

Mt. Kalawati Vs. Devi Ram

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Court : Himachal Pradesh

Decided On : Sep-02-1960

Reported in : AIR1961HP1

Judge : C.B. Capoor, J.C.

Acts : [Hindu Marriage Act, 1955](#) - Sections 5, 6, 11, 12, 12(1) and 18

Appeal No. : Misc. First Appeal No. 93 of 1960

Appellant : Mt. Kalawati

Respondent : Devi Ram

Advocate for Def. : P.L. Sharma, Adv.

Advocate for Pet/Ap. : M.L. Aukta, Adv.

Disposition : Appeal dismissed

Judgement :

C.B. Capoor, J.C.

1. This appeal arises out of a petition filed by the appellant under Ss. 10 and 12 of the [Hindu Marriage Act, 1955](#). The appellant was married to the respondent about eight years prior to the filing of the petition. At that time she was minor and was given in marriage by her brother who was also then a minor. The allegations were

that ever since the marriage the respondent had been ill-treating and belabouring the appellant, that for more than two years prior to the filing of the petition he had deserted her and since then she had been living at her father's house.

2. The factum of marriage was not denied by the respondent. It was, however, repudiated that he was cruel to the appellant or had deserted her. The appellant, it was alleged, had of her own accord left his house in March, 1958, and had refused to return to his house, although repeated efforts were made by him to persuade her to come back.

3. The learned Senior Subordinate Judge recorded a finding against the appellant on the questions of desertion and maltreatment. Although he did not doubt the correctness of the appellant's allegation that both she and her brother were minors at the time of her marriage he held that the appellant was not under law entitled to avoid her marriage and that in any case there was undue delay in the filing of the petition for obtaining a decree of nullity.

4. A preliminary objection was raised on behalf of the respondent that the appeal under consideration lay in the Court of the District Judge and not in this Court. That objection was overruled by order dated 30-8-1960.

5. The learned counsel for the appellant conceded that on the evidence on record his client was not entitled to a decree for judicial separation under Section 10 of the Hindu Marriage Act and he confined his argument to the prayer for the decree of nullity of marriage.

6. The evidence adduced on behalf of the appellant overwhelmingly bears out that at the time of marriage she was below 15 years of age and her brother, Rewa Dass, who gave her in marriage had not attained the 18th year. The aforesaid evidence has virtually not been controverted on behalf of the respondent.

7. The short albeit interesting question that arises for determination is as to whether the appellant was entitled to a decree of nullity of marriage on the ground that both she and her brother who had given her in marriage were minors at the time of the wedding.

8. The marriages which under the Act are void and voidable have been specified in Sections 11 and 12. The former section is specifically prospective and a marriage solemnized in contravention of the conditions specified in Clauses (i), (iv) and (v) of Section 5 has been declared to be null and void. The latter section is both retrospective and prospective and also governs a marriage solemnized before the commencement of the Act. The relevant portion of Section 12 runs as below:

'(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that the marriage is in contravention of the condition specified in Clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under Section 5, the consent of such guardian was obtained by force or fraud; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner'.

'(2) Notwithstanding anything contained in subsection (1), no petition for annulling a marriage-

(a) on the ground specified in Clause (c) of subsection (1) shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered'.

It would, thus, appear that the minority of the wife or of the guardian in marriage is, by itself, not a ground for the annulment of the marriage. According to Clause (c), if the consent of the petitioner or where the consent of the guardian in marriage is required under Section 5 the consent of such guardian was obtained by force or fraud the marriage can be avoided. At this stage, it is interesting to note that even under Section 11 the minority of the petitioner or of her guardian in marriage, by itself, is not a ground for getting the marriage declared null and void.

9. On behalf of the appellant, reliance was placed upon Clauses (iii) and (vi) of Section 5 and subsection (2) of Section 6 of the Hindu Marriage Act and it was contended that the intent of the legislature was that if at the time of the marriage the bride is below 15 years of age and her guardian in marriage who gives consent is also less than 21 years of age, such a marriage would not be legal. While it is true that according to Sections 5 and 6 one of the conditions for a Hindu Marriage is that the bride should have attained the age of 15 years and that if she be below 18 years, her guardian in marriage, if any, has consented to the marriage, the fact remains that neither under Section 11 nor under Section 12 the non-fulfilment of such a condition has been recognized as a ground for the annulment of the marriage.

Section 18 has provided for punishment for contravention of the conditions laid down in Clauses (iii) and (vi) of Section 5 and it could not, therefore, be said that the legislature was oblivious and had inadvertently omitted to provide for the avoidance of marriage on the ground of minority of the bride and her guardian in marriage. The omission, to my mind, was deliberate. It is not for the Courts, to scan the wisdom of the legislature and speculate on the reasons which led the legislature to make or not to make certain provision.

10. On behalf of the respondent, it was urged that Section 5 was not retrospective and as such its provisions could not apply to a marriage solemnized prior to the commencement of the Act. The contention is correct only partially. An infraction of some of the provisions of that section has been mentioned in Section 12 as a ground for annulment of even a marriage solemnized prior to the coming into force of the Act and to that extent those provisions have retrospective effect. The

other provisions of Section 5, however, are only prospective in operation. I am, therefore, of the opinion that under Section 12 of the Hindu Marriage Act the appellant is not entitled to a decree of nullity.

11. On behalf of the appellant, it was lastly argued that if at the time of the solemnization of the marriage both the bride and her guardian in marriage happen to be minors, such a marriage should be deemed to have been obtained by force or fraud. The argument may well be dubbed as one of desperation and has only to be heard to be rejected. The mere fact that the appellant was below 15 years of age and her brother who had given her in marriage was below 21 years cannot lead to the conclusion that the marriage of the appellant was obtained either by force or fraud.

12. It was conceded on behalf of the appellant that under the Hindu Law, as it prevailed prior to the coming into operation of the [Hindu Marriage Act, 1955](#), the marriage of a minor Hindu girl was not liable to be annulled on the ground that at the time of the marriage she and her guardian who gave her in marriage were minors.

13. The appeal is devoid of force and it is accordingly dismissed with costs. The order dated 30-8-1960 will form part of this judgment.