

Mt. Savitri Devi Vs. Naukhi Ram

Mt. Savitri Devi Vs. Naukhi Ram

SooperKanoon Citation : sooperkanoon.com/888608

Court : Himachal Pradesh

Decided On : Aug-21-1957

Judge : Ramabhadran, J.C.

Acts : [Constitution of India](#) - Article 227; ;[Hindu Marriage Act, 1955](#) - Sections 13 and 23

Appeal No. : First Appeal No. 7 of 1957

Appellant : Mt. Savitri Devi

Respondent : Naukhi Ram

Advocate for Def. : Prithvi Raj, Adv.

Advocate for Pet/Ap. : Ramji Das, Adv.

Judgement :

ORDER

Ramabhadran, J.C.

(1) This proceeding, under Article 227 of the Constitution, arises under the following circumstances : Mt. Savitri Devi filed a petition under Section 13 of the [Hindu Marriage Act, 1955](#), against her husband, Naukhi Ram, seeking a decree of divorce on the ground that Naukhi Bam was living in adultery with one Mt. Dropadi. In his written statement, the allegation of adultery was stoutly denied by Naukhi

Ram. Thereupon, the following issue was framed by the trial Court:

'Whether the petitioner is entitled to a divorce? O. P. Petitioner'.

Six witnesses were examined by the petitioner in support of her case 23-5-1957 was fixed for the evidence of the respondent (Naukhi Ram). On that date, it transpired that no witnesses were produced by the respondent with the result that the Court closed his case, heard arguments and fixed 25-5-1957 for orders.

(2) We now come to the proceedings, of 25-5-1957, which are highly material to this case. On that date, the respondent, Naukhi Ram, made a statement to the trial Court to the effect that he was agreeable to the dissolution of the marriage between him and Mt. Savitri Devi. According to the proceedings, Mt. Savitri Devi, apparently, gave up her claim to maintenance and costs.

(3) Thereupon, the learned Judge of the trial Court granted a decree for divorce, but without giving any finding on the issue framed by him. He further made a note that parties were at liberty to remarry. Parties were further directed to bear their respective costs.

(4) Against this decree, an appeal was filed under Section 28 of the [Hindu Marriage Act, 1955](#), by Mt. Savitri. In the memorandum of that appeal, it was stated that the appellant, Mt. Savitri Devi, never gave up her claim to maintenance and costs. This Court was, therefore, requested to modify the decree of the trial Court and grant the appellant, Mt. Savitri Devi, maintenance and costs.

On 6-8-1957, after hearing Mt. Aukta for the appellant, I called for a report from the trial Court, as to under which provision, of the [Hindu Marriage Act, 1955](#), the marriage between the parties had been dissolved by mutual consent. A report has been received from the trial Court, to which I shall make reference shortly.

On 13-8-1957, after hearing learned counsel for the appellant and going through the report of the Court below, I directed that notice be issued to the respondent to appear and show cause why the decree, granted by the lower Court, should not be set aside, inasmuch as it ran counter to the provisions of the [Hindu Marriage Act, 1955](#). In doing so, I had indicated that even if the present appeal was not pressed,

I would be prepared to take up the matter, in the exercise of this Court's powers of superintendence, conferred by Article 227 Of the Constitution.

(5) Today, I have heard learned counsel for the parties. They submitted that the evidence on the record was sufficient to arrive at a positive finding that Naukhi Ram had been living in adultery with Mt. Dropadi. Mr. Prithvi Raj, for the respondent, added that it was on account of the overwhelming evidence, produced by the petitioner, that his client desisted from adducing evidence in rebuttal.

(6) I am constrained to remark that the Court below has not appreciated the scope of a divorce petition under the [Hindu Marriage Act, 1955](#). Section 13 of that Act lays down the grounds on which a divorce decree could be granted. One of these grounds is where one of the parties to the marriage is living in adultery. This is the ground contained in Section 13 (1) (i).

Under Section 23, before a decree for divorce is granted, the Court must satisfy itself, inter alia, that the divorce petition has not been presented or prosecuted in collusion with the respondent. The section further proceeds to say that in such a case, but not otherwise, the Court shall decree such relief accordingly. In the present case, the issue framed by the trial Court does not refer, to any of the grounds of divorce prescribed in Section 13.

The issue, as already shown, merely raises the question as to whether the petitioner was entitled to a divorce or not. This was not a satisfactory issue. The plea of adultery with Mt. Dropadi, alleged by the petitioner, has been denied by the respondent. Consequently, the obvious issue to frame was: 'Whether the respondent was living in adultery with Mt. Dropadi?' It was further incumbent upon the trial Court to satisfy itself that the various conditions, laid down in Section 23, were also satisfied.

For this purpose, separate issues were not necessary, although the Court in its judgment, should state clearly that these conditions have been satisfied. What the learned Senior Subordinate Judge has done in this case is this: he has granted a decree in favour of the petitioner merely on the admission of the respondent. He has made no attempt, whatever to discuss the evidence on the record and give a

judicial finding as to whether the conditions necessary for granting a divorce had been satisfied or not.

I am constrained to remark that the report submitted by him, in pursuance of this Court's order dated 6-8-1957, has only made matters worse. In that report, the learned Senior Subordinate Judge has stated that he granted a decree on the basis of a custom, as referred to in Section 29 (2). This plea cannot be countenanced and for two reasons:

In the first place, it is no body's case that the marriage had been or was to be dissolved' in accordance with custom, and, in the second place, it is not the function of a Court, constituted under the [Hindu Marriage Act, 1955](#), to grant a decree of divorce, or a declaration, of divorce, on the basis of custom.

(7) The question, therefore, arises as to what should be done in the present state of affairs. At the last hearing, learned, counsel for the appellant stated that his client did not wish to press the appeal. I was, accordingly, requested to dismiss the appeal, as not being pressed. It was further suggested that there was no appeal pending before this Court.

This might be so, but under Article 227 of the Constitution, it is open to this Court, in the exercise of its powers of superintendence, to set aside a decree passed by a subordinate Court, if it is found that the decree is in excess of the legitimate authority of that Court. As already shown, under the provisions of the [Hindu Marriage Act, 1955](#), the Senior Subordinate Judge to whom the powers of a District Court, as defined in Section 3 (b), have been delegated, can grant a decree for divorce only, if certain conditions laid down in Sections 13 and 23 of that Act are fulfilled, and not otherwise.

By granting a decree for divorce, on the basis of the statement made by the respondent without going into the evidence and without giving a judicial finding on the plea of adultery, the Court below has exercised a jurisdiction not vested in it by law. In *Waryam Singh v. Amarnath*, AIR 1954 SC 215 (A), their Lordships of the Supreme Court pointed out that:

'The power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.' This is a case where this Court must, in the exercise of its powers of superintendence, interfere in order to keep the Court below within the four corners of its legitimate authority. I propose, therefore, to set aside the decree passed by the Court below and direct it to dispose of the petition in accordance with law.

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