

Ramesh Kumar Vs. Bhanwari Devi

Ramesh Kumar Vs. Bhanwari Devi

SooperKanoon Citation : sooperkanoon.com/772989

Court : Rajasthan

Decided On : Jan-03-2002

Reported in : 2002(1)WLN730

Judge : N.N. Mathur;and Harbans Lal, JJ.

Appeal No. : D.B. Civil Special Appeal No. 21 of 1995

Appellant : Ramesh Kumar

Respondent : Bhanwari Devi

Advocate for Pet/Ap. : Mr. M.L. Kalla

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This special appeal is directed against the order dated 9.3.1995 passed by the learned Single Judge dismissing the appeal filed by the appellant upholding the order of the District Judge, Bikaner, dismissing the petition for dissolution of marriage by decree of divorce.

2. The necessary facts giving rise to the instant appeal are that the appellant Ramesh Kumar filed a petition Under Section 13 of the Hindu Marriage Act

seeking decree of dissolution of marriage with the respondent Smt. Bhanwari Devi. The appellant marriage with the respondent Smt. Bhanwari Devi in July, 1982 in accordance with the Hindu rites. She hardly stayed for 4 to 5 days with him and then left for her parents house at Dungargarh. She returned after two months and stayed hardly for three days and left the house without any information to him. He came to know that she left the house in the company of one Meghwal. He lodged the missing report at Police Station, Sujargarh. She was found roaming in the company of the second respondent Satya Narayan. She was also produced before the Judicial Magistrate, Churu, in her statement Under Section 164 Cr.P.C. she stated that she left her matrimonial home in the company of Satyanarain. She also admitted her illicit relations with him. Smt. Bhanwari Devi filed a written statement denying the plaint allegation. On the material controversy the learned District Judge framed the following issues:

1- vk;k vizkfFkZuh Hkaojhnsoh nq'pfj= L=h gksus ds dkj.k vizkFkhZ la0 2 ,oa vU; ds lkFk vuSfrd thou O;rhr djrh jgh gsS

2- vk;k vizkfFkZuh lu~ 1982 vDVwcj ds lk'pkr izkFkZuk lk= is'k djus dh rkjh[k rd izkFkhZ dsk Mst VZ djrh jgh gS o vuSfrd thou ;kiu djrh jgh gS

3- vk;k vizkfFkZuh dks izkFkhZ us tc mlds isV es cPpk Fkk ekjdwV dj ?kj ls ckgj fudky fn;k

4- fjyhQ

3. The plaintiff Radha Krishan examined himself as PW-1. He also examined his father Radha Krishna as PW-2. Smt. Bhanwari Devi examined herself as DW-1 and Kishan Lal as DW-2. She also examined Natwarlal as DW-3. The trial court decided the issue No. 1 against the appellant husband on the ground that the adulterer was not made party to the proceedings as required by Rule 801(g). The trial court decided the issue No. 2 against the appellant on the ground that he had given wrong date i.e. 15.9.1986 with respect to the knowledge of his wife living in adultery. As regards issue No. 3 the trial court held that respondent's wife failed to discharge the burden that she was turned out from the house. As such he decided the issue No. 3 against the respondent wife. In view of the findings the trial court

dismiss the petition for divorce filed by the husband appellant.

4. In appeal by the husband, inspite of notice respondent Smt. Bhanwari Devi did not put in appearance. The learned Single Judge found that the husband failed to establish the charge of adultery against the respondent wife. He further observed that the decree for divorce cannot be passed on the ground of desertion because once the allegations of adultery are levelled against the wife then the question of desertion became totally irrelevant, as no wife can live with a husband who had made false and fabricated allegation of adultery against his wife. In view of the finding the learned Judge dismissed the appeal.

5. Inspite of notice the respondent Smt. Bhanwari Devi has not appeared even before us in this special appeal. It is contended by Mr. M.L. Kalla, learned Counsel for the appellant that the trial court has over-looked material fact that by way of amendment in the petition for divorce the adulterer Satyanarain was made a party to the proceedings. It is also agreed that the learned Judge has also glossed over the important aspect of the case that Smt. Bhanwari Devi was found in the company of Satyanarain and when she was produced before the Magistrate in her statement Under Section 164 Cr.P.C. She admitted her illicit sexual relation with Satyanarain. She also expressed her desire to stay with Satyanarain. It is ofcourse true that in her statement before the trial court she resited from her statement before the learned Magistrate by stating that she made a statement before the learned Magistrate under the pressure of the Police. We have gone through the statement of Smt. Bhanwari Devi Exhibit-P-3. The statement appears to be natural. She did not make complaint any where at any stage that she made statement before the learned Magistrate under Police pressure. Pleadings show that she hardly stayed for 8 days with her husband. She has admitted in the cross-examination that wife of Satyanarain has filed a petition in which the allegation has been made that said adulterer Satyanarain is living with her. Smt. Bhanwari Devi has also not contested the proceedings either before the learned Single Judge or before us. All these circumstances clearly indicate that she is living adulterous life with the adulterer Satyanarain. There is a clear finding of desertion against the second respondent. In these circumstances the appellant is entitled to decree for divorce.

6. Consequently we allow this special appeal and set aside the judgment of the learned Single Judge dated 9.3.1995 as well as of the trial court dated 30.5.1992. The appellant's petition for divorce under Section 13 of the Hindu Marriage Act is accepted, on the ground of adultery as well as desertion. We award decree for divorce dissolving the marriage between appellant and respondent Bhanwari Devi. No order as to costs.

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