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Paramjit Kaur Vs. S. Rajinder Singh

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Court : Delhi

Decided On : May-22-1986

Reported in : 1986(11)DRJ149

Judge : Leila Seth, J.

Acts : Hindu Marriage Act, 1955 - Sections 13(1)

Appeal No. : First Appeal No. 101 of 1985

Appellant : Paramjit Kaur

Respondent : S. Rajinder Singh

Advocate for Pet/Ap. : K.K. Sud, Adv

Judgement :

Leila Seth, J.

(1) This appeal has been filed by Ms. Paramjit Kaur against the judgment and order of the Additional District Judge, Delhi, dated 22nd April, 1985 by which he has not granted her divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955, but has granted her a decree of judicial separation on the ground of desertion.

(2) Ms. Paiamjit Kaur was married to Sardar Rajinder Singh on 22nd May, 1977 at Delhi. The marriage was solemnized in accordance with Sikh rites. Thereafter, they lived together and had three children, Khyati, Rohit Pal and Harmit Pal.

(3) But it appears, that the relationship between Paramjit Kaur and Rajinder Singh was under strain from the start. Rajinder Singh used to com(r) home late at night, drunk. When Paramjit Kaur objected, be abide and beat her. Because of the ill treatment, she left the matrimonial home on three occasions, i.e. in 1977, 1980 and 1981 and went to her parents' home and complained to them. Her parents, however, persuaded her to return to the matrimonial home, which she did.

(4) But on 5th November, 1982, once again, Rajinder Singh came home drunk and he gave a severe beating when she objected, and turned her out of the house. Thereafter, she did not return and stayed on with her relatives.

(5) Paramjit Kaur's parents, relatives and friend went to Rajinder Singh't house in January, April and August, 1983 and also on 13th August, 1984, to try and bring about a reconciliation. But Rajinder Singh categorically refused to take Paramjit Kaur back.

(6) Paiamjit Kaur has also asserted that though she has been living with her three children at h(r)r parents' house since 5th November, 1982, her husband. Rajinder Singh, has not come, even once, to take her back, nor has he lent any maintenance for her or the children.

(7) The petition was filed on 10th December, 1984 and service was effected on the respondent husband, but he did not appear. As such, the S matter proceeded ex parte.

(8) Paramjit Kaur appeared as Public Witness . I and gave evidence as above mentioned. Mr. M.K. Verir.a, Advocate, appeared as Public Witness . 2 and stated that he wai on visiting terms with both the families. He asserted, that he had seen Rajinder Singh slap Paramjit Kaur and had advised Rajinder Singh to behave properly with her. He also asserted that since November, 1982, Paramjit Kaur is residing with her parents at defense Colony, New Delhi. He further added, that he

had gone with her relatives to Rajinder Singh's home in January, 1983, in order to try and effect a reconciliation, but Rajinder Singh was adamant and did not agree.

(9) The learned Additional District Judge, Delhi, accepted the abovementioned testimony, which was unchallenged and unrebutted. But, though, he had no hesitation in arriving at the conclusion that Rajinder Singh had deserted Paramjit Kaur, for a continuous period of not less than two years immediately preceding the presentation of the petition, he felt, that it was a fit case to grant the alternative relief of judicial separation instead of dissolving the marriage. This was because the petition had been presented just after the period of two years had elapsed and in the past on tree earlier occasions, the parties bad reconciled. Further, there were three children of the marriage. As such, the learned Additional District Judge was of the opinion that the ends of juitice would be met by granting the alternative relief of judicial separation and not dissolving the marriage 'straightaway'.

(10) It is, with this alternate relief that the appellant is aggrieved. Mr. KK.Sud, learned counsel appearing for the appellant, has submitted, that once the ingredients of Section 13(1)(ib) of the Act had been established, the appellant was entitled to a decree of divorce and that it was not a fit case for granting the alternative relief of judicial separation. In any case, it is, also, submitted, that a further period of one year has elapsed, since the date of the order of the learned Additional District Judge. Apart from that, the respondent Rajinder Singh, has also not appeared in this court, despite the fact that a registered A. D. card, bearing No. 2676, was sent to him on 23rd April, 1986, indicating the actual date of hearing as 5th May, 1986.

(11) It would appear to me, that in view of the unchallenged and unrebutted testimony of Paramjit Kaur, further corroborated by Mr. M.K. Verma, the ingredients of Section 13(1)(ib) of the Act have been clearly established and the appellant is entitled to a decree for dissolution of marriage. The fact, that she hai three children and had on three earlier occasions returned to the matrimonial home, are not sufficient to deprive her of the relief that she has sought.

(12) If a wife returns to the matrimonial home on the persuasion of her parents, with whom she is seeking shelter, during the early years of her marriage, it does

not mean, that she should not be granted a decree of divorce, when she is subsequently and finally turned out, because of the pious hope that she may once again return to the matrimonial home. This is especially so, when numerous attempts at reconciliation between the parties have failed.

(13) In fact, it appears to me, that Rajinder Singh is totally uninterested in his wife and family, as the matter has gone ex parte both in the trial court and in this court. Further, he has made no effort either to provide for his children or his wife or to contact them. Another year has gone by, and though, at the time of the presentation of the petition, the period of desertion was slightly more than two years, to-day more than three years have elapsed.

(14) The realities of life are staring one in the face and it is clear that the hopes expressed by the learned Additional District Judge have dimmed into nothingness. As such. it appears to me, that in the facts and circumstances of the case, it would be just to grant a decree of dissolution of marriage rather than a decree of judicial separation, which I accordingly do. However, as the matter is ex parte, I make no order as to costs.

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