

Devi Singh Vs. Smt. Sushila Devi

Devi Singh Vs. Smt. Sushila Devi

SooperKanoon Citation : sooperkanoon.com/758382

Court : Rajasthan

Decided On : Jan-01-1980

Reported in : 1980WLN(UC)31

Judge : G.M. Lodha and; M.C. Jain, JJ.

Appeal No. : D.B. Civil Special Appeal No. 8 of 1978

Appellant : Devi Singh

Respondent : Smt. Sushila Devi

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. This is an appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, against the judgment of the learned Single Judge of this Court dated 28-3-1979 whereby the appellant's Civil Misc. Appeal No 118 of 1973 was dismissed and the judgment and decree of the learned District Judge, Jodhpur, dated 16-f-1978 was maintained whereby The appellant's petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), for the grant of decree of divorce, was dismissed.

2. The material facts may briefly be stated as under: The appellant Devisingh presented a petition under Section 13 of the Act with the allegations that the parties to the petition were married in April 1961 and a son was born out of the wedlock. According to the petitioner the non-petitioner-respondent deserted the petitioner for the last 14 years. The relations between the parties had become strained. Civil and criminal litigations had ensued. Thus, on the ground of desertion the petitioner sought a decree of divorce. The petition was resisted by the non-petitioner. It was averred that the non-petitioner had not withdrawn herself from the society of the petitioner without any reasonable excuse. The petitioner had treated the non-petitioner with cruelty, physical and otherwise and had misbehaved with her. The petition for restitution of conjugal separation was dismissed and there had been litigations with regard to the maintenance and custody of the child and further there had been criminal litigations under Sections 500, 323, IPC, and 107, CrPc. A plea was also raised that the petition is barred by principle of res judicata in view of the dismissal of the petitioner's applications for restitution of conjugal rights and for judicial separation on 29-9-68 & 9-5-1972.

3. Necessary issues were framed and after trial of the petition the same was dismissed by the learned District Judge on 16-8-1978. Issue No. 1 relating to withdrawal of the non-petitioner from the society of the petitioner without any reasonable excuse since 1964, was decided in favour of the non-petitioner and issue relating to res judicata was also found in favour of the non-petitioner. Dissatisfied with the judgment and decree of the learned District Judge the husband-petitioner preferred an appeal before this Court. The same was dismissed by the learned Single Judge on 28-3-1979. The learned District Judge. The learned Single Judge found that it has not been established that the wife has been living separate from the husband without reasonable excuse. It was also found by the learned Single Judge that there is no cogent and convincing evidence on record to hold that the petitioner had made bonafide and reasonable efforts by removing all apprehension of his wife and by creating such atmosphere, so as to facilitate the return of the wife to the matrimonial home. Consequently, the issue relating to res judicata was also found in favour of the non-petitioner by the learned Single Judge for the reason that new facts and circumstances have not come into existence. Dissatisfied with the judgment and decree of the learned Single Judge the present

appeal has been preferred.

4. Before hearing of the case at the time of admission an effort was made by us for reconciliation, but looking to the past relations between the parties, it appears that reconciliation is not possible and our effort to bring about reconciliation tailed, Consequently, we heard the learned Counsel for parties⁵. On behalf of the appellant Shri M.L. Kala, vehemently urged that the respondent had been living separately since 1964 and in view of the relations between the parties the court should have granted a decree for judicial separation under Section 13A of the Act, as Section 13A provides for an alternative relief of a decree for judicial separation in divorce proceedings, when the court considers it just to do so having regard to the circumstances of the case. Shri Kala urged that the present is a fit case for exercising of the discretion vested in the court under Section 13A of the Act.

6. We are unable to accede to this contention of the learned Counsel. We may read Section 15A here, so as to deal with the contention of Shri Kala:

13. As Alternate relief in divorce proceedings. In any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in Clauses (ii), (vi) and (vii) of Sub-section (1) of Section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

Section 13A provides for alternative relief in divorce proceedings if the petition is not founded on the grounds mentioned in Clauses (ii), (vi) and (vii) of Sub-section (i) of Section 13A to pass a decree for judicial separation instead of passing a decree for divorce; if it considers it just so to do having regard to the circumstances of the case. It may be stated that Section 13A does not add a new ground for obtaining a decree for judicial separation. The petition for judicial separation can be moved under Section 10 of the Act on any of ground specified in Sub-section (1) of Section 13 and in the case of wife, also on any of the ground specified in Sub-section (2) thereof. By introduction of Section 13A, it cannot be taken that even when the grounds for seeking judicial separation are not proved, still a Court may pass a decree for judicial separation. What Section 13A

contemplates is that instead of passing a decree whereby the marriage tie is broken, the court may looking to the case, pass instead a decree for judicial separation giving the spouses a further opportunity to come closer, if possible to reunite. By introduction of Section 13A, it cannot be taken that even where the grounds are not established and the court feels that the relations between the spouses are completely broken & there is no possibility of re union, then it may pass a decree for judicial separation. In our opinion, such a construction cannot be placed on Section 13A. In this view of the matter, in our opinion, the petitioner could not be granted the relief of judicial separation under Section 13A, unless ground for the grant of that relief is established. The learned District Judge, after through scrutiny and appraisal of evidence on record, have concurrently found that it has not been established that the wife has been living separate from the petitioner without reasonable excuse. In view of the petitioner's own conduct and behaviour there was reasonable excuse for the respondent to live separate from the petitioner. The petitioner's own statement completely damages his case. He has been very categorical in his statements that he has no intention to keep the respondent with him. It is true that the respondent has been living separate from the petitioner since 1974, but on that basis the respondent cannot be said to have deserted the petitioner. It appears that looking to the petitioner's own conduct, she has been compelled to live separately and animus deserendi cannot be attributed to the respondent. Thus the appellant has been rightly refused the relief of divorce as well as the relief of judicial separation.

7. It was next contended by Shri Kala that issue relating to res judicata has been wrongly found in favour of the respondent. We do not find any force in this submission, as well. The learned Single Judge has decided the question of res-judicata on the basis that no new facts had come into existence and on the same facts and circumstances the principle of res judicata, will apply. Had the new facts and circumstances come into existence demonstrating remorse on the part of the petitioner and his changed mental outlook towards his wife and genuine efforts on his part to bring his wife to resume matrimonial home and marital relations, then the position would have been different. But his own statement completely damages his case, as stated above. Thus, in the absence of new facts and circumstances, the principle of res judicata has been, in our opinion, rightly held to

be applicable on the same facts.

8. In the light of the facts and circumstances of the case and the relations between the parties established from the material on record and the petitioner's own conduct, behaviour and statement, the petitioner is not entitled to the relief prayed for. The decision of the learned Single Judge has turned on the appreciation of the evidence, which, by no stretch of imagination, can be said to be perverse and it is well established that this Court, hearing a special appeal, should not interfere in the findings of facts arrived at by the learned Single Judge.

9. In view of what we have stated above this appeal has no merit and we hereby dismiss the same summarily with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com