

Laxman Das Vs. Nirmala Devi

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Court : Rajasthan

Decided On : Jul-30-1992

Reported in : I(1993)DMC51

Judge : Navin Chandra Sharma, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : S.B. Civil Appeal No. 99 of 1985

Appellant : Laxman Das

Respondent : Nirmala Devi

Advocate for Def. : Nirmal Kumar Maloo, Adv.

Advocate for Pet/Ap. : Perm Asopa, Adv.

Disposition : Appeal dismissed

Judgement :

Navin Chandra Sharma, J.

1. This is a husband's appeal against the dismissal of his petition under Section 13 of the [Hindu Marriage Act, 1955](#) (for short, "the Act" hereinafter), for divorce.

2. Appellant Laminas, a resident of Chain Raiji-ka-Katla, Bundi, was married to Smt. Nirmala Devi, resident of Jhalawar, on 1st February, '79, according to Hindu rites. According to the petitioner-appellant after her marriage, Nirmala Devi, for some time, had lived with him, in her matrimonial home, at Bundi. A daughter was born to her out of this wedlock. The appellant has his aged parents. After the marriage, Nirmala Devi was insisting upon the appellant to live separately from his parents, to which, the latter did not agree. The respondent's behaviour towards the family members of the husband, was also not cordial. On one occasion, in the absence of the appellant, the wife had left her matrimonial home, without the husband's consent, and had gone to her other relations living at Bundi. The appellant had brought her back to his house. Again in (he year 1979, she had left for her parents' house at Jhalawar, while her husband was out, telling his parents that she would not come back. However, her husband had brought her back after persuasion. In February, 1980, the spouses had gone to appellant's mother's sister at Kota, and while both of them were returning to Bundi on 8th February, 80, by bus, the wife left the husband at the bus-stand; hired on auto-rickshaw; and left for Jhalawar, telling the husband that she would not come back. It was thus asserted that the wife had deserted the husband on 8th February, 80. Consequently, the husband filed a petition for divorce, on 22nd September, 83.

3. The wife's case, on the other band, has been that the appellant and his parents were treating her harshly, and were insisting upon her to bring a sum of Rs. 10,000/- from her parents.- The husband was always telling her that she would not be allowed to live with him in her matrimonial home, unless, she brought that amount from her parents. She had also been turned out from (he house after giving beating. It was stated that while she was pregnant, (be appellant had turned her out from the house, and that after taking her to Kola, had left her at the bus stand, stating that either, she should bring the sum of Rs. 10,000/- from her parents, or otherwise, she should treat that their marital relations had come (o an end. Her parents had come to Bundi and had urged to the appellant and his parents, to keep the marital relations in-tact, but, of no avail. She had sent a notice on Kith April. '83, to her husband, for keeping her with him. Even prior to that, she, on two occasions, had come to Bundi, along with her daughter, but, the appellant refused to meet her. Under these compulsions, she had to take a room on rent at

Bundi, and she started living there, so that, social compulsions might be exercised upon the appellant for taking her back.

4. The District Judge, Bundi, accepted the version of the wife that it was the husband, who had left her at Kota and had made her to sit in a bus for Jhalawar, and he' did not accept (he appellant's version that it was the wife who had deserted him. The District Judge accepted the wife's case (that she as well as her parents had come to Bundi to persuade the appellant, for keeping her with him. No initiative was taken by the appellant to bring his wife back. Although, it was not believed that the appellant and his parents had treated Nirmala Devi, with cruelty, but, the version of the wife was accepted that she had not deserted her husband, but, she had even been living at Bundi, in a rented house to exert pressure upon her husband, to keep her. Consequently, it was held that there was no animus deserendi on the part of the wife, and that animus deserendi and separation did not co-exist.

5. The law is very well-settled that if, in fact, there has been a separation, the essential question always is whether the act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But, it is not necessary (that they should Commence at the same time. The de facto separation may have commenced without the necessary animus, or it may be that the separation and the animus deserendi coincide in point of time; for example, when (he separating spouse abandons the marital home, with (he intention, express or implied, of bringing cohabitation permanently to a close, and that if a deserting spouse takes advantage of the locus poenitentiae provided by law and decides to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refused to offer, the latter may be in desertion and not the former. (See Bipinchandra Jaisinghbai Shah v. Prabhavati, AIR 1957 SC 176; Lachhman Utamchand Kirplahni v. Meena alias Motu. 1964 SC 40; and Smt. Rohini Kumari v. Narendra Singh, AIR 1972 SC 459).

6. It is thus clear that in its essence, desertion means intentional permanent foreseeing and abandonment of one spouse by the other, without the other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. Desertion, however, is not the withdrawal from place, but from a state of things for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state. There must be an intention on the part of the deserting spouse, of bringing cohabitation permanently to an end, without any reasonable cause, or without the consent of the other spouse. Physical act of departure of one spouse, does not necessarily make that spouse deserting party. The fact of separation and intention to desert, must be proved. It is a matter of inference to be drawn from the facts and circumstances of each case.

7. As a matter of fact, from the averments made in the petition of the present case, there does not come out any cause, which would have led (he wife to desert the husband, except that she was insisting upon the husband to live separately, from his parents. The fact goes to show that there was no intention to desert. All that the wife was pressing for was, for better atmosphere or an independent atmosphere, free from the influence of the parents of the husband. She did not at all went to bring an end to cohabitation. The further version of the appellant that on 8ih February, '80, at Kola, the wife, suddenly left the husband, hired an auto-rickshaw and left the place, staling that she would not return at all, is not precisely correct. The facts and circumstances of the entire case go to show that the things were somewhat different. The husband may be right when he states that the wife wanted that the husband should live separately from his parents. The behaviour of the parents of the husband was quite normal. Nirmala Devi has stated in her cross-examination that the behaviour of her in-laws and of appellant's sister, was proper, with her. She may also be wrong in stating that she was beaten up, or was asked to bring a sum of Rs. 10.000/-, but, the fact was that not only the wife, but, her parents also had come to Bundi, to persuade the appellant to keep his wife with him. The husband's assertion in his statement is that from the very beginning, the insistence of the wife was that the appellant should live separately from his parents. The appellant's elder brother was also living separately from the parents of the appellant, and (hat might have actuated the respondent also, to wish so, but, that does not mean that she wanted to bring about the cohabitation

completely to an end. The husband had taken his wife from Bundi to Kota. It is said that she was taken to Kota, at the residence of the appellant's mother's sister. It seems that the wife's insistence still continued that she would not live in the house where the parents of the appellant lived, and in that background, she had left for Jhalawar, from Kota, by bus. That was the whole matter. The wife was still anxious to live with the husband, and for that purpose, she even paid visits to Bundi. to somehow persuade her husband for separate living. She wanted to retain marital relations with the appellant by living separately at Bundi, by taking a room on rent. The predominant idea in the mind of the wife was that of independent living, rather than bringing the cohabitation to an end. Separation might have been there, but, the intention to desert the husband, did not exist. She had even been attending the Court, in person, whenever called by the Court, for reconciliation, but, the husband did not appear, despite being required to appear in person. These are normal wear and tear of married life, and are insufficient to indicate any intention to desert.

8. Divorce in such circumstances, cannot be granted. This appeal has no merit in it, and it is hereby dismissed. The interim order passed by this Court on 5th November, '85, staying the proceedings of restitution of conjugal rights, is hereby vacated.