
(1998) 05 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. No. 16998 of 1998

Smt. Nirmala Kumari

APPELLANT

Vs

District Judge, Mainpuri and others

RESPONDENT

Date of Decision : 14-05-1998

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 19, 9

Citation : AIR 1999 All 92 : (1998) 3 AWC 2138 : (1999) 3 CivCC 351 : (1999) 1 CivCC 468 : (1998) 2 DMC 696 : (1999) 3 RCR(Civil) 70

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : N. Lal, for the Appellant;

Judgement

D.K. Seth, J.—By an order dated 17.4.1998 passed by the learned District Judge, Mainpuri. In Civil Revision No. 58 of 1998, while dismissing the revision, had confirmed the order dated 17.1.1998, passed by the learned Civil Judge (Senior Division), Mainpuri deciding the issue No. 3, tried as a preliminary issue to the extent that the said issue Involves determination of disputed question of fact through evidence that might be led at the time of hearing of the suit, and, therefore, this Issue of jurisdiction should be decided along with other issues on merits at the time of hearing of the suit itself. This order is under challenge in this petition.

2. Mr. N. Lal, learned counsel for the petitioner contends that the jurisdiction of the Court in respect of the present suit filed u/s 9/13 of the Hindu Marriage Act is provided in Section 19 of the Hindu Marriage Act. By reason of Section 19 of the said Act, such petition can be filed only in the Court having jurisdiction where the marriage had solemnised or the parties have lived or resided last together.

3. In the present case the plaintiff in paragraph 8 of the plaint had admitted that the petitioner-defendant wife had been in service at Budaun and had been residing there. Though in the plaint, he had claimed that the marriage has taken place at Mainpuri but in the replication filed by him in reply to the written

statement by the petitioner-wife alleging that the marriage had taken place at Budaun, the plaintiff had admitted that the marriage to have been solemnised at Budaun. Therefore, according to the learned counsel for the petitioner, by reason of these two admissions, no evidences were necessary to be led for the purpose of deciding the issue No. 3 with regard to jurisdiction. He relies on the decision in the case of Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, , in support of his contention.

4. According to him, when there has been an admission, there is no scope for leading of further evidence and the Issue can be decided on the basis of such admitted fact.

5. I have heard learned counsel for the petitioner Mr. N. Lal at length and have perused the Impugned orders as well as the pleadings as have been placed before this Court.

6. Admittedly, Section 19 of the Hindu Marriage Act creates Jurisdiction for matrimonial cases either at the place where the marriage was solemnised or at the place where the respondent at the time of the presentation of the petition resides or at the place where the parties to the marriage last resided together.

7. It may be admitted that the marriage was solemnised at Budaun. It may also be admitted that the wife had been living at Budaun at the time of presentation of the petition. But in the plaint, it has been pleaded that they have last resided at Mainpuri. In the written statement, the said fact has been denied and it has been alleged that the last residence of the parties was also at Budaun. Mr. Lal, learned counsel for the petitioner very fairly concedes that this contention of the wife in the written statement has not been admitted in the replication. But however, according to him, it has also not been denied and, therefore, it should be deemed to have been admitted.

8. Thus, it appears that there was an assertion in the plaint that the parties had last resided at Mainpuri while it was denied in the written statement by the wife while asserting that they had last resided at Budaun. The replication being silent, the dispute remains. Even in the absence of denial of the written statement, the statement made in the plaint remains. Unless anything contrary is stated in the replication, the statement made in the plaint cannot be eclipsed. Thus there was two assertions by the contending parties one in the plaint and the other in the written statement contradicting each Other. Such question, therefore, cannot be decided on the basis of the alleged admission as contended by Mr. Lal. Inasmuch as though the other two conditions, namely, clauses (i) and (ii) of Section 19 of the Act, even it is assumed that these are admitted, but so far as clause (iii) is concerned, there is no such admission.

9. Section 19 as it contemplated that such petition is to be filed within the jurisdiction of the Court either where the marriage was solemnised or where the respondent at the time of the presentation of the petition resides or where the parties to the marriage last resided together, therefore, the suit can be filed in

any of the Court having jurisdiction in respect of either of the three clauses mentioned above. If one of the clause is satisfied, it is well maintainable in the Court where the parties had last resided together. Therefore, the choice is of the plaintiff to present the plaint in a Jurisdiction of his choice. Since it is alleged on the basis of the plaint that the parties last resided at Mainpuri, therefore, the petitioner was presented at Mainpuri. If the same is denied, the same has to be decided on evidence as to whether the parties had last resided at Mainpuri or at Budaun. When one averment is asserted by one party and denied by the other, in that event, the Court cannot decide without proper evidence.

10. The decision in the case of Smt. Jeewanti Pandey (*supra*), does not help Mr. Lal in the facts of the present case. Inasmuch as in the said case it was held in the context of clause (it) of Section 19, the word "resides" must mean the actual place of residence and not a legal or constructive residence, it certainly does not connote the place of origin. The word "resides" is a flexible one and has many shades of meaning, but it must take Its colour and content from the context in which it appears and cannot be read in Isolation. It follows that it was the actual residence of the appellant at the commencement of the proceedings, that had to be considered for determining whether the District Judge. Almorah had jurisdiction or not. But the parties originally belonging to a village Bagyan, within the territorial jurisdiction of the Court of the District Judge. Almorah having been married at New Delhi and having been residing at Delhi, simply because both of them were original residents of Almorah, the suit cannot be presented at Almorah. Since on the facts of the said case, the marriage was solemnised at New Delhi and both husband and wife were residing thereafter at Delhi, there was no averment that the parties had ever resided at Almorah, though they were the residents of Almorah. In the said case, it was further held that in order to give jurisdiction on the ground of "residence", something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the Court in which the respondent is sued, is his natural forum. The word "reside" is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's owing dwelling permanently as well as in its extended sense. In its ordinary sense, "residence" is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time : to dwell permanently or for a length of time to have a settled abode. Where there is such fixed home or such abode at one place, the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g., for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides.

11. Thus, it appears that even it is admitted that the plaintiff had resided at

Budaun for some time, that might be at the residence of the wife meaning thereby at his in-laws, house then that would be a house other than his fixed abode at Mainpuri which is not disputed in the present case. Admittedly, the plaintiff has fixed abode at Mainpuri. If he has resided casually for some time at the house of father-in-law, it cannot be said to be a fact that he had last resided together at Budaun. But then as has been found in the decision in the case of Smt. Jeewanti (supra), this is a question to be found on trial as may appear through evidence. Whether one is to be accepted and other is to be discarded is dependent on the basis of the material that would come before the Court. The situation as it stands today is not enough to come to such a conclusion having regard to decision in the case of Smt. Jeewanti (supra), with regard to the impact of the last residents of the parties.

12. For all these reasons. I am not inclined to interfere with the order. The writ petition fails and is accordingly dismissed.

13. It may, however, be observed that all the observations hereinabove are tentative and for the purpose of deciding the writ petition only and shall not be taken into account at the time of deciding the suit on merit.

14. At this stage, learned counsel for the petitioner submitted that issue No. 3 may be decided separately before other issues.

15. In view of the decision in the case of D. P. Maheshwari v. Delhi Administration and others, AIR 1984 SC 153, I am not inclined to accede to such a prayer. Inasmuch as it was held in the said case that the Court should avoid deciding issues as preliminary Issue. But in the facts and circumstances of the case as noted above, it would not be Justified to decide the issues separately when all the issues can be decided together. However, it is expected that the matter being a matrimonial matter, may be decided by the Court below as expeditiously as possible.