

Damodar Vs. Urmila

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Court : Rajasthan

Decided On : Jul-30-1979

Reported in : AIR1980Raj57

Judge : K.S. Sidhu, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9 to 13 and 19

Appeal No. : Civil Misc. Appeal No. 71 of 1978

Appellant : Damodar

Respondent : Urmila

Advocate for Def. : H.C. Rastogi, Adv. for; A.K. Gupta, Adv.

Advocate for Pet/Ap. : N.K. Mallo, Adv. for; A.K. Bhandari, Adv.

Disposition : Appeal dismissed

Judgement :

K.S. Sidhu, J.

1. This appeal in a matrimonial matter has been preferred by the husband from the judgment dated Nov. 20, 1977, made by the District Judge, Jhunjhunu, granting the wife a decree for restitution of conjugal rights against the husband.

2. The facts leading to the filing of this appeal may be shortly stated here. The parties were married according to Hindu rites at Pilani, Tehsil Chirawa, Dist. Jhunjhunu, on March 9, 1970. The wife brought a petition against the husband under Section 9 [Hindu Marriage Act, 1955](#) (hereinafter called the 'Act') for restitution of conjugal rights on September 18, 1973. She made the allegations that the parties resided together at Sonthali for nearly 3 1/2 years after the marriage. and that the husband and his parents had been ill-treating her throughout that period. On Aug. 17, 1973, the husband forcibly took her to Pilani and left her there at her parents' house. He bluntly told her that he would not reinstate her in the matrimonial home until she brought dowry according to the wishes of his parents and satisfied them. She was carrying a pregnancy of nearly 8 months duration in August, 1973, when she was deserted by the husband. Her father went to the husband's village, namely, Sonthali on Aug. 18, 1973 and pleaded with the husband and his parents to reinstate her in the matrimonial home. They did not agree, They told him that the husband would not keep her in the matrimonial home until she brought dowry as required by them. She thus complained that the husband had withdrawn from her society without any reasonable excuse and, therefore, she was entitled to the decree as prayed

3. The husband contested the petition and filed a written statement in answer to it. He admitted that the parties were married according to Hindu rites at Pilani on March 9, 1970, He, however, pleaded that the Muklawā ceremony had taken place nearly 9 months after the marriage, and that the parties had started cohabitation only after the said ceremony. They resided together at Sonthali for about a week after the Muklawā ceremony. She then went back to her parents' house at Pilani and lived there for nearly 3 months with her parents. He went to Pilani and brought her back to Sonthali where they again lived together for about a week. He then went to Hoshiyarpur in the State of Punjab to work as an Astrologer. She stayed behind at Sonthali with his parents for about a month. On her insistence, his parents arranged for her return to her parents' house at Pilani. He lived in various places in Punjab till Feb. 12, 1973, when he visited his village Sonthali on the occasion of the wedding of his sister. She also visited Sonthali on that occasion. They did not, however, have sexual intercourse during that period, because, according to the husband, he was suffering from some skin irritation and itching at

that time. He went back to Chandigarh after attending the wedding. Thus, according to the husband, there was no sexual intercourse between the parties at all after the husband had left Sonthali for Punjab to work as an Astrologer in the middle of 1970. He discovered a couple of months after the marriage of his sister that the wife was pregnant. He pleaded that she had admitted before the women folk that she had become pregnant from some one other than her husband. She bluntly told his parents in his absence that he is of dark complexion, and that, therefore, she is not interested in living with him. She thus left Sonthali and went back to Pilani after about a month of his sister's wedding. Her father sent her back to Sonthali around the festival of Rakshya Bandhan in 1973. She kept quarrelling with his parents at Sonthali. Her father came to Sonthali and took her from there to Pilani on Aug. 18, 1973. The husband pleaded that he was not present in Sonthali when her father took her away from there to Pilani. The husband's father went to Pilani and pleaded with the wife's parents for a settlement and for return of the ornaments and gifts given to her on the occasion of the marriage. They were not prepared for a compromise. They turned him out of their house at Pilani. The husband's father returned to Sonthali and convened a meeting of the Panchayat of the brotherhood. He told them that his daughter-in-law had committed adultery. According to the husband, the Panchayat of the brotherhood granted divorce to him according to the custom of the community. The information of this divorce was sent to the wife at Pilani and also to the Panchayat of her community. He pleaded that the divorce granted by the Panchayat is valid according to the custom and usage prevalent in the community, and that, since the marriage is no longer subsisting the wife is not entitled to restitution of conjugal rights.

4. The parties were taken to the trial on the following issues:--

1. Whether the respondent took the petitioner to Pilani and left her there on Aug. 17, 1973, by reason of the fact that the petitioner and her parents were unable to fulfil his demand for dowry ?
2. Whether the petitioner is not a woman of good character, and if so, what is its effect on this petition ?

3. Whether the community Panchayat of Sonthali had given its decision 10 days after Aug. 17, 1973, dissolving the marriage between the parties on account of the character of the petitioner. If so, was the said decision communicated to the Panchayat at Pilani and to the petitioner's father What is the legal effect of such decision on these proceedings ?

4. Relief

5. By his judgment dated Nov. 30, 1977 the learned District Judge held that the wife had failed to prove that the husband had taken her to Pilani against her will on Aug. 17, 1973, and left her there at her parents' house, stating that he would not keep her in the matrimonial home unless she brought dowry according to his wishes. Issue 1 was thus decided against the wife. He further held that the husband had failed to prove that the wife is a woman of bad character, and that she had become pregnant from a person other than the husband himself. Issue 2 was, therefore, decided against the husband. The findings of the learned trial Judge on Issue No. 3 also went against the husband, inasmuch as he concluded that, though the custom of divorce through the forum of the community Panchayat was prevalent in the family of the husband, no such divorce as alleged had ever been granted by the Panchayat to him. He further held that even assuming that such a divorce had been granted by the Panchayat, the same is not valid, because, none of the parties entered appearance before the Panchayat to put forward their pleas regarding the controversy. He also expressed opinion that the custom of divorce by the Panchayat without, hearing the parties concerned is prevalent in the community of the husband is opposed to public policy, and therefore, void.

6. Consequently the learned trial Judge granted the wife a decree for conjugal rights as prayed. As already stated, the husband has appealed.

7. After hearing both the sides and going through the evidence on record, I am satisfied that the findings of the trial Court on issues 1, 2 and 4 are correct and, therefore, deserve to be affirmed. As for issue 3, the trial Court and for that matter, this Court, has no jurisdiction to go into the question of the alleged divorce obtained by the husband from the community Panchayat and its validity.

8. Taking up issue 1 first, the wife appeared as her own witness and examined her father Tara Chand, Hira Lal and Radhey Shyam in support of her case that the husband had taken her to Pilani on Aug. 17, 1973 and left her there at her parents' house against her will. Giving reasons for this estrangement between the husband and wife, she testified that the husband and his parents were demanding more dowry, and that, since her parents were not able to fulfil their demand she was forcibly taken to Pilani and left there. Of course, the petitioner's father Tara Chand and her witnesses, Hira Lal and Radhey Shyam supported her allegation and stated that the husband had brought her to Pilani on Aug. 17, 1973, and left her there at her parents' house. They also stated that when they requested the husband to take her back, he bluntly told them that he would not do so unless she brought more dowry.

9. On the other hand, the husband testified that he had been continuously residing in Punjab for a couple of years before the institution of this petition, and that, on Aug. 17, 1973, when, according to the petitioner, he had taken her from Sonthali to Pilani and left her there, he was at Chandigarh. He further stated that in fact, the petitioner's father had himself taken her away from Sonthali to Pilani on Aug. 18, 1973, when both he and his father were at Chandigarh in connection with their business as astrologers. He further stated that they came to Sonthali on August 20, 1973, on receipt of information from his uncle that the petitioner's father had taken her away from their house in Sonthali,

10. The learned trial Judge preferred to rely on the husband's evidence that on August, 17, 1973, he was at Chandigarh, and that, therefore, he could not have taken the wife from Sonthali to Pilani that day and left her there. I am inclined to agree with this appreciation of evidence made by the learned trial Judge. The wife herself admitted that the husband had gone to Punjab to work as an Astrologer about a year after the marriage, and that he kept working there in the towns of Hoshiyarpur, Ropar and Chandigarh. The husband placed on the record a telegram Ex. A-3 which he had received at Chandigarh on Aug. 19, 1973. The telegram was sent to him by his uncle Kedarmal asking him to come immediately along with his father Babulal to Sonthali. In these circumstances, it would be reasonable to believe the husband that he was in Chandigarh on Aug. 17, 1973.

11. There is no satisfactory evidence on the record to prove that the husband and his parents had made any demand of dowry on the wife and her parents in or around August 1973. In fact, there was no question of making a demand for dowry after such a long time of the marriage. The problem of dowry arises only at the time of marriage or within the first few months thereafter. It is seldom raked up as long as 3\$ years after the marriage. The letters Ex. 1 to Ex. 5 which were written from time to time by the parties and their relations during the period after the marriage would show that the question of dowry had never been raised by the husband or his parents at any time.

12. For all these reasons, I affirm the findings of the trial Court on issue 1.

13. Turning now to issue 2, the husband had set up a case that he had had no access to his wife in 1971 and 1972, when, according to him, he was residing in various towns of Punjab and the wife was residing either at Sonthali or Pilani. He admitted that he had visited Sonthali in Feb. 17, 1973 on the occasion of the marriage of his sister. He also admitted that the wife was also in Sonthali on the occasion of that marriage. He, however, denied that they had any sexual intercourse during that period. On the other hand, the wife's case is that the husband had come to Sonthali nearly 2 months before the marriage of his sister, and that, they had had sexual intercourse during that period regularly, She further pleaded that she became pregnant from the husband at Sonthali in January 1973.

14. The learned trial Judge rejected the husband's case that there was no sexual intercourse between him and his wife during the period he was visiting Sonthali on the occasion of the marriage of his sister. His plea that he was incapable of such intercourse by reason of some skin ailment, can scarcely be believed. No evidence has been produced by the husband regarding the so-called confession by the wife that she had become pregnant from some one other than her husband. The husband made a belated assertion in his deposition in the trial that he had seen the wife and the husband of the wife's younger sister, namely, Sanwarmal behind closed doors at the wife's parents' house before the Muklawar ceremony, and that, he had shown that scene to the parents of the wife. He tried to explain that he did not mention this incident to any one else, and instead, continued to

have normal relations with his wife for fear of infamy. The learned trial Judge rejected the husband's testimony in that behalf holding that it is difficult if not impossible to believe that the wife would commit adultery with her sister's husband in her parents' house when her own husband was visiting her parents' house and was present there along with the wife's parents. It is significant to note that no mention was made by the husband of this incident in the written statement filed by him in answer to the wife's petition for restitution of conjugal rights. It would, therefore, be reasonable to hold that this incident was concocted by the husband as an afterthought.

15. For all these reasons, I affirm the finding of the trial Court that the husband has failed to prove issue 2. He made a false accusation against the wife regarding her character. It appears that he concocted this allegation in order to trump up some excuse for deserting the wife and withdrawing from her society for such a long time. He has himself taken up the stand that for nearly 2 years immediately preceding the institution of this case he had been residing at various places in Punjab and that the wife was left behind to stay either with her own parents at Pilani or at the husband's parents' house at Sonthali. It will, therefore, be reasonable to conclude that the husband has withdrawn from the society of the wife without reasonable excuse.

16. This brings me to issue 3. As already stated, the matrimonial Court has no jurisdiction to go into the factum or validity of the alleged divorce obtained by the husband from the community Panchayat in accordance with the so-called custom prevalent in the community. This is a matter which falls squarely within the jurisdiction of the Civil Courts. Section 9 of the Civil P. C. lays down that the Civil Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. A perusal of the relevant provisions of the Act would show that it is a complete code in itself creating new rights for an aggrieved spouse governed by the Act to obtain decree of restitution of conjugal rights, judicial separation, nullity of marriage and divorce, as the case may be. Sections 9 to 13 deal with the rights of an aggrieved spouse to make an application seeking appropriate relief against the other spouse. Section 19 which provides for forum for seeking such relief lays down that every

petition under the Act shall be presented to the District Court, within the local limits of whose ordinary original civil jurisdiction the cause of action arose in the manner and circumstances specified in Clauses (i), (ii), (iii) and (iv) of that section. The words 'every petition under this Act' occurring in this section have reference clearly to the petitions under Sections 9 to 13 of the Act. The Act does not make any provision for the grant of relief to a spouse interested in getting a declaration that he or she, has already obtained dissolution of marriage according to custom or usage from the community Panchayat and that the said dissolution is valid and binding on the two spouses. Similarly, there is no provision in the Act, to enable a spouse, against whom a petition is filed by the other spouse under any of the sections from 9 to 13, to raise a plea in defence that he or she has already obtained dissolution of the marriage from the community Panchayat or the like according to custom governing the parties, and that, therefore, the marriage is no longer subsisting. It can, therefore, be safely held that the Act which deals with certain matrimonial disputes among the Hindus does not make any provision for adjudication of a claim or defence, that the marriage between the contending parties already stands dissolved by virtue of the decision of a private forum like the Panchayat of the tribe, community, group or family, as the case may be. Such adjudication can, therefore, be obtained only from the Civil Court and not from the matrimonial Court under the Act.

17. A reference to the provision of Section 23A of the Act would also confirm the conclusion arrived at above. This section which was inserted by the Amendment Act, No. 68 of 1976, creates a new right in favour of a respondent-spouse to make a counterclaim in his or her written statement for any relief under the Act on grounds of petitioner's adultery, cruelty or desertion. Applying the maxim '*generalibus specialia derogant*' (Special things derogate from general), it may be safely concluded that no relief other than the relief based on the petitioner's adultery, cruelty or desertion is available to a respondent in a matrimonial proceeding under Sections 9, 10, 11, 12 and 13 of the Act. In other words, the respondent in a matrimonial petition under any of these sections cannot be heard on his plea that the marriage has already been dissolved according to custom by a private forum or domestic tribunal like the community Panchayat. He or she must seek the appropriate relief from the Civil Court.

18. Section 29 of the Act which deals with 'Savings and repeals' would also show that the Act does not create a special right of dissolution of marriage on the basis of custom. All that the Act does is to save such a right, if it already exists otherwise. One may possibly understand an argument that if the Act has created a new right, it must have, expressly or impliedly, provided for remedy or machinery for enforcing the right. There is no room for such an argument in the present case, because, the Act does not create a special right based on custom, but only saves a pre-existing right, if any, in that behalf,

19. Looking at the problem from all angles, therefore, it is quite clear that the District Judge, in his capacity as the matrimonial Court under the Act, as distinguished from his capacity as a Court of ordinary original civil jurisdiction, has no jurisdiction to entertain a claim or counter-claim made by a Hindu spouse to the effect that he or she has already obtained dissolution of the marriage according to custom from a private forum or domestic Tribunal, and that the same is binding on the parties. It is accordingly held that the Court below and, for that matter, this Court has no jurisdiction to go into the pleas of the husband giving rise to issue 3.

20. In conclusion, this appeal fails and is hereby dismissed. In the circumstances, the parties are left to bear their own costs throughout.