

Rajendra Prasad Pareek Vs. Krishna Devi Pareek

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Court : Rajasthan

Decided On : Dec-17-1991

Reported in : I(1992)DMC399; 1992(1)WLC256; 1991WLN(UC)483

Judge : K.C. Agarwal, C.J. and; R.S. Kejriwal, J.

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

Appeal No. : D.B. Civil S.A. No. 36 of 1987

Appellant : Rajendra Prasad Pareek

Respondent : Krishna Devi Pareek

Advocate for Def. : N.K. Maloo, Adv.

Advocate for Pet/Ap. : R.M. Lodha, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Kejriwal, J.

1. This Special Appeal under Section 18 of the Rajasthan High Court Ordinance has been directed against the judgment passed by learned Single Judge of the Court on 9.2.1987, confirming the judgment and decree dated 5.9.1985, passed by learned-District Judge, Jaipur City, Jaipur dismissing the application of divorce

submitted by the appellant against the respondent.

2. The brief relevant facts of the case are that on 28.5.1983, the appellant filed an application under Section 13 of the Hindu Marriage Act (for short the 'Act') for divorce against the respondent with the allegations that the marriage of the parties took place on 22.11.1978, at Jaipur in accordance with the Hindu rites and customs, that the respondent lived with the appellant till April, 1980, and thereafter she went to her father's house without the consent and permission of the appellant and never returned back, that the respondent had deserted the appellant for a continuous period of more than two years, that the respondent has been suffering from mental disorder and she treated the appellant with cruelty at times when she was not in her senses. It was further alleged that the father of the respondent also treated the appellant with cruelty.

3. The respondent in her reply denied the allegations of the appellant. She stated that the appellant himself left the respondent to her father's house after two-three days of Dipawali 1982; that she never treated the appellant with cruelty; that the allegations regarding mental disorder are vague and false. She prayed that the application of divorce be dismissed and a decree for restitution of conjugal rights be passed.

4. The learned District Judge, Jaipur City, Jaipur, after recording evidence of both the parties, vide his detailed order dated 5.9.85, decided all the issues in favour of the respondent and dismissed the application for divorce. The appellant has challenged the decree of learned District Judge, Jaipur City, Jaipur, before this Court and the learned Single Judge rejected the appeal vide his judgment dated 9.2.1987.

5. Being aggrieved with the judgment of learned Single Judge, the petitioner-appellant has filed this appeal.

6. We have heard Mr. R.M. Lodha, learned Counsel for the appellant and Mr. N.K. Maloo, learned Counsel for the respondent and perused the record and judgments of both the lower Courts.

7. Mr. Lodha argued that the respondent deserted the appellant without any reason in May, 1980, and as such the lower Court should have passed a decree of divorce on the ground of desertion. He argued that it was for the respondent to show that the desertion was for sufficient reason but the respondent did not show any reason of desertion. He further argued that the respondent did not return back and thus she permanently broke the marital relations and as such the lower Court should have granted decree of divorce on this point. In support of this argument, Mr. Lodha placed reliance on *Saroja v. Arumugham*, 1989 (1) HLR 528, & *Dr. K.C. Sikroria v. Smt. Sarla Sikroria*, 1988 (2) RLR 834. These authorities are not applicable to the facts of the present case. The respondent in her reply alleged that the appellant himself left her to her father's house after Dipawali, 1982. Learned District Judge and also the learned Single Judge did not believe the statement of the appellant and believed the assertion of the respondent that she lived with the appellant till Dipawali 1982. It is further to be noted that the respondent in her reply prayed for a decree of restitution of conjugal rights and both the lower Courts have granted the decree. We have also called the parties for reconciliation. As both the times the respondent showed her intention to live with the husband i.e. the appellant but the husband was not prepared to keep the respondent. In view of this, in our considered opinion, it can not be said that the respondent deserted the appellants.

8. Mr. Lodha next argued that the respondent treated the appellant with cruelty at the times when she was not in her senses. He also drew our attention to Ex. 1 affidavit of respondent and Ex. 2, a letter written by the father of the respondent. Learned Single Judge has disbelieved both these documents. P.W. 1 Kedarnath, who is oath-commissioner and who is required to keep the register of the affidavits attested by him does not keep any register. He does not know the respondent personally. He attested the affidavit on being identified by one Mr. Upadhyaya, who has not been produced. Furthermore, the affidavit is on a simple paper and there was no opportunity of getting any affidavit from the respondent. It is further to be noted that the appellant came with a case that the respondent left the house in May 1980 and this affidavit was alleged to have been got attested on 7.11.82. When the wife was residing according to the appellant at her father's house, there was no occasion for the respondent to get the affidavit attested and hand-over the

same to the appellant, likewise there was no occasion for the father of the respondent to write any letter on 7.11.1982, to the appellant or his mother or father. Both the lower Courts have rightly disbelieved both these documents. No further witness of the family has been produced to prove the ground of cruelty. Considering all these facts and circumstances, both the lower Courts, in our opinion, rightly held that the appellant has failed to prove that the respondent treated the appellant with cruelty. Mr. Lodha also argued that the respondent has been suffering from mental disorder. No doctor has been examined by the appellant to show that the respondent has been suffering from mental disorder or is of unsound mind. It is an admitted fact that the marriage took place on 22.11.1978 and according to the appellant, the respondent lived with him till April 1980 and according to the respondent she lived with the appellant till Diwali 1982. But she was never got treated by any doctor. The Court has also examined Dr. Surendra Kumar Pareek as C.W. 1, who stated on oath that the respondent has not been suffering from any mental disorder and as such there was no question of her treatment. The respondent appeared before us twice in connection with reconciliation proceedings and we also observed that she is neither of unsound mind nor has been suffering from any mental disorder and under these circumstances, in our view the findings recorded by both the lower Courts are justified and does not require any interference.

9. Mr. Lodha, lastly argued that the parties have been residing separately since more than nine years and thus the marriage has been irretrievably broken and as such a decree of divorce may be granted on this ground. In support of this argument, Mr. Lodha placed reliance on Smt. Saroj Rani v. Sudarshan Kumar, 1984 HLR 713 (S.C.) and Rajinder Singh Bajwa v. Manjit Kaur Bajwa, 1990 (1) HLR 639. These authorities are not applicable to the facts of the present case. Furthermore, we are unable to accept this argument of Mr. Lodha. Firstly, there is no such ground in Hindu Marriage Act that if the marriage has been irretrievably broken down, a decree of divorce may be granted. In Reynold Rajamani and Another v. Union of India and Another AIR 1982 S.C. 1261, the Apex Court held as under :-

'When a legislative provision specified the grounds on which divorce may be granted they constitute the only conditions on which the Court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set-forth in the legislation, that is the business of the Legislature and not of the Court.'

10. In view of this, a decree of divorce can not be granted as alleged by Mr. Lodha. Furthermore, in the present case the wife was not guilty. She was always ready and willing to live with the husband but the fault lies with the appellant who is not prepared to keep her inspire of a decree of restitution of conjugal rights granted by the lower Court.

11. Consequently, we do not find any force in the appeal and the same is dismissed with cost of Rs. 500/-.

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