

Smt. Parvati Vs. Prem Singh

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Court : Rajasthan

Decided On : Jan-29-2001

Reported in : I(2001)DMC501; 2001WLC(Raj)UC212

Judge : V.S. Kokje and; K.S. Rathore, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 24; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : D.B. Civil Misc. Appeal No. 986 of 1996

Appellant : Smt. Parvati

Respondent : Prem Singh

Advocate for Def. : Resham Bhargava, Adv.

Advocate for Pet/Ap. : A.N. Gupta, Adv.

Judgement :

ORDER

Rathore, J.

(1). This D.B. Civil Appeal No. 986/96 preferred by the appellant-wife against the judgment and decree dated 31st January, 1996, passed by the learned Family Court, Ajmer, in the Case No. 103/1992, by which, the Family Court allowed the

petition of the respondent-husband filed under Section 13 of Hindu Marriage Act and passed the decree of dissolution of marriage.

(2). The brief facts of the case giving rise of this appeal are that the marriage of the appellant with the respondent was solemnised on 2.7.1978. At the time of marriage, the respondent was 11 years of age and the appellant was 10 years of age. Therefore, according to Hindu Customs, the 'Gona' (marriage) took place on 26.6.1986 and they lived together as husband and wife at Ajmer. It was alleged that the behaviour of the appellant towards the respondent was not good and that she left her husband's house on her own wishes and went to her parental house at Jaipur. When she left her husband's house, she was having pregnancy of three months. It was alleged that against the wishes of respondent the appellant aborted herself and by way of this cruel conduct towards the husband who found that it is difficult for him to live with her because of the reasons that she abused him, manhandled with him, threatened him to commit suicide, levelled allegation that he had illicit relation with his Bhabhi, and she quarreled with him in front of the neighbours. As per the respondent, this forced him to file a divorce petition under Section 13 of the Hindu Marriage Act. The learned Family Court framed the following issues to decide the application filed by the respondent-husband under Section 13 of the Hindu Marriage Act.

(3). The learned Family Court after considering the evidence adduced before him as well as pleadings of the case and oral arguments decided issues No. 1 to 4 in favour of the respondent Prem Singh and against the appellant and passed the decree in favour of the applicant-respondent Prem Singh. The appellant also filed an application under Section 24 of the Hindu Marriage Act before the Family Court, Ajmer. The Family Court vide order dated 29.9.1985 during the pendency of the divorce petition allowed the maintenance at the rate of Rs. 300/- per month and Rs. 150/- per pessi (date) were also ordered to be given to the appellant for expenses.

(4). The appellant also preferred a petition under Section 125 Cr. P.C. before the Family Court on 6th October, 1991 claiming Rs. 500/- per month as maintenance. The Family Court, Ajmer, allowed the maintenance at the rate of Rs. 300/- per

month with effect from 1st May, 1992. Accordingly, dissatisfied with the judgment and decree dated 31.1.96, the appellant preferred this Appeal before this Court. The appellant challenged the decree and judgment dated 31.1.96 on the ground that the appellant never caused mental torture to the respondent and it is further contended that a false allegation has been alleged against the appellant regarding the abortion and she did not want to bear any child. She further challenged the order that the ministerial staff of the Family Court, Ajmer were much more sympathetic and apt in order to accommodate the respondent and to this effect she also moved an application to the learned Judge, Family Court, by post, and a copy of the same was also endorsed to the Chief Justice of Rajasthan High Court. She has further stated that being not conversant with the court proceedings she had to depend upon the ministerial staff of the Family Court, Ajmer. Her repeated applications regarding additional maintenance and expenses remained undecided in absence of the Advocate or assistance from the literate person. It is further alleged that she look witnesses from Jaipur but their evidence was not recorded. Since the appellant was not able to get the certified copy of the order sheets pertaining to the Family Court, Ajmer due to financial crunch and absence of active assistance from any literate person, the appellant was denied an effective opportunity to adduce the evidence in support of her contentions. The appellant further submitted that the decree of divorce was wrongly granted in favour of respondent by the Family Court, Ajmer, and the same cannot be legally survived.

(5). In this appeal notices to show cause was issued on 30.10.96. After the service was complete, the matter was listed before this Court on 31.3.97 and the Court directed both the parties to remain present in Court on 7.5.1997. When the matter was taken up on 7.5.97, despite specific directions of this Court, the appellant did not appear before the Court nor her counsel. In absence of the appellant, reconciliation proceedings could not be taken place and the Court observed that it appears that the appellant is not interested in reconciliation and the appeal was directed to be listed for hearing immediately after the record is received.

(6). The oral evidence in the case consists of two witnesses examined on behalf of the petitioner and non petitioner.

(7). Respondent Prem Singh examined himself as AW-1. He deposed that after 'Gona', on 26.6.86, when he brought the appellant to live with him, her behavior was normal for sometime. She started thereafter quarrelling with the respondent and the members of his family. She started misbehaving with the respondent and his brothers and sisters and started beating them. When the respondent tried to pacify her, she used to say that she did not like the respondent and that her parents got her married to a person whom she did not like. He further deposed that the appellant used to go away to Jaipur time and again and the respondent used to take her home every time. She used to live normal for some time and again used to start misbehaving. The respondent further deposed that because of such conduct of the appellant, he had to suffer intimidation and embarrassment in the locality. The respondent further deposed that the appellant used to allege that the respondent has illicit relations with his brother's wife, which was a false allegation. The respondent suffered mental agony because of such a false allegation against him when the elder sister of the appellant was the wife of the brother of the respondent. The respondent further deposed that the appellant used to threaten the respondent that she will commit suicide. She also used to threaten the respondent that she would lodge a report with the police to implicate the respondent in a false case. She used to go away from the house and the respondent used to bring her back after pacifying her. The respondent stated that on 6.11.88, the appellant had threatened to commit suicide and after quarrelling with the respondent, went away to her parents' place to Jaipur. At that time, she was carrying pregnancy of three months. When after sometime, the respondent went to Jaipur, he came to know that the appellant had got the pregnancy terminated by abortion without the consent of the respondent. This caused grave mental agony and shock to the respondent because of which he remained ill for two months. The respondent further deposed that the appellant did not return with him to her matrimonial home and even after that, misbehaved with the parents of the respondent when they had gone to her parents' place, for bringing her back to the respondent's place. When the respondent went to bring her back, he was ill treated by the parents of the appellant and he was given threats of being beaten up and locked up through the police. Whenever he went to take the appellant back home, the respondent was ill treated by the parents of the appellant. He further

deposed that the appellant had deprived him of conjugal relations for the last seven years. Ultimately, he deposed that because of such a conduct of the appellant, the respondent had suffered physically and mentally and also in social status and it had become a subject of ridicule everywhere. He further deposed that because of the appellant's conduct, his family has dis-integrated. Because of the false allegation of keeping illicit relations with the brother's wife, the brother's family and other members of the family have stopped visiting the respondent and for this reason, he did not want to live with the appellant and desires dissolution of the marriage by a decree of divorce.

(8). The appellant herself had cross-examined the respondent. Apart from pulling her case that the respondent had given a false statement about everything, the appellant suggested in the cross-examination that the respondent's mother had beaten her with stick and that the respondent himself used to beat her often and used, to threaten to drive her out of his house. She again suggested in the cross-examination that the respondent was having illicit relations with his brother's wife named Mamta. It has come in the cross-examination that the appellant's sister who was married to the brother of the respondent was named Kishna. She suggested to the respondent that the abortion was the reason of beating given by the respondent to the appellant. She also suggested that the respondent did not go to Jaipur to bring the appellant back after 1988. It was also suggested by her to the respondent that the respondent used to physically assault the appellant because she objected to his illicit relations with his brother's wife Mamta and used to deprive her of food and used to threaten her of divorcing her for that reason. She further suggested that the respondent had himself lift her at Jaipur in only clothes which she had on her after beating her in her state of pregnancy. All the aforesaid suggestions were denied by the respondent in his cross-examination. The only admission made by the respondent in his cross-examination was that he had filed the case for divorce after the Jaipur Court passed an order for maintenance. He denied the suggestion that he had himself stopped looking after the appellant after 1988.

(9). Man Singh, father of the respondent Prem Singh, deposed as AW-2 that initially, the appellant behaved normally but after sometime, she started giving

threats of committing suicide and started going to her parent's place without asking the respondent or the members of his family. He further deposed that the conduct of the appellant caused mental agony and tension to the entire family of the respondent. She used to go to Jaipur off and on and when the parents of the respondent went to bring her back home and again, they were subjected to insults. He further deposed that the appellant was living with her parents for the last 6-7 years. He had also stated that the appellant made false allegations that the respondent was having illicit relations with his brother's wife and for that reason, both the brothers of the respondent separated from the family. He further deposed that the appellant used to quarrel on insignificant issues and used to insult him.

(10). In the cross-examination of the witness by the appellant, it was suggested by her that she did not give threats of committing suicide but used to say that she will get them locked up in jail. She also suggested that the mother-in-law had beaten her. She also suggested that the respondent used to beat her and used to threaten to drive her out of the matrimonial home. Then, she suggested that the respondent was having illicit relations with his brother's wife named Mamta. She then suggested that she was not given any treatment when she fell ill. All these suggestions were denied by the witness.

(11). The appellant herself was examined as NAW-1. She deposed that she came to the matrimonial home when she was 18 years of age. She remained with the respondent thrice, once for five months, second time for three months and third time, for 2 months and a half. She was ill-treated right from the very beginning by the respondent who used to beat her. She further deposed that right from the day she went to the matrimonial home, he used to say that he will not keep her and used to beat her. She was living with her parents for seven years and during that period, the respondent never came to take her back to his house. She did not go to the respondent's house on her own. She further deposed that she wanted to live with the respondent but he did not keep her well and her mother-in-law and sisters-in-law also troubled her. Lastly, she stated that the respondent himself had forcibly left her at her parents' place after quarrelling with her.

(12). In the cross-examination conducted by the respondent himself, she denied the case of the respondent which was specifically put to her by the respondent. She stated that she did not terminate pregnancy of her own volition but abortion took place because of the respondent beating her continuously for nine days. She also deposed that she got the pregnancy terminated by abortion in a private hospital at Jaipur. As regards the illicit relations with the brother's wife, she stated that that was not a false allegation but the respondent himself used to say that he will keep his brother's wife and will not keep the appellant as wife. She categorically stated that the respondent was having illicit relations with his brother's wife named Mamta. She also stated that the basis of her allegation was that the respondent himself used to say that he will keep his brother's wife as his wife. She admitted that she did not complain of misbehaviour of the respondent to her own sister who was also the brother's wife of the respondent. She also admitted that she did not lodge any report about the respondent beating her. She admitted that the respondent never demanded any dowry from her but his parents used to say that nothing by way of dowry was given by her parents. She further deposed that during the period of seven years the respondent came to Jaipur to her parents' place twice. He had come to meet her and not to take her to his house. Rest of the cross-examination consists of denial by the appellant, of the specific case of the respondent, put to her.

(13). NAW-2 Devilal is the father of the appellant. His statement is of no consequence on the question of cruelty.

(14). In this state of evidence, it is very clear that the appellant entertained not only a doubt but a belief that the respondent was having illicit relations with his brother's wife Mamta. There is no evidence of such an illicit relations. The entire basis of the allegation, according to the appellant herself, was that the respondent used to say so. The allegation clearly seems to be unfounded. The appellant's own elder sister was married to the another brother of the respondent. If the Illicit relations had been there, there would have been some evidence of it available to the appellant. It is not natural that Mamta's husband and the respondent's parents would tolerate any such thing and would support the respondent. The allegation has not been proved and is clearly false. Making such a false allegation clearly

constitute cruelty. There is no reason why the respondent's evidence should not have been believed by the Family Court. In our opinion, the Family Court, on a proper appreciation of evidence, has reached the correct conclusion that the appellant had practised cruelty by her own misbehaviour as also by making false allegation against her husband that he was having illicit relations with his brother's wife named Mamta.

(15). After going through the judgment dated 31.1.96 and appreciating the evidence recorded as well as the pleadings of the case, we are of the view that the learned Family Court has rightly decided the issues No. 1 to 4 in favour of the respondent and passed the judgment and decree of dissolution of marriage dated 31.1.96.

(16). Accordingly, we are of the view that no interference is called for in the judgment and decree passed by the Family Court, Ajmer.

(17). As such, the appeal filed by the appellant is hereby dismissed with no orders as to cost.