

Sukhdev Vs. Smt. Santosh

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Court : Rajasthan

Decided On : May-23-1997

Reported in : AIR1998Raj12

Judge : V.S. Kokje and; J.C. Verma, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 25

Appeal No. : Civil Special Appeal No. 3 of 1988

Appellant : Sukhdev

Respondent : Smt. Santosh

Advocate for Def. : R.K. Singhal, Adv.

Advocate for Pet/Ap. : S.G. Ojha, Adv.

Disposition : Appeal dismissed

Judgement :

Verma, J.

1. The appellant Sukhdev had filed a divorce petition on 30-7-81 under Section 13 of the Hindu Marriage Act on the grounds of desertion by his wife-respondent Smt. Santosh which was decreed by the learned Distt. Judge, Sriganaganagar vide his order dated 5-8-86 and the marriage between the parties were ordered to be

dissolved. The learned trial Court had granted permanent alimony of Rs. 150/- per month under Section 25 of the Hindu Marriage Act at the time of decreeing the divorce petition. The order of trial Court was challenged by the respondent-wife by filing S.B. Civil Misc. Appeal No. 180/86 in the High Court. The learned single Judge vide his order dated 21-10-1987 had set aside the judgment of the trial Court. However, the learned single Judge had enhanced the amount of permanent alimony to Rs. 250/- per month from the date of filing of appeal. The wife was also allowed the litigation expenses amounting to Rs. 500/-. Being aggrieved by the order of learned single Judge passed on 21-10-1987, the present special appeal bearing 3/88 has been filed by the husband (appellant) with the prayer to set aside the order of learned single Judge and for restoration of the order of trial Court.

2. The parties had married on 9-5-74 at village Dhingarla in Tehsil Rajgarh, Distt. Churu. Out of the wedlock, a daughter was also born who was of about 6 years at the time of filing the divorce petition. After about 7 years of the marriage, husband had filed the divorce petition alleging therein, that respondent did not live at her in-laws house and was always prepared to go to her parents' house. It was stated that about 3 to 3 1/2 years before filing of divorce petition, she had gone to her parents' house and thereafter she went to Orissa with her father without consent of the appellant where her father was employed. It was stated in the divorce petition that whenever he went to bring her back, he was told that his wife had gone to Orissa with her father. Even his and his brother's efforts to bring her back to his house had not bore any fruit. Despite the assurances given by his in-laws to the fact that whenever she would come back, she would be sent to him, nothing was done. Even he and his brother and also Hari Singh, Nambardar made efforts to bring her back to their house, but they have not been able to bring her back. In the nutshell, the appellant alleged that he had made all types of efforts to bring her back, but the respondent did not come back and ultimately he filed the present petition for divorce.

3. In the reply filed by the respondent-wife, she had denied the allegations to the fact that she was mostly living at her parents' house. She has further stated that she was living at her in-laws' house. It was stated by her that the appellant being a truck driver in the police department, used to be away most of the times and in his

absence, the brother of appellant Bhawani Shanker and her mother-in-law used to ill-treat her, and give her beatings. She even alleged that Bhawani Shanker had once threatened her that she would be sold in the State of Punjab. Because of the circumstances prevailing at the house of her husband, her father was informed. Her father and brother had come to the village and a Village Panchayat was gathered and Bhawani Shanker, brother of appellant had told in the Panchayat that they are not prepared to keep her. She has stated that she had never withdrawn herself from the company of her husband. She has further stated that she was ready and willing to go with her husband. She had denied the fact that at any time, her husband or his brother had ever come or had brought any Panchayat to village Dhingarla to take her back. She had taken a defence that appellant and his family members had turned her out.

4. On the pleadings of the parties, following issues were framed :

(i) Whether non-applicant (wife) has withdrawn herself from the company of the applicant (husband) without any reasonable cause?

(ii) Whether the non-applicant (wife) on account of her desertion, treated the applicant (husband) with cruelty?

(iii) Whether Mst. Santosh is entitled to get Rs. 5007- per month as permanent alimony?

(iv) Relief.

5. Four witnesses including the appellant were examined on behalf of appellant whereas the respondent had examined herself as NAW-1 and one Richpal as NAW-2. The learned Distt. Judge after going through the evidence had given findings in favour of appellant and dissolved the marriage by granting decree of divorce and further had ordered for permanent alimony of Rs. 150/- under Sec. 25 of the Hindu Marriage Act which was challenged by the wife by preferring an appeal in High Court and the learned single Judge of this Court had set aside the order of learned Distt. Judge.

6. It is stated by the counsel for the appellant that it has come on record by way of evidence that he and his brother Bhawani Shanker and one Manful Ram had visited the house of parents of respondent time and again and every time they were told that she had gone to Orissa with her father. It is stated that she had gone to Orissa with her father without the consent of the appellant. The learned single Judge had discussed the evidence produced by appellant and had come to a definite finding that version of husband was not correct. Bhawani Shanker (AW-2) had stated that when the respondent went with her father, the husband Sukhdev was not present in the house. Bhawani Shanker had further stated that appellant- Sukhdev did not know and even did not hear the talk that was going on between AW-2 Bhawani Shanker and father of respondent at the time when the respondent was taken to her parents. AW-2 Bhawani Shanker has been disbelieved for the reasons that it is natural in the joint Hindu family that if father of girl visit the house and wishes to take his daughter with him, he will talk about it with elders of her matrimonial house. AW-3 Manful was not present at the time when respondent had gone with her father. Buta Singh (AW-4) had given different story by saying that neither appellant nor Bhawani Shanker were present when the respondent had gone with her father and according to deposition of AW-4 while taking respondent to her house, the father of the respondent had stated that he is taking her for 5-6 days. The contention of appellant was not supported even by Bhawani Shanker and his presence at the time when his wife had left along with her father was not borne out from the testimony of the witnesses of prosecution. Because of the reason that appellant was not present at the house as stated by other witnesses, therefore, the assertion that Richpal, father of respondent had told her to collect all the articles belonging to her, as she was not returned back to his matrimonial house, had no legs to stand.

7. The contention of the respondent that she did go with her father as she was being beaten and maltreated by her mother-in-law and elder brother of her husband and the fact that she was even once turned out of the house and she was forced to go to her elder father Hanuman Prasad and she had returned back, but she was again maltreated and beaten by her mother-in-law and the brother of husband and was again turned out of the house and only then her father had to come to her in-laws' house. It was contended that she was taken to her parents'

house by her father because of the reason that she was maltreated. This fact is admitted by AW-2 Bhawani Shanker when he says in his deposition that her father had told him that she was being ill-treated and, therefore, it will be proper for her to stay away for her safety. The learned single Judge has observed that a woman who is married for only few years and has also a daughter, will not like to leave her matrimonial house without any cause, nor in the Indian society, father of girl will like to break the relations of his daughter with her matrimonial house without any solid reasons. The observations of learned single Judge after appreciation of evidence is perfectly right and justified. The reason given for discarding the evidence of the prosecution by the learned single Judge in regard to so-called repeated visits to the house of her parents are borne out from the record. The appellant had stated that they had taken the services of Hari Singh and also of Sarpanch of the village for persuading the father of respondent to send her back but neither this Hari Singh had been produced nor Sarpanch of the village nor any Motbir had been produced by the appellant to prove this assertion. The witnesses produced by the prosecution are highly interested and the evidence of appellant at the trial is totally contrary to the facts mentioned in petition. The learned single Judge has rightly held that trial Court was totally unjustified in placing the reliance on the sole statement of appellant whose deposition was contrary to the facts mentioned in the petition. The appellant is also falsified by other witnesses on the fact that his wife had left the house in his presence without his consent.

8. The statement of Bhawani Shanker AW-2 is also not trustworthy so far the month or the year of alleged desertion is concerned. It is also admitted by AW-3 Manful when he says, that father of the girl never refused to send her back. It has been noted out by the learned single Judge that at the trial stage, appellant was not prepared for any reconciliation and the appellant was not willing to take her back. Thus the 'animus deserendi' which is essential for proving the desertion has not been proved by the appellant-husband. It has been held by learned single Judge that for claiming desertion without any reasonable cause, onus to prove a desertion as well as the 'animus deserendi' is on the petitioner/appellant and it is to be established beyond reasonable doubt to the satisfaction of the court. The parties claiming desertion are bound to prove that desertion was without any just cause and further the parties have to establish (i) the factum of separation, (ii) the

intention to bring cohabitation permanently to an end (*animus deserendi*), (iii) the absence of consent, and (iv) the absence of consent giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.

9. To our opinion, the learned single Judge has rightly held that there is no evidence of the fact to prove that there was any desertion on the part of the respondent without the consent of the appellant and without any just cause. We fully agree with the findings of learned single Judge that appellant has to prove his case as alleged in the petition. We confirm the order of learned single Judge in toto.

10. The counsel for the appellant has also stated that in any case, even if the divorce petition is to be dismissed, then in that situation, no orders in regard to permanent alimony can be passed by the learned single Judge. It has been held by Bombay High Court in AIR 1989 Bom 220, that even: if in the given circumstances, divorce petition is dismissed, but still the order of permanent alimony can be passed in the particular circumstances. No interference is called for in the judgment of learned single Judge. The appeal is therefore, dismissed. No order as to costs.