

Sakri Vs. Chhanwarlal

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Court : Rajasthan

Decided On : Sep-30-1974

Reported in : AIR1975Raj134; 1974(7)WLN965

Judge : Kan Singh, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 23(2)

Appeal No. : First Appeal No. 118 of 1971

Appellant : Sakri

Respondent : Chhanwarlal

Advocate for Def. : J.R. Tatia, Adv.

Advocate for Pet/Ap. : M.M. Vyas, Adv.

Judgement :

Kan Singh, J.

1. This is an appeal under Section 28 of the [Hindu Marriage Act, 1955](#), hereinafter to be referred as 'the Act', by a wife against whom the learned District Judge has passed a decree for restitution of conjugal rights under Section 9 of the Act.

2. The parties, who were. Hindus, were married according to Hindu rites on 4-5-65 (Baisakh Sudi 3, Samvat year 2022) at Jodh-pur. The husband averred that after

the marriage was celebrated the wife did not live with him. He made several attempts to induce his in-laws to scold his wife, but they did not heed. He, therefore, made the application under Section 9 of the Act in the court of the learned District Judge on 14-12-1968. The wife appeared to be a minor at the time the proceedings were commenced and, therefore, a guardian ad litem was appointed for her. The guardian ad litem resisted the application on a number of grounds. It was pleaded that there was no 'Muklava' ceremony and, therefore, the marriage was not complete and then there was bad blood between the parties on account of a beating administered by the husband to the wife and the in-laws. The guardian ad litem of the wife proceeded to say that there was a caste Panchayat at which the parties had divorced each other.

3. The learned District Judge framed the following issues :--

'1. Has the respondent not performed the conjugal rights without any just and sufficient cause? Hence is the petitioner entitled to a decree for restitution of conjugal rights?

2. Whether in pursuance of a custom prevalent amongst the community of the parties the petitioner dissolved the marriage by a divorce on 6th November, 1968?

3. (a) Is there any custom of Muklava in the community of the parties?

(b) If so, since Muklava ceremony was not performed the marriage between the parties was not complete?

4. Is the petitioner not entitled to claim restitution of conjugal rights on the ground specified in para 12 of the written statement?

5. To what relief is the plaintiff entitled?'

The parties led their respective evidence on these issues. The learned District Judge eventually held that there was no reasonable excuse for the wife to deny conjugal rights to her husband. Accordingly, the learned District Judge passed a decree for restitution of conjugal rights in favour of the husband and against the wife.

4. The wife, became a major while the appeal was pending in this Court and accordingly on 5-3-1974 the guardian ad litem for the wife was discharged. Thereafter both the learned counsel took time to expose the chances of settlement out of court, but no settlement could be brought about in spite of earnest endeavours by both the learned counsel.

5. Today when the appeal came up for hearing I enquired of learned counsel if there was any effort for reconciliation by the trial Court. Learned counsel agreed that there was no effort for reconciliation before trial Court.

6. Now Section 23(2) of the Act lays down :

'Section 23(2). Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do, consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.'

This section, therefore, clearly contemplates that the Court has a duty to try to bring about reconciliation in every case. Even cases where apparently there may be no chances of eventually bringing about a reconciliation are no exceptions.

7. In *Chhote Lal v. Kamla Devi*, AIR 1967 Pat 269 it was observed that the law enjoins upon the Court a duty to make a sincere effort at reconciliation before proceeding to deal with the case in the usual course. In order that the requirement of making 'every endeavour' is fulfilled it is at least requisite that the Courts should have a first hand version of the point of view of the lady from her own mouth so that the Court might be in a position to appreciate what really has led to the estrangement between the husband and the wife. He went on to say that even where the Advocates for the parties submit that it is not possible to have a reconciliation the duty of making every endeavour for bringing about a reconciliation cannot be said to have been fulfilled.

8. In *Raghunath Prasad v. Urmila Devi*, AIR 1973 All 203 it was held that the effort at conciliation is to be made by the Court right from the start of the case and not only after the closure of the final hearing of the case and before the Court

proceeds to grant relief under the Act. As observed in the Patna case it was observed by the learned Judge in this case too that the Court cannot give up effort for reconciliation merely on the ground that the counsel for one or both the parties had stated that there was absolutely no chance for reconciliation.

9. In *Kivubai v. Ningappa*, AIR 1963 Mys 3 the learned Judges observed that while the trial Court has a duty to perform by making every endeavour to bring about a reconciliation in the parties under Section 23(2), the matter does not affect the jurisdiction of the Court. It was further observed that though it is no doubt true that the section says that such endeavour is to be made in the first instance, but it cannot be said from this that the Court cannot make use of its good offices at any later stage. It was point out that if no endeavour had been made by the trial Court, it would be a serious omission which has to be taken into account, but it cannot affect the jurisdiction of the Court to try the case, and as it is the constant duty of the Court to bring about reconciliation such efforts are not only open to the appellate Courts, but it is appropriate that those Courts should also make the endeavour.

10. I must at once say that both the learned counsel are on common ground that effort at the reconciliation was required to be made in accordance with Section 23(2) of the Act. While learned counsel for the appellant presses for sending the case back to the trial Court, learned counsel for the respondent submits that this omission of the trial Court may be made good here by this Court by making an effort for reconciliation at this stage.

11. While the making of an effort even at the beginning of proceedings may be a desirable thing the requirement of the law will be amply fulfilled if before the final stage of the case namely, the granting of relief, the Court makes an endeavour for a reconciliation between the parties. The emphasis of the section is that the effort has to be made before proceeding to grant any relief under the Act, The words 'in the first instance' do not mean that the Court cannot proceed to go into the matter without first. making an effort at reconciliation. The words 'in the first instance' only denote that the Court must make every endeavour to bring about reconciliation between the parties before proceeding to grant any relief under the Act. The effort

has to be a reasonable human effort because that is conditioned by the words 'where it is possible so to do, consistently with the nature and circumstances of the case.' The words 'in every case' only mean all the cases where a relief as contemplated by Section 23(1) of the Act has to be granted.

12. The only question that now remains to be considered is whether the case be sent to the trial Court or an effort should be made in this Court. The wife was a minor at the time the proceedings commenced in the trial Court and from the averments in the petition it does not appear that she had ever stayed with her husband even for a day. In such a case, therefore, I should think it would be better if the effort at reconciliation is made by the trial Court in the first instance in this way the parties will be having an advantage of an effort at reconciliation by the trial Court and, if necessary, by the appellate Court too though it may very well turn out to be that no appeal would be filed as the parties might forgive and forget each other. Therefore, I am of the opinion that the case should be remanded to the trial Court.

13. Accordingly, I allow this appeal, set aside the judgment and decree of the learned District Judge, Jodhpur dated 17-4-71 and remand the case to that Court with the direction that he shall make reasonable effort at bringing about reconciliation between the parties and, if unfortunately for them no reconciliation is brought about, then decide the matter afresh after hearing learned counsel.

14. The parties are directed to appear before the learned District Judge on 14-10-1974.