

Nirmala Vs. Gauri Shanker

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Court : Rajasthan

Decided On : Apr-04-1975

Reported in : 1975WLN(UC)111

Judge : J.P. Jain, J.

Appeal No. : S.B. Civil Misc. Appeal No. 6 of 1975

Appellant : Nirmala

Respondent : Gauri Shanker

Disposition : Appeal dismissed

Judgement :

J.P. Jain, J.

1. This appeal is by Nirmala against whom a decree for restitution of conjugal rights has been passed by the District Judge, Kota, on 7-12-1973 at the instance of Gauri Shanker, respondent. The parties were married according to Hindu rites in November, 1957 at Rota. For about 4-5 years their relations were happy. Another period of 4-5 years is said to have been not very pleasant. In June, 1967, Nirmala left her husband's house to join the marriage of her brother. It is not disputed that she did not return to her marital home and failed to join the society of her husband after that. Out of this wedlock four children were born. Three

survived. Two of them are residing with Gauri Shanker where as the youngest child is staying with Nirmala. The petition was filed on 30th of March, 1970. It was stated by the petitioner that there is no real dispute between him and his wife and he is prepared to live peacefully with her but Nirmala is not prepared to come back to resume the society of her husband. It was prayed that a decree for restitution of conjugal rights be granted to him.

2. This petition was resisted by Nirmala by her written statement dated 23.1.71. She admitted not to have resumed the society of her husband after June, 1967. But she justified her separation mainly on two grounds; (1) that she was illtreated by her husband (2) that her husband is keeping another woman Mst. Shakuntala as a concubine. The learned District Judge tried the case. He held that there is no evidence of ill treatment by Gauri Shanker with his wife. He referred to the statement of Nirmala herself. As regards the issue No. 3 he held that Nirmala has miserably failed to prove that Mst. Shakuntala was staying with Gauri Shanker as a concubine. The factum of separation having been admitted, the learned Judge found that Mst. Nirmala is not justified to live separately from her husband. He also referred to the statement of Nirmala on this point. Nirmala stated in her statement that even if she is asked to go to her husband's house to resume his society she would not like to go as Gauri Shanker is keeping two ladies in his house as concubine. On this evidence the learned Judge granted a decree for restitution of conjugal rights in favour of the respondent by his order dated 7.12.73. Nirmala has come in appeal and on her behalf I heard Mr. Dave, who has tried to show that the order passed by the learned District Judge is erroneous.

3. The evidence recorded in this case were read out before me. I find that the appreciation of the evidence by the learned District Judge is perfectly correct. There is no evidence of cruelty by Gauri Shanker towards Nirmala. Nirmala has miserably failed to prove that her husband is keeping any woman as concubine. Nirmala herself produced Mst. Shakuntala as N.A.W. 1. The witness admitted that she stayed in the house of the family as a maid servant. She had no illegitimate relations with Gauri Shanker and she never bore a child from him. She had even left the employment of that family and joined service at a different place. This testimony of Shakuntala, which has been brought on record at the instance of

Nirmala herself demolishes her case on the point of adultery. That apart, Gauri Shanker in his statement explains his preparedness to take Nirmala back but Nirmala in her statement as N.A.W. 2 specifically denied to join the society of her husband. She stated that even if Gauri Shanker wants to take her to his house she would not go. Here she said that he is keeping two women in his house, that is again without any substance. In this view of the matter there is no justification for Nirmala to stay separately from her husband and to refuse to go to her marital home to discharge her obligations towards her legally wedded spouse.

4. I find no substance in this appeal and it is accordingly dismissed. In the circumstances there will be no order as to costs.

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