

Lad Kanwar Vs. Jagdish

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Court : Rajasthan

Decided On : Feb-09-1979

Reported in : AIR1979Raj197

Judge : M.L. Shrimal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 10, 13 and 13(1A); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 7

Appeal No. : Civil Misc. Appeal No. 39 of 1978

Appellant : Lad Kanwar

Respondent : Jagdish

Advocate for Pet/Ap. : D.K. Soral, Adv.

Disposition : Appeal dismissed

Judgement :

M.L. Shrimal, J.

1. Heard learned counsel for the appellant.

2. Respondent Jagdish had filed a petition No. 92 of 1973 against appellant Mst. Lad Kanwar, daughter of Ram Kalyan for restitution of conjugal rights in the Court of District Judge, Kota. The learned Judge had called the parties. He made every

endeavour to bring about reconciliation between the parties. Thereafter appellant Lad Kanwar made an application before the Court mentioning therein that Jagdish had treated the petitioner with such cruelty as to cause a reasonable apprehension in her mind that it would be harmful for her to live with him. On this ground of cruelty a decree for judicial separation had been prayed to be passed. In support of her application affidavits had also been filed. Though the evidence in that case had been given through affidavits, the other party had not opposed it. Accordingly the learned Judge reached the conclusion that Jagdish had maltreated his wife, and eventually held that Mst. Lad Kanwar was entitled to a decree for judicial separation.

2. Thus at the request and insistence of Mst. Lad Kanwar a decree for judicial separation had been obtained by her in her favour on April 13, 1974. None of the parties challenged this decree in appeal or otherwise. After the expiry of two years of the decree passed in Civil Misc. Case No. 92 of 1973, Jagdish filed a petition for divorce before the learned District Judge under Section 13 of the [Hindu Marriage Act, 1955](#) on the ground that there has been no resumption of cohabitation between the parties to the marriage for a period of two years after the passing of the decree for judicial separation in the proceedings to which they were parties. The learned Judge after taking necessary proceedings and hearing the parties passed a decree for divorce in accordance with Section 13(1A) of the [Hindu Marriage Act, 1955](#) vide her judgment, dated August 11, 1977.

3. The appellant has challenged the above verdict of the trial court through this appeal.

4. The only contention raised, is, that the decree passed by the learned District Judge, Kota, in Civil Misc. Case No. 92 of 1973 was without jurisdiction. In the proceedings for restitution of conjugal rights the court below, counsel adds, had no authority to pass a decree in favour of the non-petitioner of that case on the basis of her application or on the written statement. The substance of the argument of the appellant's counsel is that no decree for divorce could have been passed on the basis of the decree awarded in Civil Misc. Case No. 92 of 1973, that decree being without jurisdiction. In support of this contention reliance has been placed on

Kiran Singh v. Chaman Paswan (AIR 1954 SC 340).

5. Coming now to the question of jurisdiction it may be stated at the very outset that the Supreme Court authority referred to above deals with the Suits Valuation Act (1887) and not with the question arising in this appeal. This authority, therefore, is of no assistance to the appellant. Besides it is clearly mentioned in the judgment that when a case had been tried by the Court on the merits any judgment rendered it should not be liable to be reversed purely on technical grounds and the policy of the legislature has been to treat objections 'to jurisdiction as technical. Order 7 Rule 7, C. P. C., specifically provides that the rules applicable to the plaint also apply to any relief claimed by the defendant in his written statement. Order 8 R. 6 C.P.C. provides that a defendant can also plead set off and the written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set off. Under Section 21 of the [Hindu Marriage Act, 1955](#), all proceedings under the Act are to be regulated as far as may be by the Civil P. C. 1908. A plaint in law means a private memorial tendered to a Court in which a person sets forth his cause of action. A written statement claiming a set off will be deemed to that extent to be a plaint; vide (1892) ILR 15 Mad 29. Under Order 8 Rule 6-A (2) a counterclaim has the same effect as a cross-suit so as to enable a court to pronounce a final judgment in the same suit both on the original claim and the counterclaim. A counterclaim need not be an action of the same nature as the original action; (AIR 1975 Punj and Har 112) Munshi Ram v. Radha Kishan. A court has power to treat counterclaim as a plaint or cross-suit. A counterclaim is a weapon of offence which enables the defendant to enforce a claim effectually as an independent action. Order 8 Rule 6-F further empowers the court to give relief in respect of counterclaim. In a suit for restitution of conjugal rights it is open to the respondent, to raise pleas, which are provided for a decree for judicial separation. In the case on hand a decree for judicial separation had been passed in Civil Misc. Suit No. 92 of 1973 by the learned District Judge at the behest of the defendant of that case. The question (which) has, therefore, to be considered on principle is as to whether there is anything in law, statutory or otherwise, which precludes a Court from treating a counterclaim as a plaint in a cross-suit. It is difficult to see any. No doubt, the Civil Procedure Code prescribes the contents of a plaint and it might

very well be that the counterclaim which is to be treated as a cross suit might not conform to all these requirements, but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If, for instance what is really a plaint in a cross-suit is made part of a written statement or by being made as a part and parcel thereof, by a separate application, though described as a counterclaim, there could under the law (be) no legal objection to the counterclaim treating (it) as a plaint and granting such relief to the defendant as would have been open to him or her. To hold otherwise would be to effect what in substance is a mere defect in the form of pleadings into an instrument for denying what justice manifestly demands. It would suffice to say that there is nothing in Order 7 Rule 7 or Order 8 Rule 6. C. P. C. or in any other provision of the Hindu Marriage Act, which lays an embargo on a Court adopting a course of giving relief to the defendant on the basis of her statement or a separate application filed in the same case.

6. Learned counsel is not correct in his submission that the decree for judicial separation passed in Civil Misc. Case No. 92 of 1973 was a nullity. The decree was not the result of a collusion between the parties. The non-petitioner in that case Mst. Lad Kanwar had raised a definite plea of cruelty. Learned Judge placing reliance on certain admissions made in the application for restitution of conjugal rights and affidavits filed by the non-petitioner decreed the claim of Mst. Lad Kanwar for judicial separation. It was within his powers to do so. It cannot be said that such a decree was without jurisdiction. Jurisdiction means 'authority to decide'. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally and they are binding until reversed on appeal. Where the Court had the authority and jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or fact. The question whether a tribunal has jurisdiction depends not on the truth or falsehood of the fact into which it has to enquire, or upon the correctness of its findings on those facts, but upon their nature and is determinate at the commencement and not at the conclusion of the enquiry. It is a settled law that where a party without objection joins issue and goes to trial upon merits, the defendant cannot subsequently dispute the jurisdiction of the Court that there was

irregularity in the initial procedure which if objected to, at the time would have led to the dismissal of the suit. The irregularity is waived if no objection is taken in time; vide (AIR 1966 SC 634) B. Petroleum Co. v. P. J. Pappu.

7. The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi-judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. Civil Misc. Case No. 92 of 1973 was a contested case and there is no reason to hold that the learned Judge, who decided that case had no jurisdiction to decide the matter in dispute in between the parties.

8. As already mentioned above, there is nothing on record to hold that learned District Judge has assumed jurisdiction in Civil Misc. Case No. 92 of 1973 which he did not possess, the appellant cannot be said to have suffered any loss, because the decree in that case was passed at the instance and on the basis of evidence led by her by affidavits and now after passing of five years of the decision of that case it is not open to her to come to this Court and say that the decree passed in that case in her favour was without jurisdiction.

Under Section 19 of the Hindu Marriage Act it is only the District Court, as defined in Section 3 (b) that has jurisdiction to entertain and try matters arising under the Act. The Section regulates the venue. Here the cause of action relates to matrimonial affairs and the same was decided by the competent Court. The question of want of jurisdiction therefore does not arise. In my view, a party can be estopped not only from giving particular evidence but from doing any act or relying upon any particular argument or contention which the rules of equity and good conscience prevent him from using as against his opponent. Reference may be made to Ganges Manufacturing Co. v. Sourajmull (1880) ILR 5 Cal 669. It is the duty of the Court to prevent the perpetration of a legal fraud. In the words of Hon'ble Chandra Sekhara Aiyar, J. as observed in Collector of Bombay v. Bombay Corporation, AIR 1951 SC 469 at page 476 is as under:--

'Whether it is the equity recognised in Ramsden's case, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of

honesty and good faith, as far as it lies in their power'.

The different conclusion would be opposed to what is reasonable and fair.

9. The party obtaining decree for judicial separation must have known that after the expiry of the two years it would be open to either party to obtain a decree for divorce. It was open to the appellant to file an application under Section 10(2) of the [Hindu Marriage Act, 1955](#) for rescinding the decree for judicial separation. The relevant section reads as under:--

'10. Judicial separation--(1).....

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so'.

Having failed to take recourse available to her under the provisions of the [Hindu Marriage Act, 1955](#) the appellant cannot be allowed to agitate, after five years of the passing of the decree, that decree in Civil Misc. Suit No. .92 of 1973 was passed without jurisdiction. The appellant cannot be said to have suffered any loss in the proved circumstances of the case. There is no dispute on the point that Mst. Lad Kanwar is not living with her husband since the passing of the decree for judicial separation by the Court in the year 1974. The judgment of the court below is perfectly sound written in lucid language after careful consideration of the facts and it hardly calls for any interference.

10. The appeal is without merits and it is dismissed summarily.