

Ladi Vs. Badri Narayan

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SooperKanoon Citation : sooperkanoon.com/771615

Court : Rajasthan

Decided On : Aug-09-2001

Reported in : II(2001)DMC524

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : [Family Courts Act, 1984](#) - Sections 10(3) and 13; [Limitation Act, 1963](#); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 14, Rule 2

Appeal No. : Civil Misc. Appeal No. 1005 of 2000

Appellant : Ladi

Respondent : Badri Narayan

Advocate for Def. : R.P. Garg, Adv.

Advocate for Pet/Ap. : Archna Mantri, Adv.

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was married to respondent on May 20, 1984 according to the Customs of Meena (Scheduled Tribe) Community. The respondent (husband) instituted a suit for declaration in the Family Court No. 2, Jaipur against the

appellant (wife) on June 18, 1998 seeking following relief

'xxx xxx xxx xxx xxx xxx'(This be declared that the parties got separated on May 6, 1995 according to the rites and customs of Meena Community and in front of the persons of the said community and from that day onwards they are no longer husband and wife).

Learned Family Court vide its decree and judgment dated June 14, 2000 granted the relief sought by the respondent and decreed the suit. The appellant in the instant miscellaneous appeal seeks to quash the said decree and judgment of the Family Court.

2. We have heard learned Counsel for the parties and perused the record.

3. Section 13 of the [Family Courts Act, 1984](#) (for short 1984 Act), provides that no party in a suit or proceeding before a Family Court is entitled to be represented by a legal practitioner. In view of this, the Judge, Family Court has to make every endeavour to examine the legal requirements of the case to which the parties are completely ignorant. Under Sub-section (3) of Section 10 of the 1984 Act the Family Court can lay down its own procedure with a view to arrive at the truth of the facts alleged by the parties but the Court is not expected to act in a slipshod manner ignoring the basic legal requirements. It is only the Judge who has to provide the legal assistance to the parties in the matter of framing of the issues. When the pleadings raise points with sufficient clearness, issues should be framed on them though they may not have been put in the pleadings in any particular form. It is the duty of the Family Court to frame issues on all the material points raised in the pleadings of the parties. The Judge must apply his mind and understand the facts before framing issues. In framing issues the Judge should exert himself so as to make him sufficiently expressive of the matter which he desires to consider under such issues.

4. coming to the facts of the instant case it may be noticed that the respondent instituted the suit on June 18, 1998 seeking declaration of his marriage status which according to him stood dissolved on May 6, 1995. In para 11 of the plaint the respondent pleaded that the suit was instituted within a period of limitation of

three years. In para 11 of the written statement the appellant averred that as it was a legal point the Court should look into it. Learned Family Court on October 1, 1999 framed as many as three issues but omitted to frame issue with respect of limitation.

5. Clause 58 of Part III of the Schedule appended to the [Limitation Act, 1963](#) provides that if the suit is filed to obtain declaration, period of limitation shall be three years and the period begins to run when the right to sue first accrues. In the instant case where marriage according to plaint itself stood dissolved on May 6, 1995 and suit for declaration was filed on June 18, 1998 i.e. after three years and the appellant in the written statement required the Court to look into the matter, it was incumbent upon the Court to frame the issue as to whether the suit was instituted within limitation. In not doing so the learned Family Court in our considered, opinion, has committed serious illegality which goes into root of the matter.

6. Though the appellant has neither raised this question in pleadings nor argued before us while making submissions but in order to do complete justice, between the parties we remit the case to the learned Family Court No. 2, Jaipur after framing the following additional issue

'xxx xxx xxx xxx xxx xxx'

(Whether suit of plaintiff-husband is within limitation ?)

7. In the result, we allow the appeal and set aside the impugned decree and judgment. The parties are directed to appear before the Family Court No. 2, Jaipur on August 29, 2001. The learned Family Court shall decide this additional issue as preliminary issue in view of Order 14 Rule 2(b), C.P.C. on the basis of the pleadings of the parties. The record of the case may be sent forthwith so as to reach the Family Court No. 2, Jaipur before August 29, 2001. No costs.