ago without any possibility of reconciliation.

(17) The circumstances of the case are not such in which it may be said that there has been unnecessary or improper delay in instituting the proceeding. The mere fact that the petition was presented after nearly eleven years of the coming into force of the Act is by itself not sufficient to hold that there has been unnecessary or improper delay. So long the appellant was not unnecessarily harassed she kept quiet but soon after the respondent started troubling her for the sake of some little property that she had inherited from her father the petition under section 12(2)(i) was presented. Consequently all the circumstances and the facts of the present case I am satisfied that there has not been unnecessary or improper delay in instituting the proceedings. Consequently the finding on the issue relating to delay (issue No. 1) is also reversed.

(18) Admittedly the conditions required for obtaining a decree of divorce as provided in sub-section (2) of Section 13 of the Act exist. For the reasons already stated above the institution of the proceedings cannot be said to have been unnecessarily or improperly delayed and, therefore, clause (d) of section 23(1) of the Act does not come in the way of the passing of the decree.

(19) The appeal is accepted and the order of the Senior Sub Judge is set aside. The marriage between Nirmoo appellant and Nikka Ram respondent is dissolved by a decree of divorce. In the circumstances of the case the parties are left to bear their own costs throughout.

(20) Appeal allowed.

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