

(1979) 12 AHC CK 0045

In the Allahabad High Court

Case No : C.M.W. No's. 5224 of 1977 and 1554 of 1978

Sarju Prasad

APPELLANT

Vs

IV Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 12-12-1979

Acts Referred:

Hindu Marriage Act, 1955 — Section 10, 29(2), 4
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(7)

Citation : (1980) AWC 248

Hon'ble Judges : Yashoda Nandam, J;K.N. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Yashoda Nandam, J.—When these two petitions came up for hearing before a learned single Judge he noticed that there was a divergence of opinion between two learned Judges of this Court on the question as to whether a wife who was living separately from her husband as a consequence of customary intervention by the Panchayat amounted to a "judicial separation" for the purposes of Section 3(7) of the U.P. Imposition of Ceiling on Land Holdings Act 1960 (hereinafter referred to as the Act). In Ramphal Singh Vs. IVth A.D.J. and Others, . Mehrotra, J. has taken the view that "it is obvious that a customary intervention by the Panchayat leading to the wife living separately cannot be termed as a judicial separation." A contrary opinion was expressed by V.K. Mehrotra, J. in Civil Misc. Writ No. 4953 of 1975 Ram Prasad v. The State decided on 7th September, 1978. In the abovementioned decision while dealing with the question, V.K. Mehrotra, J. observed as follows:

The Hindu Marriage Act, 1955, codified the law relating to Hindu marriages and, inter alia, provided for judicial separation u/s 10....Thus, the concept of separation, in so far as Hindu marriages were concerned through intervention of Court, came to be covered by statutory provisions when the Hindu Marriage Act, 1955, was enacted. However, u/s 29(2) of the said Act, it has expressly been

provided that nothing contained in the Act should be deemed to affect any right recognised by custom or conferred by any special enactment to obtain dissolution of Hindu marriages whether solemnised before or after the commencement of the Act. It is clear from the aforesaid provision that any dissolution of a Hindu Marriage in a manner permitted by custom or in a manner contemplated by any special enactment would be a separation recognised by law. In this background, it would be legitimate to take the view that the words "a judicially separated wife" in Section 3(7) of the Ceiling Act, should be held to cover cases of all separations between a Hindu husband and a wife which will be recognisable as a legal separation. Such separation may be brought about under the specific provisions of the Hindu Marriage Act, 1955 or in a manner recognised by any custom or any special enactment as contemplated by Section 29(2) of the said Act. Therefore, in judging the question whether a wife separated from her husband is to be treated as a judicially separated wife for purposes of Section 3(7) of the Act, the authorities under the Act have to recognise a separation between a Hindu wife and husband brought about either under the provisions of the Hindu Marriage Act, 1955 or in a manner recognised by the custom applicable to them or under the provisions of any special enactment. It cannot be confined to the separation brought about by recourse to the provisions in that regard contained in the Hindu Marriage Act, 1955 as submitted by the learned Standing Counsel.

(Emphasis supplied)

2. A perusal of the passage quoted above discloses that V.K. Mehrotra, J. omitted to notice that the law draws a clear distinction between a "dissolution of marriage" and a "judicial separation." While a "dissolution of marriage" snaps asunder the marriage ties between a husband and his spouse, "judicial separation" on the other hand merely permits the parties to a marriage to live apart. During the period of judicial separation a marriage continues to subsist even though certain legal obligations which a marriage involves remain suspended including that of conjugal cohabitation.

3. When the case came up for hearing before us in the first instance, we gave time to the counsel for the parties to point out to us any text book dealing with the subject or any case law wherein it has been laid down that there had ever subsisted any institution like judicial separation by custom amongst the castes or tribes of India professing the Hindu or any other religious faith. Learned Counsel for the parties frankly conceded that they had not been able to find any material in support of the proposition that there has ever been any customary law permitting judicial separation while the marriage tie subsisted amongst any of the communities in this country. It is thus clear that the expression "judicially separated wife" for the purposes of Section 3(7) of the Act does not embrace within its ambit the idea of a separation between a husband and a wife by mere custom.

4. Section 3(7) of the Act which uses the words "judicially separated wife" itself,

in our opinion, contains a complete answer to the question that has arisen for consideration as a consequence of the conflict of opinion in the two decisions mentioned above. The legislature explicitly qualified the words "separated wife" by the use of the expression "judicially." The word "judicial", according to Webster's New Twentieth Century Dictionary, means "allowed, enforced or set by order of a judge or law court." According to Shorter Oxford Dictionary, the word "judicial" means "of (used as an adjective of) or belonging to judgment in a court of law, or to a judge in relation to his function ; pertaining to the administration of justice; proper to a legal tribunal; resulting from or fixed by a judgment in court." A "judicial separation" consequently must of necessity be brought about through the intervention of a judicial act as a consequence of legal proceedings in a competent court of law. The employment of the word "judicial" rules out the idea of a legal separation through the intervention of a Panchayat etc. according to the custom, if any, prevalent in a community. The conclusion arrived at is strengthened by the provisions of the Hindu Marriage Act, to which a reference has been made by V.K. Mehrotra, J. Section 4(a) of the above mentioned Act provides that:

4. Save as otherwise expressly provided in this Act:

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

5. Section 10 of this Act expressly deals with the subject "judicial separation" and consequently assuming that there was any custom of legal separation existing amongst any castes or tribes or those practising any religious belief in this country by reason of Section 4(a) of the Hindu Marriage Act, it ceased to have any effect. Section 29(2) of the Hindu Marriage Act, on which V.K. Mehrotra, J. has placed some reliance enacts as follows:

Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

6. This provision saves only dissolution of a Hindu marriage brought about as a consequence of some prevailing custom. It expressly omits to make a mention of "judicial" or "legal" separation.

7. It may be mentioned here that the expression "judicially separated wife" in Section 3(7) of the Act has been used not only to cover cases of Hindu tenure-holders but is equally applicable to parties professing other religious beliefs. There are provisions under the Divorce Act, Special Marriage Act and the Hindu Married Women's Right to separate Residence and Maintenance Act, 1946, which also deal with decree for "judicial separation" through law courts.

8. In the instant case it has been found by the court below that a decree for

judicial separation was obtained by the parties on the 15th April, 1974. There was thus no judicial separation on the 8th June, 1973 which is the relevant date since it was on that date that the Act came into force. Assuming, therefore, that there was some form of separation obtained between Sarju Prasad (the Petitioner in Writ Petition No. 5224 of 1977) and his wife Smt. Chandrawati (the Petitioner in Writ Petition No. 1554 of 1978) such separation could not constitute a "judicial separation" between them and they consequently remained members of a family and holdings existing in their names or held by them were liable to be clubbed together for the purposes of the Act as was done by the learned District Judge.

9. For the reasons given, we are of the view that there is no merit in either of the two writ petitions. Both of them are accordingly dismissed. Parties shall bear their own costs. Interim orders, if any, are hereby vacated.