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

Renu Vij Vs. Surinder Kumar

Renu Vij Vs. Surinder Kumar

SooperKanoon Citation : sooperkanoon.com/690797

Court : Delhi

Decided On : May-21-1985

Reported in : AIR1986Delhi33; 1985(9)DRJ323

Judge : S.S. Chadha, J.

Acts : Hindu Marriage Act, 1955 - Sections 13

Appeal No. : Civil Miscellaneous (Main) Appeal No. 251 of 1984

Appellant : Renu Vij

Respondent : Surinder Kumar

Advocate for Pet/Ap. : Rakesh Tikku,; M.M. Tikku,; O.N. Vohra and;

Judgement :

S.S. Chadha, J.

(1) The short question of law raised in this petition under Article 227 of the Constitution of India is the scope of the words 'the parties to the marriage last resided together' as used in Section 19(iii) of the Hindu Marriage Act, 1955, giving territorial jurisdiction to the Court.

(2) The respondent (husband) brought a petition before the District Judge, Delhi for dissolution of marriage by a decree of divorce under Section 13(1) (ia), (ib) and

(iii) of the Hindu Marriage Act 1955 as amended by the Marriage Laws (Amendment) Act, 1976 (hereinafter referred to as the Act). The marriage between the parties was solemnized at Agra on May I, 1980 according to Hindu rites and ceremonies. It is alleged in the petition that after the marriage, the husband brought the petition herein (wife) in Doli by bus from Agra to Delhi to his matrimonial home, that the husband tried for sexual intercourse with the wife but the wife refused and that the husband came to know from her abnormal behavior at the reception and thereafter, in the hotel room that the wife was possibly suffering from some mental disorder much before marriage. I may very briefly cote other allegations in the petition that the husband consulted certain Maulvies who performed Jhara on the wife who showed slight improvement. Later on, the husband took the wife to Dr. S. B. Mathur, Psychiatrist on the morning of May 5, 1980 when he expressed the opinion that the wife was suffering from mental disorder and the required long treatment. On further medical advice, the wife was got admitted in Sir Ganga Ram Hospital where she was under treatment for a period of about 10 days but there was little improvement in her condition, It is further averred that the wife became violent in the evening of June 17, 1980 and evinced suicidal tendencies and that the husband wanted to take the wife to Shahdara Mental Hospital but was resisted by her father. Ultimately on June 22, 1980 the father of the wife took her to Agra.

(3) Further allegations are made that the common relatives approached the husband and his parents that the wife had been cured and assured that she was fit to lead a normal happy married life. She was again brought to Delhi on February 22, 1981 to the house of the husband. It is further stated that she again used to become aggressive and violent and being fed up with her abnormal behavior, the husband informed her father about her abnormal mental condition. She was ultimately taken back to Agra on March 8, 1981. The jurisdiction of the Courts at Delhi in invoked on the allegations 'that the parties last resided together at Delhi within the local limits of ordinary original civil jurisdiction of this Hon'ble Court'.

(4) The wife filed a written statement denying the allegations of insanity and alleging at the same time constant ill-treatment meted out to her. She raised a preliminary objection challenging the territorial jurisdiction of the Court to entertain

and try the petition.

(5) A preliminary issue was framed by the learned Additional District Judge, Delhi on March 6, 1984 as to 'whether this Court has jurisdiction to entertain and try the present petition'.

(6) The husband appeared in the witness box and made a statement on oath on this preliminary issue. He stated that he was married to the wife on May, 1 1980 at Agra according to Hindu rites and ceremonies, that before the marriage, he had been residing in Delhi and he used to work for gain in Delhi, that after the marriage the wife was brought to his house No. 55, Ara Kashan Road, Pahar Ganj, New Delhi and he and his wife last resided together at the said address till the wife left the matrimonial home on March 4, 1981, and that on 5th and 6th March, 1981 the wife resided at her uncle's house in Pahar Ganj when parents of the wife took her to Agra on March 8,1981. In the cross-examination, the husband admits that during her stay with him he never had conjugal relations with the wife. It is conceded that from the date of her marriage till March 4, 1981 the wife stayed at his house for about 45-55 days, in all, while for the rest of the period she stayed at her parent's house. It is also clarified that out of those 45 days. she stayed at hospital for about 10 days and at her cousin's house for about 4/5 days. The wife did not enter the witness box to rebut this evidence of the husband. On the appreciation of the evidence Shri R. C. Jain, Addl. District Judge, Delhi in the impugned order held that the parties last resided together at Delhi and, thereforee, bids Court had the territorial jurisdiction to entertain and try the petition.

(7) Before I deal with the question of jurisdiction it is opposite to set out the provisions of Section 19 of the Act :-

'EVERY petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction. (i) the marriage was solemnised, or (ii) the respondent at the time of presentation of the petition, resides, or (iii) The parties to the marriage last resided together or (iv) The petitioner is residing at the time of presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which the Act extends, of has not been heard of as being alive for a period of seven years or more by

those persons who would naturally have heard of him if he were alive,"

(8) The only argument addressed by Shri Rakesh Tikku, the learned counsel for the petitioner is that residing together has to be interpreted in a manner to find out whether the parties were living together in the sense that it is not a physical presence or attribute but the mental outlook of the parties has to be looked into. The residence as well as togetherness as husband and wife must co-exist and the absence of either will not vest the jurisdiction. It is urged that both the parties must be conscious of the fact that they are voluntarily, consciously and willingly residing together as husband and wife. To give the Court jurisdiction, says the counsel, it must be residing together with all the natural incidence of a normal conjugal life. The counsel wants me to draw an inference on certain facts, in my opinion for which no foundation has been laid by the petitioner during the trial of the preliminary issue. There is no denial of the fact either by positive evidence or by cross-examining the husband that the wife has not brought to the matrimonial home at Delhi. The husband at the time of his marriage was living in House No. 55, Ara Kashan Road, Pahar Ganj, New Delhi. He was also employed or working for gain in Delhi and was residing in that house which was his place of residence. The wife was brought into that house. It was a place to which the element of matrimonial home or abode can be attributed. No cross-examination was directed to the husband about his mental-attitude on residing together. The allegations made in the petition show the attempts made by the husband to have treatment of the mental disorder of the wife. No questions were directed to the husband about the insincerity of the efforts of the husband arranging treatment for the wife. The wife did not enter the witness box to give the state of her own mental attitude for the period May 2, 1980 to 22 June, 1980 when she admittedly stayed in the matrimonial home provided by the husband.

(9) Jurisdiction, territorial in this case, means authority to decide or capacity to determine questions raised in the petition under the Act. Power to adjudicate upon and enforce remedy in respect of rights created by the Act have been entrusted to the existing district courts, the limits of whose ordinary original civil jurisdiction have already been localised by the existing statutory provisions. Section 3 of the Act defines the district court as means, in any area for which there is a city civil

court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in the Act. It extends the jurisdiction to certain Courts.

(10) There arc four alternative forums. The choice of the district court will be exercised by the petitioner out of several competent courts. The district court within the local limits of whose ordinary original civil Jurisdiction the marriage was solemnised will have jurisdiction. For the purposes of giving jurisdiction to a district court, the solemnisation of the marriage a start of the matrimonial alliance, is made the basis. Jurisdiction is also conferred in the district courts within the local limits of whose jurisdiction the respondent at the rime of the presentation of the petition resides. The principle behind this is that the petition be filed at a place where the respondent is able to defend it without undue trouble. The matrimonial disputes can also be settled by a district court within the local limits of whose ordinary civil jurisdiction the parties to the marriage last resided together.

(11) The expression 'parties to the marriage last resided together' which has been invoked by the husband in the present case means where the husband and wife had their residence. From the evidence on the record, it is clear that after the marriage was solemnised at Agra, the wife was brought to the matrimonial home at Delhi where she admittedly resided till June 22, 1980 and again from February 22, 1981 to March 4, 1981. It was not a merely casual visit by the wife but a definite and clear intention to live in the matrimonial home. She had animus menandi an intention to stay for an indefinite period but for the interruption caused. Her coming back and again residing at the matrimonial home reflects her intention. The length of the period of residing together is not the determining factor for the legislature has not laid down that condition. Only the factum of last residing together is the decisive factor. In''Jagir Kaur v. Jaswant Singh', : [1964]2SCR73 , the question arose while interpreting the provisions of Section 488(8) of the Criminal Procedure Code, 1898. It was observed that the cognate expression 'last resided' takes colour from the word 'resides' and if the word 'resides' includes temporary residence, the expression 'last resided' means the place where the person had his last temporary residence.

(12) In 'Mrs. Sushma Dewan v. Major Ajit Kumar Dewan', , the phrase 'last resided together' was interpreted and it was observed that it is not to be interpreted and it was observed that it is not to be interpreted in a pedantic manner. Under Hindu Law, a wife is supposed to live either with the husband or at a place which can be regarded as a home or a permanent abode of the husband. When a husband does possess a home or a permanent abode and the wife is brought to that house, then it means a place to which an element of home or abode can be attributed. This was considered as a more reasonable way of interpreting the phrase because this makes the forum in which the parties can ventilate their grievances more certain.

(13) In 'M. Clearance S/o. Murugesh v. M. Raicheal d/o. Mari Prakashan and another A.I.R. 1964 Mys 67 a question arose where the two parties were together at no time except during their marriage ceremony at the Church and at the dwelling where the marriage the marriage was intended to be consummated on the night of the marriage, leaving her with her parents and never visited her. The question arose under Section 3 of the Divorce Act, 1869 as to the meaning of the word 'reside' and 'resided together'. It was held that there was no reason why in the extreme case like that the two parties who were necessarily together at the time of the marriage should not be held to constitute as 'resided together' even though it might appear to be straining the meaning of that phrase. The principle that emerges from that decision is that the residing together even for a temporary period as husband and wife, even though the marriage was not consummated, would give the Court jurisdiction. In the case before me, admittedly the wife stayed in the matrimonial home from May 2, 1980 to June 22, 1980 and again from February 22, 1981 to March 4, 1981. It has to be treated as resided together as husband and wife.

(14) Even in 'Dr. Smt. Supriya v. Dr. Vasudeve Dang', : AIR1973 All94 cited by the counsel for the petitioner, it was held that in order to confer jurisdiction to a Court, a petitioner must prove that the parties reside or last resided together as husband and wife. The words 'reside' and 'last resided together' have to be interpreted for finding out as to whether the stay of the parties would come under the terms 'reside' or last resided together'. The residing together as a husband and wife does not mean and include marital relations as a necessary ingredient. It is the factum

of the residence together and not the purpose of the residence that is material. The purpose of the residence in this case is living together as husband and wife without having conjugal relations. There are provisions in the Act to seek annulment of the marriage on the ground that the marriage has not been consummated owing to impotence of the respondent. In that case also the jurisdiction is regulated by Section 19.

(15) The statement of the husband is that he never had conjugal relations with the wile. The enjoyment of marital relations is not a relevant factors for determining whether the husband and wife resided together. Residing together does not mean having sexual intercourse. In "Edith Welsh v. Edward Walsh A.I.R.1927 Bom 230 a Full Bench of the Bombay High Court while considering a petition under the Divorce Act, containing pari materia provisions in Section 3 means what it says and does not mean sexual inter-course.

(16) For the above reasons, the petition fails and is dismissed leaving the parties to bear their own costs.

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