

Mt. Banto and anr. Vs. Chandan

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Court : Himachal Pradesh

Decided On : Apr-15-1949

Reported in : AIR1949HP21

Appellant : Mt. Banto and anr.

Respondent : Chandan

Judgement :

Bannerji, J.C.

1. This is an appeal from a judgment and decree of the District Judge dated 20th June 2004 s., decreeing the plaintiff's suit for restitution of conjugal rights.
2. The plaintiff, Chandan, brought the suit against Mt. Banto, defendant 1 and her father Durga, defendant 2, on the basis of a 'Nawishat' (agreement). The defendants denied the marriage and Btated that it was only a 'Mangwali' and that the plaintiff did not fulfil the conditions embodied in the said 'Nawishat' dated 6th January 2002 s.
3. One of the conditions of 'Nawishat' was that the plaintiff would remain throughout his life as 'Ghar Jawantri' or 'Ghar Jamai' in the house of his wife's father.
4. It is admitted that the plaintiff left the house of his alleged father-in-law and brought this suit for taking away his so called wife. The plaintiff's own witnesses

Das and Sawan-Din state that the plaintiff left the house of defendant 2 of his own accord.

5. From the judgment of the District Judge, it appears that the relationship of the plaintiff and the defendant, Mt. Banto, was of a kind that was not a proper marriage, though co-habitation took place.

6. I do not agree with the learned Judge that the marriage between the plaintiff and Mt. Banto ever took place. In lieu of service of a youngman like plaintiff, the aged defendant 2, Durga, promised that the former would live as the husband of his daughter. This custom of obtaining the service of an able-bodied man in exchange of the society of daughter is not only ugly and brutal but also against morality and public policy. This custom ought to be declared as illegal and immoral.

7. In the circumstances, I would hold that there was not even a semblance of marriage between the plaintiff and Mt. Banto. I would further hold that such marriage would in future be declared unlawful and unenforceable in any Court of law and null and void.

8. There is a child, about two years old, of defendant 1. He is not claimed by the plaintiff as the plaintiff had left the house of defendant 2 nearly five years ago and did not set his foot there during these years. It is hard to decide the fate of this little child, who is the offspring of another man, who has taken the place of the plaintiff and cohabits with the girl, defendant 1, in lieu of service to her father. He will remain with his mother and grandfather Durga, defendant 2.

9. I shall, therefore, advise the Chief Commissioner to annul whatever tie is said to exist between the plaintiff and the defendant, Mt. Banto. The silver ornament called 'Paunchi' given by the plaintiff to Mt. Banto will be returned with Rs. 5 (Rupees five) only in cash as compensation. The parties will bear their own costs throughout.