

Sheela Devi Vs. Romesh Chand

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Court : Jammu and Kashmir

Decided On : Nov-16-2012

Judge : Hon'ble Mr. Justice M. M. Kumar

Appellant : Sheela Devi

Respondent : Romesh Chand

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. CTA No. 4 OF 201. Sheela Devi Petitioners Romesh Chand Respondent !Mrs. Surinder Kour, Sr. Advocate with Ms. Mehrun-ul-Nisa, Advocate ^Mr. K. K. Kundan, Advocate Honble Mr. Justice M. M. Kumar, Chief Justice Date:

16. 11.2012 :

: M. M. Kumar, CJ 1. Smt. Sheela Devi has filed the instant petition under Section 24 of the Code of Civil Procedure, 1977 for transferring the petition filed by her husband Romesh Chand which has been assigned file No. 01/HMA of 2008 and is pending in the Court of learned Munsiff, Basohli with the powers of District Judge under the Hindu Marriage Act, to any Court of competent Jurisdiction to the Principal District Judge, Kathua. She has pleaded that she lives in Himachal Pradesh which is far away from Basohli. It is pertinent to mention that the respondent husband has sought relief of dissolution of marriage in the aforesaid petition

2. Brief facts of the case, as disclosed in the instant petition, are that the petitioner is a resident of village Bagdar Tehsil Dalhousie District Chamba (HP) and she was married to the respondent in the month of April, 2000 at her village in accordance with Hindu rites and customs. Soon after the marriage differences arose and her family made efforts to settle the petitioner at her matrimonial home but all those efforts failed. Eventually she was driven out from her matrimonial home forcing her to take shelter at her fathers house in her native village Bagdar Tehsil Dalhousie (Chamba). Romesh Chand, the husband of the petitioner, is working as a Patwari and has been threatening the petitioner and her relatives who are accompanying her to defend the case. She has stated that being a destitute lady she is not in a position to attend the hearing at Munsiff Court, Basohli which is at a far away distance and if the matter is transferred to the District court at Kathua then she would be able to conveniently cover the distance and attend the hearing.

3. In the objections filed by the respondent-husband the prayer made by the petitioner has been opposed on the ground that for the last more than two years she has not filed any reply to the petition filed by him under Section 13 of the Hindu Marriage Act. The transfer petition has been filed only to delay the proceedings and harass him. He has also contested the distance between Himachal Pradesh to Basohli and Himachal Pradesh to Kathua. The respondent-husband has also raised a plea that being a government servant it would not be possible for him to prosecute his case at Kathua because he is posted at Dharjankar which is 70 Kms from his village Kot Tehsil Basohli.

4. I have heard learned counsel for the parties and have perused the record. It is pertinent to mention that when notice of this petition was issued to the respondent-husband the proceedings before the trial court were stayed on 11.02.2010. The interim directions have continued since then. On 16.03.2012 the parties were called in person to appear before the Mediation Centre on 28.03.2012 at 10:30 AM. The Mediation Centre was to file the report by 30.03.2012. Eventually, the mediation did not succeed and the matter has been sent back to the Court.

5. It has come on record that the petitioner is living with her father in District Chamba (HP) and she is not earning being unemployed. Even otherwise, the

convenience of the wife in a case like the one in hand is required to be kept in view as has been held in the cases of Uma Parekh v. Ajeet Pareek (2005) 9 SCC 60. and Laxmi Devi v. Rajesh Kumar Sanadhya (2002) 10 SCC 693. In Laxmi Devi's case (supra) the long distance travel by the wife, who was also living with her father, was held to be a valid ground for transfer of the proceedings.

6. In the present case, the petitioner-wife is not in a position to incur expenses nor can she be subjected to long distance travel. The claim of the respondent-husband to the contrary is without substance when he says that the distance between her village to Basohli where the proceedings are pending would be lesser than the distance of her village to Kathua. Even otherwise, on enquiry it has been found that no adequate transport facilities are available to Basohli which result into extreme inconvenience to the wife. She has to change the transportation at 2/3 places to reach Basohli. Therefore, the short distance itself may not be a ground for declining the relief.

7. As a sequel to the above discussion, this petition succeeds. The proceedings in case titled Romesh Chand v. Sheela Devi being File no. 1/MHA of 2008, pending in the court of Munsiff Basohli are ordered to be transferred to the Court of competent jurisdiction at Kathua. Parties are directed to appear before Principal District Judge, Kathua on 17.12.2012. (M. M. Kumar) Chief Justice JAAMU:

16. 11.2012 Anil Raina, Secy.

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