

(1992) 09 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 90-M of 1985

Smt. Sumitra Devi

APPELLANT

Vs

Narender Singh

RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Hindu Marriage Act, 1955 — Section 9

Citation : (1993) 103 PLR 422

Hon'ble Judges : S.S. Sodhi, Acting C.J.; S.S. Grewal, J; N.K. Sodhi, J; M.R. Agnihotri, J; G.C. Garg, J

Bench : Full Bench

Advocate : R.S. Bindra and Harjit Kaur, for the Appellant; S.K. Mittal and B.S. Ranna, for the Respondent

Judgement

S.S. Sodhi, A.C.J.—The reference here seeks reconsideration of the judgment of the Full Bench in Smt. Kailash Wati v. Ayodhia Parkash 1977 79 P L. R. 216 .

2. The view expressed in Kailash Wati's case (supra), while dealing with the provisions of section 9 of Hindu Marriage Act, 1955, was sought to be doubted by the Division Bench on the ground that the Full Bench had failed to notice Article 19(1)(g) of the Constitution which guarantees to all citizens the right to practise any profession or to carry on any occupation, trade or business.

3. It will be recalled that there was a similar attempt by a learned single Judge to have the judgment in Kailash Wati's case (supra) reconsidered by a still larger bench, on an argument resting upon Article 14 of the Constitution, in the context of personal laws like Hindu laws. This was foiled by another Full Bench in Pritam Kaur v. Surjit Singh 1984 86 P. L. R. 202 . as being, "plainly untenable on principle." It being observed in this behalf, "if the ratios of larger Benches and the judgments of superior Courts were to be merely rested upon the quick- sands of the ingenuity of the counsel to raise some fresh or novel argument (which had not been earlier raised or considered) in order to dislodge them, then the

hallowed rule of the finality of binding precedent would become merely a teasing mirage "Chief Justice S S Sanchiawalia speaking for the Full Bench went on to lay down as a settled principle, "that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh. The ratios of the Full Benches are and should be rested on surer foundations and are not to be blown away by every side wind It is only within the narrowest field that a judgment of a larger Bench can be questioned for re-consideration. One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the Superior Court or a larger Bench of the same Court Secondly, where it can be held with certainty that a co equal Bench has laid the law directly contrary to the same. And thirdly, where it can be conclusively said that the judgment of the larger Bench was rendered per incuriam by altogether failing to take notice of a clear-cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a smaller Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are admittedly the well-accepted ones in which and otherwise binding precedent may be suggested for reconsideration."

4. With this statement of law as set forth and enunciated, we with respect, wholly concur and also hereby endorse the view.

5. Not only this, but the Supreme Court in Smt. Saroj Rani Vs. Sudarshan Kumar Chadha, has specifically ruled that section 9 of the Hindu Marriage Act, 1935, is not violative of Articles 14 or 21 of the Constitution. On parity of reasoning, no infirmity can be attributed to this provision of law in the light of Article 19(1)(g) of the Constitution either.

6. There can thus be no manner of doubt that no occasion arises here to warrant reconsideration of the view expressed by the Full Bench in Kailash Wati's case (supra)

7. The reference is accordingly hereby declined and the matter is remitted to the Division Bench for disposal on merits.