
(1975) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 128 of 1973

Prahlad Singh

APPELLANT

Vs

Mst. Meena Kumari

RESPONDENT

Date of Decision : 04-05-1975

Acts Referred:

Citation : (1975) WLN 202

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Jain, J.—This is an appeal by Prahlad Singh whose petition for judicial separation against his wife, Smt. Meena Kumari has been dismissed by the District Judge, Udaipur, on 15-4-74.

2. The parties are Sindhis by caste and they were married according to Hindu rites on 17-1-60 at Udaipur. It appears that they lived together for about ten years. In the petition dated 3 8 73 it has been alleged by Prahlad Singh that Meena umari has deserted him for more than three years and has been staying at her father's place without any reasonable excuse. It was also alieged that his wife had been very cruel to him when she staying with him. He mentioned an incident when she ran after him with a burning piece of wood. According to the petitioner Meena Kumari is also a woman unsound mind and on account of irregular periodical menses she has not been able to conceive which has also caused a tension on the mind of the petitioner, as he would not be able to run his family name. Thus he prayed for judicial separation on three grounds : (i) that Meena Kumari has deserted him for a continuous period for more than two years; (ii) that Meena Kumari has treated the petitioner with cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be huarmful and injurious for him to live with her; and (iii) that Meena Kumari is a wouman of unsound mind.

3. These allegations were repudiated by Meena Kumari in her reply. On the other hand, she stated that it was the petitioner her husband who has been cruel to her and used to beat her on petty matters, so it was he who turned her out from the house some three years back and since then she is staying at her father's place.

4. The learned Judge tried the case and recorded the evidence adduced before him by the parties. On a consideration of the evidence he held that Meena Kumari is not staying at her marital home without a reasonable cause. Though in fact the parties are living separately but Meena Kumari has every intention to go back to her home and is prepared to discharge her marital obligations. He found no truth in the allegation that she is a woman of unsound mind. He was also unable to find in favour of the petitioner that she has been, cruel to her husband as to cause reasonable apprehension in the mind of the petitioner that it would, be injurious to him to live with her. This decree has been challenged before him.

5. The learned Counsel for the appellant has taken me through the evidence. On behalf of the petitioner including himself he examined Manak Chand P.W. 2, Hira Lal P.W. 3, Mingumal P.W. 4, and Jiyalal P.W. 5. On the other side Meena Kumari examined herself as P.W. 1, her father Laik Mal as D.W. 2, Shital, Prasad a cousin and the neighbour of the petitioner as P.W. 3, and Tholanmal D.W. 4.

6. There is no manner of doubt that the parties are living separately for some more than three years preceding the institution of the petition. But the matter does not end there as this by itself is not sufficient to hold that Meena Kumari has deserted her husband. The statement of Prahlad Singh does not disclose as to why Meena Kumari left him. As a matter of fact the entire emphasis of his evidence is that she is a woman of unsound mind. He also deposed about the incident some years back that she ran after him with a burning piece of wood, and almost burnt one of his hands. If this is true it is difficult for him to persuade this Court to believe that Meena Kumari was cruel to him. If she was a woman of unsound mind he cannot possibly find fault with her for this incident. As a matter of fact he should have taken care to get her treated. He produced no medical evidence nor did he get the respondent examined by a psychiatrist to satisfy this Court that she has suffered from any type of insanity. A stray incident that she went after her husband with a burning piece of wood would not be again sufficient to hold that she had been cruel to him as to cause such an apprehension in his mind that it would, be dangerous to live with her. On cross examination he clearly stated that he did not go to fetch her back. He even frankly stated that he does not want to keep her. The evidence of P.W. 2 who is the brother of the petitioner is hardly of any avail to him. He only speaks about that incident and deposed that Meena Kumari is not mentally normal. Hira Lal P.W. 3 is the cousin of the petitioner. He does not as well advance the case of the petitioner, as he informed the court that the relations between Prahlad and his wife were far from affectionate. Jiyalal (P.W. 5) stated that Meena Kumari has not been living with her husband for nearly four years. He also speaks about the

incident which according to him took place on the day of Dashera. There is no evidence to show the real cause of Meena Kumari leaving the petitioner's house. There is no evidence of cruelty either. As for the case of the petitioner that Meena Kumari has been continuously of unsound mind for a period of not less than two years preceding the institution of the petition, there is hardly any evidence on record. The mere assessment of the petitioner or that of his relations cannot be accepted that she is (sic) learned Judge has been right in holding that the petitioner has completely failed to prove his case on any of the grounds taken up by him. Here it may as well be noticed that Meena Kumari in her statement as P.W. 1 stated that she was cruelly treated by her husband and on petty matters she used to be beaten and on some occasions she had to cry out for protection and people from the neighborhood came to her rescue. She further deposed that she was turned out from the house on 20-3-70. She also refuted the allegation in her sworn testimony that she ever beat her husband with a burning piece of wood. One thing significant to note in her statement is that she is still prepared to go to her husband's house and join her society. According to her she had to stay with her father in compelling circumstances. Shital Kumar's statement as D.W. 2 needs special notice. He is the cousin and the neighbour of the petitioner. He had seen the petitioner cruelly beating his wife Meena Kumari. The learned Judge has believed this statement and there is no reason that I should differ from his view. After having examined the evidence with care I am unable to accept that the appellant has been able to make out his case either of desertion or cruelty or one as regards the unsoundness of mind of his wife.

7. The parties are present in this Court as well. In my presence Meena Kumari expressed her willingness to join her marital home. But Prahlad Singh is not prepared to accept her word and in his opinion she is not true when she says that she is prepared to go back. I have no reason to disbelieve Meena Kumari. However, in spite of efforts made by the learned Counsel for the parties the appellant did not yield and there could be no reconciliation.

8. In the result I find no substance in this appeal and it is hereby dismissed. The respondent will get Rs. 100/- as costs of this appeal from the appellant. No separate order is necessary on her application for allowing her litigation expenses.