
(1963) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : First Appeal No. 42 of 1963

Narayan Prasad Choubey

APPELLANT

Vs

Smt. Prabhadevi

RESPONDENT

Date of Decision : 09-08-1963

Acts Referred:

Hindu Marriage Act, 1955 — Section 10, 10(1)

Citation : AIR 1964 MP 28 : (1965) ILR (MP) 957 : (1963) JLJ 718

Hon'ble Judges : Shiv Dayal, J;S.P. Bhargava, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.—This is the plaintiff's appeal from the dismissal of his suit which he filed u/s 10 of the Hindu Marriage Act, 1955, for a decree for judicial separation against the respondent.

2. The appellant aged 32 years, is a lecturer in the Government Higher Secondary School, Sihora. Prabha Devi (respondent), aged 26 years, was married to him in May 1955 and the consummation ceremony (Gouna) took place in January, 1956. The couple lived at Sagar for about four months from January to April 1956, where after she went to her parents' house and returned after two months. She remained with her husband for another five months from July to November 1956. The contentions in the plaint were that the defendant quarrelled and disobeyed the plaintiff's mother whom he held in great esteem because she had brought him up after much sacrifice in adverse circumstances. The plaintiff reprimanded the defendant. She abused him and "misbehaved" and threatened to poison him. Thereafter, she once tried to poison the plaintiff's mother and also the plaintiff himself, but she did not succeed in her designs. She threatened to take poison herself. One day she poured kerosene oil on her own body and set fire to it. When she had somewhat recovered, she went away with her parents to Hatta and did not come back to the plaintiff "to discharge her

conjugal duty" since December 1956-in August 1960, she came to Sihora, where, the plaintiff was then posted, and publicly insulted him

3. The defendant denied the adverse allegations against herself and alleged that all along she served the plaintiff and his mother as a devoted Hindu Wife, but the mother-in-law used to poison his ears and they both illtreated her; she tolerated all that. One day while she was cooking food, accidentally her clothes caught fire. Even before she could recover from the burns, the plaintiff took her to Damoh on 8-1-1957, called her father by a telegram and entrusting her to her father's custody went away to Jabalpur. The plaintiff did not give her a single pie during these five years: Dor allowed her to stay with him.

4. The learned Additional District Judge dismissed the suit.

5. There is no evidence that the defendant threatened the plaintiff as alleged in the plaint. A bald statement of the plaintiff, which has been controverted by the defendant in the witness-box, cannot be believed on its face. There are at least two circumstances which strongly point towards the falsity of these allegations. Firstly, the story is fantastic per se. It does not accord with human conduct that the wife would tell her husband that she would poison him some day. Secondly, according to the statement of the plaintiff, the incident of threatening and the incident of attempt to poison him occurred in or before April 1956, and the plaintiff says that it occurred to him even in April 1956 that he should not keep his wife with him. But, on his own showing, he brought her back from her father's place in July 1956. On the same ground the story of attempt to administer poison in milk which was to be taken by the plaintiff is unbelievable and has been rightly rejected by the trial Judge.

6. As to the contention that the respondent tried to administer poison to the plaintiff's mother (Kashibai, P. W. 5), all that she says is that one day she suspected that poison had been mixed in the milk that she was going to take, but she does not say whether she got it tested or that she tasted it and found something unusual in it.

7. There is no positive evidence that the, respondent set herself to fire. She being all alone at the place where her clothes caught fire, here is the only statement available. She says that it was accidental. Believe it or not. In our judgment that cannot be a ground for judicial separation.

8. It is quite clear that the relations between her and her mother-in-law, Kashi Bai, were not happy. The domestic quarrels were mostly of a very petty nature, but the plaintiff thoroughly disapproved of his wife's disobedience to his mother's orders. . For instance, Kashibai (P. W. 5) says that the defendant some times refused to obey her. On one occasion she found that she had given something to a maid servant. When Kashi Bai asked the defendant what she had given, she replied that she was at liberty to give whatever she liked. Kashibai did not want her to touch certain articles during the periods, but she deliberately touched them. Kashibai did not want her to take bath with cold water during

winter season but she did not listen to her. The defendant resented that her mother-in-law did not allow her to visit picture or to go to the neighbouring houses. Some times the defendant destroyed her (Kashibai's) edible tobacco to which she was addicted. From this statement it seems that the mother-in-law is of a typical nature who wants her daughter-in-law to be implicitly obedient to her and not to question the propriety of her commands. It is remarkably admirable that neither spouse has a word to say against the other's chastity. It is obvious enough that their life became unhappy because of the petty domestic quarrels between the mother-in-law and the daughter-in-law.

9. Now the question precisely before us is whether that can be a ground for judicial separation, the answer is clearly in the negative, "Irritating idiosyncrasies are part of the lottery in which every spouse engages on marrying and taking the partner of the marriage "for better, for worse," See *Lang v. Lang* 1954 3 All ER 571 . Under the Hindu law as it was administered before the commencement of the Hindu Marriage Act, 1955, no judicial separation between the husband and the wife (was provided on any ground. For the first time, judicial separation was introduced among the Hindus under the last mentioned Act, but the grounds are restricted. They are contained in Section 10. Unless a party can strictly bring his case within the purview of that section, he is not entitled to a decree for judicial separation even if it may be accepted that the husband is unable to pull on with the wife because he does not like her ways. Having accepted her before the nuptial fire, he has to give allowance to her irritating idiosyncrasies. If she is defiant and disrespectful towards her mother-in-law, the plaintiff was undoubtedly within his right to express disapprobation and reprehend her conduct, but that is not the same thing as to entitle him to a decree for judicial separation under the law as it exists at present.

10. It is then urged for the appellant that a decree u/s 10 of the Act could be passed on the ground of desertion within the meaning of Clause (a). As to this, we are fully satisfied that it is not the wife who deserted the husband; it is the other way round. There is no reliable evidence to show that she left the matrimonial home or that she does not want to return from her father's place. It was the plaintiff who managed that her father took her away even at a time when she was not in a good state of health, having not fully recovered from the burns which she had (received. As stated by her, it took two more months at her father's place before she could completely recover. Thereafter, the plaintiff did not go at any time to fetch her back. Desertion was, therefore, by the husband, the question is not which spouse is staying in the matrimonial home and which spouse is staying away from it. In deciding the question of desertion, the Court has to look to the conduct of both the parties. (See *Leela Devi v. Manoharlal*, AIR 1959 Madh Pra 349). As laid down by their Lordships in *Bipin Chander Jaisinghbai Shah Vs. Prabhawati*, desertion is a matter of inference to be drawn from the facts and circumstances of each case.

The essential question always is whether that act of separation is attributable to

an animus deserendi. In the present case, there is no possibility of holding that the defendant, at any time, had the intention to desert her husband. It was not she who abandoned the marital home, or who ever intended, expressly or impliedly, to bring cohabitation permanently to a close. It is stated in 12 Halsbury (Simonds) 241, para 453 :

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases".

A line of demarcation must always be drawn between what may be called blame-worthy conduct causing unhappiness to the other spouse, and a conduct equivalent to dismissal from consortium. The party truly guilty of disrupting the home is not necessarily, or in all cases, the party who first leaves it. In the present case, the husband deserted the wife by expelling her; by driving her away.

11. All this apart, the defendant in this case has always been willing to live with the plaintiff. On one occasion she accompanied her father and brother to his house but he did not accept her return. What is more, the appellant has filed in this Court a letter dated J8-2-1963 in which the defendant has again requested the plaintiff to take her back. When the parties appeared before us in person, she entreated him and apologised for any mistakes that she might have committed. She was crying all the time. But the appellant was not prepared to take her back at any cost. He out-right rejected the suggestion that she might be allowed to live in his house for a week or so and her conduct might be watched. Even if she committed any mistakes and her relations with her mother-in-law in the past were such as were disliked by her husband, her genuine penitence could not be turned down outright.

Even if we had come to the conclusion that she was guilty of desertion, the appellant could not refuse reinstatement. In *Bipin Chander Jaisinghbai Shah Vs. Prabhawati*, their Lordships observed :--

"If a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former".

Thus, although it is not possible to hold that it was the respondent who deserted the appellant, yet her offer to come back to him and live as a faithful wife, without repeating any conduct which might incur his displeasure, is a complete

answer to the allegation of desertion.

12. For these reasons, the appeal is dismissed with costs. Counsel's fee Rs. 75/-.