
(2015) 07 RAJ CK 0159
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1959 of 2014

Kanhaiya Dan

APPELLANT

Vs

Santosh Devi

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 9

Citation : (2015) 07 RAJ CK 0159

Hon'ble Judges : Govind Mathur, J; Jaishree Thakur, J

Bench : Division Bench

Advocate : Pradeep Shah, for the Appellant; S.S. Rathore, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. In pursuant to the notice dated 01.5.2015 Shri Sajjan Singh Rathore has put in appearance on behalf of the respondent Smt. Santosh Devi.
2. Admit. No need to issue notice afresh as the contesting respondent is represented by his counsel. With consent of the parties, this appeal is heard finally today itself.
3. In brief facts of the case are that the appellant Kanhaiya Dan and the respondent Smt. Santosh Devi entered into a wedlock as per the Hindu customs and rites on 08.5.2002. The respondent Smt. Santosh Devi at the time of marriage was having qualification of 10th standard, whereas the appellant Kanhaiya Dan was having school education up to 4th standard. Under an order dated 18.4.2006, an appointment was accorded to the respondent Smt. Santosh Devi as Constable with Rajasthan Police. She then preferred an application as per Section 13 of the Hindu Marriage Act, 1955 to annul the marriage dated 08.5.2002. After service of notice of the application aforesaid the appellant filed a written statement and also an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The learned family court,

Chittorgarh by the judgment dated 03.12.2014 accepted the application preferred under Section 13 of Hindu Marriage Act and granted a decree to annul the marriage dated 08.5.2002.

4. To challenge the judgment and decree dated 03.12.2014, the instant appeal is preferred. It is submitted by learned counsel for the appellant that the appellant preferred an application under Section 9 of the Act of 1955 to restore the conjugal rights and this fact itself is sufficient to arrive at a conclusion that he was never interested in breakage of marriage and further that he never extended any cruelty sufficient to grant a decree as per Section 13 of the Act of 1955. It is further submitted that even as per the evidence available on record, there is no material to have a finding of cruelty extended by the appellant giving a cause to annul marriage between the parties.

5. Per contra, as per the learned counsel the family court while examining the appeal framed four issues in the terms:--

"1. Whether the non applicant has deserted the applicant from last five years for reasonable grounds.

2. Whether the non applicant extended mental and physical cruelty towards applicant after marriage?

3. whether the non applicant is entitled to have an order for restitution of conjugal rights?

4. The relief."

6. The family court after examining the evidence available on record decided the issue No. 1, 2 & 3 in favour of the applicant and against the non-applicant Shri Kanhaiya Dan. According to learned counsel for Smt. Santosh Devi the issues have been decided by the family court by examining entire evidence available on record. According to him the family court while examining the first issue held that as per the evidence available the applicant was having qualification up to 10th standard and thereafter she at her own obtained higher education and also faced process of selection for recruitment to the post of constable and further she availed training at her own expenses relating to the post on which she was appointed. The family court also arrived at the conclusion that the non applicant was not supporting the applicant when she was availing necessary training. While deciding the issue No. 2 the family court held that on the basis of the facts available, there is no possibility of any kind of adjustment and assistance between the parties to maintain marriage and therefore the marriage has reached at a irretrievable point.

7. Heard learned counsel for the parties and also examined the entire record including the evidence adduced by the parties while getting the application under Section 13 of the Act of 1955 adjudicated.

8. From perusal of the statement made by Shri Kanhaiya Dan, the appellant non

applicant (NW-1) it is apparent that he was not living with the respondent applicant from last more than three years. During the course of examination, he stated in specific terms that from last three years, he was not sharing any conjugal relation with the applicant respondent Smt. Santosh Devi. He also stated that during the course of training, he did not send any money to the non applicant and the fact stated in his reply for bearing expenses of training is wrong. He also accepted that before filing the application under Section 9 of the Act of 1955, no effort was made by him to restore the conjugal relations, though some efforts were made by the persons belonging to his community and family. The statement given by NW-1 Shri Kanhaiya Dan is sufficient to establish the desertion as alleged by the applicant.

9. In addition to the evidence adduced by Shri Kanhaiya Dan, his father Shri Narayan Dan (NW-2) also stated about the fact that Smt. Santosh and Kanhaiya Dan were not living together but separately. The statement given by Smt. Santosh is also of quite importance and she while deposing before the family court as AW-1 stated that since 2008, she was not living with her husband. She also stated that on the festival of Holi in the year 2008 non applicant Kanhaiya Dan deserted her and thereafter he was torturing her mentally. Prior to that he was in habit of abusing her and also to harass her by making comments about her complexion. The evidence discussed above is sufficient to arrive at the conclusion that the non applicant has deserted the respondent applicant. The fact about filing application under Section 9 of the Act of 1955 is of no consequence in the instant matter as that was filed only after receiving the notice of the application preferred under Section 13 of the Act of 1955 by the respondent with a ground of desertion.

10. Having considered all the facts stated above and also the finding given by the family court that the marriage between the parties has reached at a irretrievable point, we do not find any wrong with the judgment and decree granted by the family court as per Section 13 of the Act of 1955. The appeal, therefore, is dismissed.