SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gulab Raj Sharma Vs. Pushpa Devi

Gulab Raj Sharma Vs. Pushpa Devi

SooperKanoon Citation : sooperkanoon.com/684666

Court : Delhi

Decided On : Mar-09-1979

Reported in : ILR1979Delhi220

Judge : Rajinder Sachar, J.

Acts : Hindu Marriage Act, 1955 - Sections 13

Appeal No. : First Appeal No. 64 of 1978

Appellant : Gulab Raj Sharma

Respondent : Pushpa Devi

Advocate for Pet/Ap. : Sat Pal and; Shyam kishore, Advs

Judgement :

Rajindar Sachar, J.

(1) This is an appeal by the husband against the dismissal of the petition brought by him for divorce under Section 13 of the Hindu Marriage Act (hereinafter to be called the Act).

(2) The parties were married on 17-5-1970. They have no child. The appellant husband claims that they only lived for a couple of days i.e. up to 20-5-1970 when the respondent wife is said to have been taken to her parent's home by her

brother. It is claimed that subsequently efforts were made to bring her back but she refused. Notices were said to have been sent by her in 1973. The appellant claims that he had been beaten by the relations of the respondent and even had reported to the police. e allegations were denied by the wife. Delay of six years was pleaded as a preliminary bar. 'The wife maintains that they lived together first in Dharampura house and then shifted to Vakilpura along with the parents of the husband from 1972 onward. She claimed that she had been 1iying in the game house with the husband right up to 6-10-1976 (when she came on a short visit to her parent's house) that is even subsequent to the moving of the petition by the husband in September, 1976. She however admitted that she had sent notice which she of course claimed were sent because she had been sent away to her parent's house and was not being brought back by the husband. It is a common case that there was family house in Dharampura where the parents of the husband lived up to 1972 and then they moved to a house in Vakilpura. The trial court found that the wife had not deserted the husband but rather the husband did not want to live with the respondent wife. He thereforee dismissed the petition. He also did not find any evidence of cruelty by the wife and that has brought the husband to this court in appeal.

(3) The case of the husband is that after marriage on 17-5-1970 they lived together for a couple of days at his house at Dharampura and since 20-5-1970 the wife went away and never came back. He claims that efforts were made to bring back the wife but she never came. There is some oral evidence produced in support of this but there is a categorical denial by the wife that she went away in 1970. Her case is that she lived with the husband up to 1972 in the house at Dharampura when both of them shifted to house in Vakilpura along with the other members of the family of the husband. Oral evidence has been produced by the respective parties in respect of the conduct of the husband and wife between 1970 and 1973. The first question that arises is whether the version of the appellant that the wife went away on 20-5-1970 and never came back to the house is acceptable- As I have said there is no documentary evidence to support the ver either of the husband that she had left the house on 20-5-1970 and never came back or in support of the wife claiming that she had gone for a short visit and had come back and had lived up to 1973 in the house of the husband. The trial court

has not accepted the version of the husband that the wife left the home on 20-5-1970. Apparently it seems to me a little untenable that even after a couple of days the wife should have left the husband's house permanently with the intentions of deserting him. No plausible reason has been put forward by the appellant in support of such assertion. Moreover it seems to me that had she moved out of the house on 20-5-1970 with no intention to come back, the wife would normally take some more positive steps to dissolve the marriage but the things dragged on with out any step by her uptil 1973. The first document which seems to shed some light is the notice of 27-3-1973 in which the wife claimed that she had been sent away many times and the last time that she had been sent is on 18-3-1973. he notice clearly makes a very strong charge that unless the conduct of the husband is amended it is quite impossible to live with him. To this no doubt the husband sent a reply on 3-4-1973 denying the allegations and objecting to the manner she had allegedly been away since 20-5-1970 and taking the stand she never came back and the date 18-3-1973 mentioned by her was just put up as an execute. I do not mind confessing the difficulty in accepting the full version of either party because of lack of credible evidence so as to fix the date. The version that she had left the house on her own on 20-5-1970 and has not returned to the husband's house has not found favor with the trial court which had the benefit of seeing the witnesses closely and then coming to the conclusion. Moreover it seems to me that had the situation been of total desertion by wife since 20-5-1970 one may well have expected some positive steps by the husband to bring the marriage to end much earlier. I thereforee am not in a position to accept this version of the husband.

(4) Then we come to the situation of 1973 when the charges and couer charges were exchanged between the parties. The version of the appellant in the evidence is that he had been all through staying in house at Dharampur stands contradicted by the reply sent on his behalf on 3-4-1973 giving the address of the appellant at Vakilpur which does support the version of respondent that she and the appellant had shifted to the house of the family of appellant in 1972 in Vakilpura. Of course there is a difference between the parties on the dispute in 1973-74. The wife's case being that she went back to the husband's house but the same is denied by the husband. Frankly the position is somewhat nebulous in 1973. But that is of no consequence because I find that on 25-3-1974 a serious effort was made by the

respondent wife to go to the matrimonial home of the husband. It appears that the relations of the wife brought her to the house at Vakilpura so that she could stay with the husband. She was however refused entry in the house- This led to a public disturbance and even the police help was sought. The police recorded the statement of the husband and his father. Wife claimed that she came back to the husband for the purpose of staying in the matrimonial home. The husband however stated in the evidence and this is also what he maintained at the time in the statement which he gave to the police Ex. Public Witness 311 namely that his wife had left him for the last 314 years and that she had not come back in that interval and that he had been threatened and also a notice had been sent to him through the lawyers and that even on that day he had been abused and beaten as a result of which his clothes had been torn. He stated that he in the meanwhile will stay in Dharampur house and that it is not proper for the wife to stay in his parent's house. Father of the appellant also gave a writing to the police. The version more or less was the same as given by the appellant and stated that the respondent had gone away a few days after the marriage and she had tried to take poison and the appellant was afraid that if anything happened to her he will be in trouble under the law. He however admitted that the respondent had come to stay in their house and as she had been left there she was staying with them at the same house and that he had come to record this lest she does some untoward thing and that he may not be blamed for this. That the relations between the parties were strained is obvious. So far as the plea of desertion it is apparent that the wife had come to the matrimonial house in 1974 with the intention to stay with the appellant. Whatever the reasons, the appellant of course was unwilling to keep her with him and so he made it clear that he was shifting to Dharampur house. Of course now seeks to mention that in fact he has never shifter Vakilpura house This however is against the record. In the reply to the notice sent by the appellant's counsel in 1973 the address given is of Vakilpur. In the evidence he maintains that he lived in Dharampur and was not taking his food with his father at Vakilpur. That again seems to me un-natural and improbable situation. I can hardly appreciate that a son should be so reluctant to have normal relations like having food at his parents house even if he was living at Dharampura. That the appellant was staying at Vakilpura house in 1974 is clear from his statement to the police that because the

respondent had come to stay he would shift to Dharampur house. Of course there is again a disagreement between the parties as to how long she lived at Vakilpura. The wife maintains that she continued to live there till 10-10-76. The wife maintains she continued to live at Vakilpur house up to 20-10-1974 and even thereafter she had been coming and going and lived up to October, 1976 even after the petition has been filed. That the respondent was in the husband's house up to 14-8-1974 is clear from her letter Public Witness 1211 addressed to the father of the appellant stating that she has been here for a month and asking that she be sent to her parent's house as she is not being well-looked after and saying that she is going her parent's house on her own. Naturally Mr. Sat Pal the learned counsel for the appellant placed emphasis on Public Witness 12jl to urge that even if the version of the appellant that she left permanently on 20-5-1970 is not accepted the letter of 14-8-1974 shows that she at least deserted from that date. I must however refer to the evidence of Rw 2 Smt. Bimla Gupta; Social Worker that she had gone to the house of the appellant's father on 20-10-1974 and had met the respondent there. There is no cross-examination of this witness on this point and there is no reason to disbelieve this witness. So whether up to August or October, 1974 it does show that respondent had continued living in matrimonial home at least from March, 1974 onwads when she came back. This conduct of the respondcnt living in the matrimonial home is inconsistent with the suggestion that the respondent had deserted the husband and intended permanently to live away since 1970 onwards. Mr. Sat Pal maintains that this was only a ploy to show that she had been wanting to live with the husband but in fact the real intention was to desert the husband and not keep the matrimonial house. I find that argument unacceptable. It as is maintained by the appellant the wife left in 1970 with no intention to come back, I see no plausible reason why an effort should have been made by her in 1974 to go back to the matrimonial home in the circumstances which to say the least were not very congenial. If in spite of that she chose to come to the appellant's father's house and to live in the circumstance it surely does not show that she was unwilling to continue in the matrimonial home. There may have been tempramental and some other differences between the two. The relations between the parties were strained admits of no doubt. That this marriage has not been a success is clear from the record. I find that there is evidence to

show that at various stages the parties did seek to dissolve the marriage by mutual agreement. Reference may be made to Panchnama, a list showing the goods given by each side. List is signed by the respondent and shows her address at Vakilpura. This letter does support what has been deposed by the witnesses that the list was drawn out apparently as a preliminary to the settlement of the matter probably though a divorce by mutual consent. However parties seem to have fallen out and nothing came out of mutual talks. The appellant filed a number of letters written almost every day by the wife containing more or less the same matter addressed to the appellant namely that she wanted to talk to him and asking him to be given time. The wife claims that she wrote those letters when she and the appellant were living in Vakilpur and for the reasons that the appellant refused to talk to her at home. I am not sure that they were written when she was at Vakilpura. Presumably it is more likely as contended by Mr. Sat Pal that those letters were written because the wife was not staying in this house at Vakikpur and was living with her pareats. The suggestion seems more probable because if the husband and wife were living in Vakikpur it was natural that she should talk to him rather than write letters. Be as it may these letters have been written continuously for over a period of one year. They certainly do show that she was willing to come back and live with the appellant inspire of the reluctance of the husband to take her back. These letters certainly support the respondent's plea that she was not wanting to break with the husband. These letters whether written from her parents' house or from the house of the appellant does negative the suggestion that the respondent had deserted the husband with the intention to bring cohabitation to an end permanently. Those letters show the wife in a pleading posture to save the marriage. Evidently those pleading had no effect and the situation did not improve because vide another Panchnama dated 13-6-1976 one Tilak Raj was appointed arbitrator who directed that Rs. 16000 which the husband has got as dowry will be returned to the wife and the marriage between them will thereafter be dissolved. It is alleged that this document was signed by her under pressure. I cannot accept that suggestion. It appears to me that by then the parties had despaired of any solution leading to reconciliation. What was the precise reason is of no consequence. The unfortunate fact however remains is that though the parties had agreed at one stage to dissolve the marriage they fell out and did not carry out the

same. I suppose that left no alternative to the appellant to bring his application for divorce alleging. desertion. Public Witness 4/1 shows that the relations between the parties have become very much strained. The parties seriously contemplated dissolving the marriage is apparent from the wording of the Panchnama. The wife no doubt claimed that even after writing this Panchnama she went back to the husband's house. This I find impossible to believe. I am of the view that the wife is exaggerating in this aspect. But that is of no avail. The appellant chose to plead desertion as a ground for divorce. The wife of course by her conduct in coming back to matrimonial home in 1974 has proved otherwise and there is no evidence to show her intention to desert. She has maintained that she was all the time not only staying but wanting to continue staying with the husband and that it was the husband who had turned her out from the house. The husband of course was quite frank to say that he does not want to live with his wife. The reason was a little vague but the wish was emphatic. The wife has proved that she has not deserted and thereforee no fault can be found with her on this count. I cannot at the same time find any fault with the appellant. So an unfortunate situation has arisen where none of the parties are at fault, but still they do not have the grace and sensitivity to agree to a divorce by mutual consent. In the state of affairs I have to with great reluctance up-hold the finding of the trial court that desertion is not proved which along would have enabled the appellant to get a decree. This is a very unfortunate situation which has arisen. The wife for reasons apparently prevalent in our society has not agreed to a consent divorce. Before me the counsel for the appellant and the respondent had bad great consultation with the clients but had informed me that they have not been able to find any solution. Law as at present is quite rigid and the human sensitivity which should have found some way either to smoothen the relations between the parties or to put an end to it has not triumphed.

(5) Mr. Sat Pal had asked me that I should dissolve this marriage on the ground that it has irretrievably broken down- I would have seriously considered this action but for the unfortunate fact that our law as at present does not permit the court to dissolve the marriage on the ground of irretrievable break down of marriage. Our Act provides for dissolution of marriage in Section 13 and lists various eventualities in which it can be done. The divorce proceedings under our law are fault oriented. In fact 'fault oriented divorce has shown itself to be artificial,

unrealistic method of terminating the marriage; vide Michael F. Farrel ; No. Fault Divorce ; A time for change; 7 Suffolk University Law Review 86 at 107.

(6) The rule of fault oriented divorce has been characterised by Roger Traynor, former Chief Justice of California Supreme Court as leading to rules insensitive to reality which has been cynically circumvented by litigants and attorneys with tacit sanctions of the courts vide Law and Social Change in a Democratic Society by Traynor (References given in at very erudite and indepth study on this topic namely irretrievable Breakdown of Marriage are to be found in the article published in the Journal of the Indian Law Institute Vol. 20 April-June 1978 page 288 by Mrs. Kusum. Research Associate, the Indian Law Institute. This break down theory as sole ground was introduced in Divorce Reform Act, 1969. Later on this provision was kept in tact when the law was consolidated in Matrimonial Cases Act 1973 (by which Divorce Reform Act, 1969 was repealed). (Australian) Family Law Act, 1975 provides that the irretrieval breakdown of marriage is the sole ground for the dissolution of marriage. (Canadian) Divorce Act, 1967-68 has also recognised irretrievable breakdown of the marriage as a clearly recongnised ground for divorce. The trend has now changed in our country when the Law Commission in its 71st report has recommended the introduction of matrimonial breakdown as a ground for divorce. The Law Commission has observed :

'RESTRICTINGthe ground of divorce to a particular offence or matrimonial disability ...causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet there has arisen a situation, in which the marriage cannot be worked. The marriage has all the external appearance of marriage, but none of the reality...In such circumstances... there is hardly any utility maintaining the marriage as a facade, when the emotional and other bonds which are of the essence of marriage have disappeared.

(7) The difficulty faced by the courts in the absence of such a provision was noticed in Parihar v. Parihar . In that case the learned judge was however able to give a finding that the wife had been guilty of cruelty and the husband thereby able to get divorce. Unfortunately however in the present case as I am not in a position

to find any fault with either of the parties though I find that the marriage is not continuing I am helpless to give any relief to the parties. This is a matter which I have no doubt the legislation will look into it urgently more so because of the recommendation of the Law Commission.

(8) The appeal thereforee fails and is dismissed. I still hope that the parties will re-think and make some settlement, but so far as the relief is concerned this court tied down to the technicalities of law is not permitted to dissolve the marriage which I find has become difficult to continue for the parties. I hope future may bring out better results.

(9) The result is that the appeal fails and is dismissed with no costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com