
(2000) 03 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 944 of 2000

Sau. Prema Bhasker Jadhav and Others	APPELLANT
Vs	
Bhaskar Laxman Jadhav and Another	RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 13, 13A, 27

Citation : (2000) 102 BOMLR 234

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—Heard the learned Counsel for the parties.

2. Petitioner No. 1 wife has filed a petition for divorce against Respondent No. 1 husband and it is pending in the Court of Civil Judge, Senior Division, Kalyan. The parties were married in June, 1985 and they have three children who are all minors and who are Petitioner Nos. 2 to 4 (through Petitioner No. 1), The grounds of divorce are having sexual relations with other persons - Section 13(1) and cruelty Section 13(ia) of the Hindu Marriage Act, 1955. Alternatively she has sought judicial separation u/s 13-A of the said Act. Petitioner No. 1 wife has made very serious allegations against respondent No. 1 husband. It is alleged that apart from instances of physical cruelty, he is going to prostitutes and, therefore, she fears that because of him, she may get infection which could be dreadful. It is further alleged by her that the instances of physical torture and sexual harassment have taken place in the presence of her own children and relatives. She has alleged that he indulged in excessive drinks and used abusive language. It is contended in the petition that it has become difficult for petitioner No. 1 - wife to continue to stay with Respondent No. 1 husband. Respondent No. 2 is the Social Welfare Officer at Thane. Petitioner No. 1 has averred that the flat where she is staying is in Ulhasnagar, is in her own name and, therefore, she

moved an interim Application that Respondent No. 1 ought to be restrained from entering into the flat. That application has come to be rejected and hence, this petition.

3. Rule on the Petition. Mr. Rao and Mr. Sonawane waive service of the Rule. All the Counsel are heard. Petitioner No. 1 and Respondent No. 1 are also present in Court.

4. Mrs. Gokhale, learned Counsel for the petitioners, submits that the approach of the learned Judge was totally wrong. Admittedly, the flat is in the name of Petitioner No. 1 - wife and it is purchased by her through her earnings and with the support of her father. At the highest, all that Respondent No. 1 husband is saying is that he contributed Rs. 30.000/-when the flat was purchased. No proof is shown that as to how he contributed that amount of Rs. 30.000/-. As against that, Petitioner No. 1's case is that it is her father who helped her to purchase this flat and that is how it is in her name. She also makes a grievance with the approach of the learned Judge, when he states that there is no documentary evidence with respect to the allegations of violence and cruelty made by Petitioner No. 1 - wife. She submits that there cannot be any documentary evidence in matters like this where allegations of cruelty and physical harassment are made which is a matter of certain happenings within the family. The learned Judge has also observed that no medical certificate is produced by Petitioner No. 1 wife to allege that Respondent No. 1 husband is suffering from AIDS. Mrs. Gokhale submits that what Petitioner No. 1 wife has alleged is not that Respondent No. 1 husband is suffering from any such disease but that there is every likelihood that he may land into any such problem and it will create difficulties for her. These are aspects which the learned Judge ought to have examined.

5. Mr. Rao, learned Counsel for Respondent No. 1 husband, on the other hand, submits that this is all word against word and there is no reason that the word of Petitioner No. 1 wife ought to be accepted. It is a matrimonial home and the husband has also equal right to be inside the house. In this behalf, he relies upon a judgment of a learned Single Judge of this Court in the case of Bharti Surendra Shah Vs. Surendra Ramanlal Shah, wherein the learned Single Judge had declined to grant an injunction to a wife and according to Mr. Rao in similar circumstances.

6. I have heard the learned Counsel for the parties at length. In my view, Petitioner No. 1 wife has made out a case for an injunction against Respondent No. 1 husband when she has pointed out a number of instances of ill-treatment and physical harassment. The kind of allegations that she has made are not normally made unless there is a reason to make any such allegations. In any event, the flat stands in her name and when the parties were married in 1985, normally, the purchase of this flat, which is made in 1989, is bound to be with the support of Petitioner No. 1's father as claimed by her, without which it will not be in her name. If Respondent No. 1 husband has contributed a share as he

is claiming of the amount of Rs. 30,000/- surely, he ought to have produced some material to show as to how he has contributed such an amount for the purchase of this flat. The judgment relied on by Mr. Rao also does not help him for the reason that it was essentially a proprietary claim based on title (and under Specific Relief Act) as observed by the learned Single Judge himself in para 10 thereof. That was a case where the wife who was otherwise not in the flat, had pushed herself in the flat and sought an injunction. She had also claimed maintenance subsequently from the husband. In the present case, Petitioner No. 1 wife has not claimed any maintenance from Respondent No. 1 husband so far and she has been in the premises all throughout.

7. Present Petition arises out of an application for interim order in a proceeding to seek divorce under Hindu Marriage Act, 1955. u/s 27 of the Act, the Court can, while passing the decree, pass appropriate orders with respect to property presented at the time of marriage which may jointly belong to them. Interim application has to be seen on the background of this power. Section 18(2) of the Hindu Adoptions and Maintenance, Act, 1956, entitles a Hindu wife to live separately from her husband and that too without forfeiting her claim to maintenance and amongst others Sub-clause (b) of that section permits this on the ground of cruelty so as to raise reasonable apprehension in her mind that it will be harmful or injurious to live with her husband. In the case of Shanta Wadhwa v. P.M. Wadhwa 1977 Mh.L.J. 661 : 1978 Mh. L.R. 44 where the wife had applied for judicial separation and permanent injunction against her husband from entering her residence, on finding that the husband was abusive and drunkard a Division Bench of this Court restrained him from entering the matrimonial home. In the present case, the flat is in her name. Prima facie, in my view in the present case, Petitioner No. 1 wife has made out a strong case for the order on facts and her submissions have a support in the law also.

8. Mrs. Gokhale has drawn my attention to the provisions of the Benarni Transactions (Prohibition) Act, 1988 also to contend that assuming without accepting that Respondent No. 1 husband has contributed any such amount the fact that the flat is in her name cannot be ignored. I am inclined to accept these submissions of Petitioner No. 1 wife. She is incharge Headmistress of a school for mentally retarded and is rendering valuable service. She is entitled to be at peace at home also. Respondent No. 1 is working in the Social Welfare Department with a good salary which includes substantial House Rent Allowance of Rs. 1200/- which claim is not denied. He should, therefore, make his own arrangement.

9. For the aforesaid reasons, the order passed by the learned Judge will have to be quashed and set aside and the Interim Application moved by Petitioner No. 1 in the Marriage Petition restraining her husband or his agents or relatives or any other persons claiming through him from entering or visiting the concerned flat will have to be and is hereby granted.

10. Mr. Rao, learned Counsel for Respondent No. 1 husband, makes a request

that if possible, Respondent No. 1 be accommodated in the very flat by permitting him to occupy the front room by dividing the Hat. Mrs. Gokhale, learned Counsel for Petitioner No. 1 is not agreeable for any such division. This suggestion will require some appropriate modifications, if such a request is to be entertained. The Hat is otherwise a small flat of two rooms and a kitchen. However, it Will be open to Respondent No. 1 husband to make necessary application to the Trial Court for that purpose. He may get an Architect's certificate to point out as to how suitably the sitting room can be separated from the other two rooms by providing a separate access to the other two rooms in which case the kitchen and the bedroom with toilet facility should remain with Petitioner No. 1 wife. Respondent No. 1 should bear all the expenses for any such modification. If Respondent No. 1 husband makes such an application along with the Architect's report and with the permission of the Society, it will be open to the learned Judge to examine that application in accordance with law and to decide it on merits after hearing Petitioner No. 1. In the event, any such order directing modification in the flat is passed and Petitioner No. 1 is not agreeable for the same. It will not be acted upon for two weeks thereafter.

11. Rule made absolute in the aforesaid terms. No order as to costs.

12. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.