

Mohanlal Vs. Mst. Mohan Bai

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Court : Rajasthan

Decided On : Jul-03-1957

Reported in : AIR1958Raj71

Judge : Ranawat, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 23

Appeal No. : Civil Misc. Appeal No. 38 of 1957

Appellant : Mohanlal

Respondent : Mst. Mohan Bai

Advocate for Def. : O.C. Chatterjee, Adv.

Advocate for Pet/Ap. : D.L. Bardhar, Adv.

Disposition : Appeal dismissed

Judgement :

Ranawat, J.

1. This is an appeal by Mst. Mohan Bai against the judgment and decree of the District Judge, Jaipur City dated 22nd January, 1957.

2. Mst. Mohan Bai, who is the legally wedded wife of Mohan Lal, filed a suit against her husband in the Court of the District Judge, Jaipur City on 15th March, 1956 for dissolution of marriage on the ground that her husband had married a second wife before the commencement of the [Hindu Marriage Act, 1955](#) and that his other wife is still living. The suit was contested by Mohanlal on the ground that the plaintiff cannot be allowed to take advantage of her own wrong inasmuch as she refused to live with her husband and it was for this reason that the husband had to contract a second marriage.

The lower Court decided the suit against the defendant and held that there was no substance in the plea of the defendant regarding the wife taking advantage of her own wrong. A number of other points were also agitated in the lower Court, but we are not concerned with them in this appeal. The only point which has been raised by the appellant in this appeal is that the Court below was wrong in ignoring the provision of Section 23(a) of the [Hindu Marriage Act, 1955](#).

3. The learned counsel of the appellant has argued that the defendant was forced to marry a second wife as the plaintiff had refused to live with him and the second marriage was contracted as a result of refusal on the part of the plaintiff to live with her husband and the wife should not now be allowed to claim a decree of divorce on the ground specified in Section 13(2) of the [Hindu Marriage Act, 1955](#).

4. Section 13(2) of the [Hindu Marriage Act, 1955](#) provides that a wife may also present a petition for the dissolution of her marriage by a decree of divorce on the following grounds; (1) in the case of any marriage solemnized before the commencement of the said 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. It is not disputed by the defendant appellant that the conditions specified in Section 13(2) are satisfied in the present case.

It is admitted that the defendant married a second wife before the commencement of the [Hindu Marriage Act, 1955](#) and that the second wife is still living. The only objection that has been raised is regarding the application of Section 23(a) of the [Hindu Marriage Act, 1955](#). Firstly the second marriage of the defendant was an

outcome of a wrong committed by the plaintiff is difficult to assume. Even supposing that the 'plaintiff refused to live with her husband, it can-not be conceived that the second marriage was necessarily the result of the plaintiff living separately from her husband.

Secondly the act of living separately can-not' be regarded as a wrong within the meaning of Section 23(a) of the [Hindu Marriage Act, 1955](#) and the learned counsel has not been able to show that such an act of living separately can be regarded as a wrong within the meaning of the term as used in the section. The term 'wrong' in Section 23(a) means an act causing some injury to the other side. A wife living separately from her husband cannot be considered to cause thereby an injury to her husband. The learned counsel of the appellant is trying to improperly enlarge the scope of Section 23(a) in seeking to apply it to the circumstances of this case. The Court below was right in holding that the plaintiff in the present case could not be considered to be taking an advantage of her own wrong. There is no other point involved in this appeal.

5. The learned counsel of the appellant has also urged that the Court below should not have allowed costs of maintenance to the plaintiff. Mr. Chatterjee on behalf of the respondent has given an undertaking to the appellant that his client would not seek to execute the decree for costs against the defendant-appellant. This undertaking should be sufficient for the appellant not to press this point.

6. This appeal fails and it is dismissed, and under the circumstances of this case, the parties shall bear their own costs. The stay order is vacated.