

Teerth Ram Vs. Smt. Parvati Devi

Teerth Ram Vs. Smt. Parvati Devi

SooperKanoon Citation : sooperkanoon.com/751938

Court : Rajasthan

Decided On : Jul-12-1994

Reported in : AIR1995Raj86; I(1995)DMC414; 1995(1)WLC296; 1994(2)WLN319

Judge : Gokal Chand Mital, C.J. and; N.K. Jain, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : Civil Misc. Appeal No. 253 of 1993

Appellant : Teerth Ram

Respondent : Smt. Parvati Devi

Advocate for Def. : Bhagwati Prasad, Adv.

Advocate for Pet/Ap. : A.K. Rajavanshi, Adv.

Disposition : Appeal dismissed

Judgement :

G.C. Mital, C.J.

1. The parties were married in the year 1970 and out of the wedlock after two years of their marriage, first child born was a girl who died after some time and the second male child born in 1977, who is alive. The husband filed a divorce petition on 2-8-1989 on the ground of desertion and cruelty alleging that on 19th Jan.,

1978 his wife left the house with her brother as usual but did not return for the 11 years inspite of best efforts made by the husband. The wife pleaded that she was always ready and willing to live with the husband and lived with him for about eight years after her marriage and bore two children but she was not happy to live with the parents of the husband and wanted to live in a separate home. The matter was tried by the learned Additional District Judge, Nohar and by his judgment and decree dated 30th April, 1993 the divorce petition was dismissed mainly on the ground that there was unexplained delay in filing the divorce petition. Under issue No. 1 it was also recorded that wife left in January, 1978 and the reason given by her was that she would come back to the husband if he establishes a separate home, was not a good ground for living separately.

This is husband's appeal.

2. After hearing learned counsel for the the parties, we are of the view that it is not a lease for granting a decree of divorce.

3. One admitted fact, which has not been taken into consideration by the Court below is that the appellant and his brother are married in the same family with two real sisters viz., the respondent before us and her sister. While the brother of the appellant is peacefully living with the sister of the respondent in a separate home in a different town, the appellant is not prepared to leave his parents and live in a separate home with his wife.

4. The other factor to be taken into consideration, which has not been noticed by the Court below, is that from January, 1978 the wife was living separately along with a minor son of about one year at that time and till the petition filed in the year 1989 i.e. for a period of 11 years, the husband did not pay a penny to the wife or the child. It was the husband, who could have created confidence in the wife by providing means to wife. On the contrary, we find that wife had to go to court of law by filing a petition under Section 125, Cr.P.C. in the year 1979, which was dismissed in default in 1980 and then the husband did not send any penny to the wife.

5. The wife filed a second petition for maintenance under Section 125, Cr.P.C. in the year, 1983, which was dismissed on 30th January, 1986 by the Magistrate and appeal was dismissed in the year 1988. The husband waited for all this time and when he found that wife will not be entitled for maintenance only then he came in a petition for divorce on 2-8-1989.

6. Accordingly, we are in agreement with the court below that the divorce petition is unduly delayed.

7. The parties have been married for 24 years and their son is 16 years old today. We are not satisfied that the husband has established a ground to have a decree for divorce. It cannot be held that wife has permanently deserted the husband with no intention to come back. The wife has no intention to break the matrimonial home for good. On the contrary, she wants her husband to establish an independent matrimonial home where she would live with him as the other brother of the husband has done. Facts may differ from case to case. In this case it cannot be held that wife will be considered to have deserted the husband without sufficient reasons. Accordingly, finding to the contrary recorded by the court below is reversed.

8. For the reasons recorded, the appeal is dismissed with no order as to costs.