

Vimla Bai Vs. Panchu Lal

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Court : Rajasthan

Decided On : Feb-05-2007

Reported in : AIR2007Raj99; RLW2007(2)Raj1276

Judge : Shiv Kumar Sharma and; Vineet Kothari, JJ.

Appellant : Vimla Bai

Respondent : Panchu Lal

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. The relationship between the spouses is a matter concerning human life which does not run on dotted lines or charted course laid down by the statutes. The appellant wife in the instant matter, however challenged the decree dated October 19, 2001 of the learned Family Court Kota mainly on the ground that the strict rules of pleadings have not been followed in drafting the petition of divorce by the respondent husband.

2. Contextual facts depict that the respondent husband in the petition under Section 13 of the Hindu Marriage Act averred that his marriage with the appellant took place some 16 years back. After the marriage the respondent husband and

his mother started residing in the house of appellant wife and start cultivating the agricultural land of appellant's father. Since the respondent was poor, the appellant wife used to tease and torture him. The appellant wife was a lady of easy virtue therefore she got herself subjected to vasectomy operation. The appellant wife was arrested in a criminal case under Sections 302, 201 and 120B IPC and thus caused mental cruelty to the respondent husband. She deserted him for the last ten years. Thus he was entitled to decree of divorce.

3. The appellant wife filed reply to the petition denying the allegations. She stated that on pursuation of the respondent she got herself operated. She further pleaded that after performing second marriage the respondent husband ousted her from his house, thus she had no other option except to live with her parents. According to appellant, the respondent did not enjoy good reputation and he had illicit relations with Sajna and Parvati.

4. On the basis of pleadings of the parties following issues were framed:

- (i) Whether the respondent committed cruelty towards the petitioner?
- (ii) Whether the respondent was involved in criminal case for the offences under Sections 302, 201 and 120B IPC?
- (iii) Whether the petitioner filed the divorce petition on the basis of wrong facts?
- (iv) Relief?

5. The respondent examined himself as Aw. 1 and Santosh Bai as Aw. 2 whereas the appellant appeared as Naw. 1 and Ramji Lal as Naw.2. Learned Family Court on hearing final submissions decided the petition as indicated above.

6. The main contention of learned Counsel for the appellant is that the learned Family Court erred in not considering the fact that there was no specific pleading in the petition that the appellant was leading adulterous life and in absence of pleading, evidence in relation to adultery was not admissible. Reliance is placed on Ram Samp Gupta v. Bishun Narain College 0043/1987 : [1987]2SCR805 and Smt. Meera v. Vijay Shankar Takhidia 1993 (1) RLR 485.

7. In *Ram Sarup Gupta v. Bishun Narain Inter College* (supra) it was indicated as under:

It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

8. Having scanned the material on record we find that in the petition the respondent husband specifically pleaded that the appellant wife was the woman of easy virtue. It was not necessary for him to incorporate the evidence by which the facts regarding character of appellant wife were to be proved in view of the provisions contained in Order 6 Rule 2 CPC, which provide thus:

Pleading to state material facts and not evidence.

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

9. As per the scheme of the Family Courts Act, 1984 (for short 'the Act.') the Family Courts are aimed to function in an informal way, since the parties are not aware with the legal complexities and their effects. Section 10 of the Act deals with general procedure and powers of the Family Court. It reads as under:

10. Procedure generally:

(1) Subject to the other provisions of this Act and the rules, the provision of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in Sub-section (1) or Sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other.

A look at the afore quoted provision goes to show that the Family Court is expected to adhere to simple and practicable procedure, either, in combination of or any of the procedure laid down in Section 10. Sub-rule (3) also confers powers on the Family Court to evolve its own procedure in bringing about settlement of matters before it and finding the truth of the disputed facts in matters before it, frees it from the shackles of rigid rules of procedure by which ordinary courts are

bound.

10. Having scanned the material on record we notice that the appellant wife in her deposition admitted that she was employed by Dr. Pathan for the purpose of cooking food and in the murder of Dr. Pathan she was arrested and prosecuted.

11. Cruelty as a ground of divorce under Section 13(1)(ia) is a conduct of such type that the husband could not reasonably be expected to live with the wife. In our opinion, involvement of the appellant wife in a murder case amounts to cruelty and learned Family Court has rightly granted decree of divorce. We find no infirmity in the impugned judgment and decree.

12. For these reasons we find no merit in the instant appeal and the same stands accordingly dismissed without any order as to costs.

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