
(1993) 08 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 94-M of 1989

Sundari Devi

APPELLANT

Vs

Ram Lal

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : (1995) 1 DMC 252 : (1994) 108 PLR 693

Hon'ble Judges : N.K. Sodhi, J;G.R. Majithia, J

Bench : Division Bench

Advocate : M.L. Sarin and Alka Sarin, for the Appellant; Surjit Kaur Tongue and K.K. Duggal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order will dispose of two First Appeals Nos. 94-M of 1989 and 90-M of 1985 both of which involve common questions of law and identical facts.

2. In F.A.O. No. 95-M of 1989, the wife has filed an appeal against the order dated March, 14, 1989 passed by the Additional District Judge, Gurgaon who, on the petition of the husband filed u/s 13 of the Hindu Marriage Act, 1955 (hereinafter called "the Act") has dissolved the marriage between the parties by a decree of divorce.

3. Marriage between the parties was solemnised on April 13, 1976 at Palwal according to Hindu rites and thereafter they lived and cohabited as husband and wife at Sohna. No issue was born out of the wedlock. It is admitted case of the parties that both were working as teachers at the time of marriage. The wife was posted at Palwal whereas the husband remained posted at a place nearby Sohna which is at a distance of 28 kilometres. It is also the common case of parties that the wife lived at Palwal with her parents and used to visit the husband only on week ends and during vacations. Since the appellant had withdrawn from the

society of the respondent-husband without any reasonable and sufficient cause and she wilfully refused to join the matrimonial home for the last several years, the respondent-husband filed a petition u/s 13 of the Act seeking a decree of divorce on the ground that he suffered mental cruelty because of the callous attitude of the wife. This petition was contested by the wife and the pleadings of the parties gave rise to the following issues :

1. Whether the petitioner is entitled to the dissolution of marriage by decree of divorce, on the grounds, as alleged ? OPP.

2. Whether the petition is not maintainable as alleged ? OPR.

3. Relief.

5. After recording evidence of the parties, the Trial Court found that the appellant had wilfully withdrawn from the society of the husband which caused mental cruelty to him and that she denied the performance of the marital obligations which she was bound to perform while living in the matrimonial home. Following the decision of the Full Bench in *Kailash Wati v. Ayodhya Parkash* (1977)79 P.L.R. 216 (F.B.), issue No. 1 was decided in favour of the husband and against the wife. On the basis of the finding recorded on this issue, petition filed by the husband was accepted and a decree for divorce was passed dissolving the marriage between the parties.

6. When this appeal came up for motion hearing, the same was admitted and ordered to be heard by a Division Bench because the view taken by the Full Bench of this Court in *Kailash Wati's* case (supra) had been doubted in F.A.O. No. 90-M of 1985 (*Sumitra Devi v. Narender Singh*) which had been referred to a larger Bench. The present appeal along with FAO No. 90-M of 1985 were then placed before a Full Bench of this Court. The larger Bench wholly concurred and endorsed the view taken in *Kailash Wati's* case and observed that there was no occasion to warrant the reconsideration of the view expressed in that case. The reference was accordingly declined and the matter was remitted to the Division Bench for disposal on merits. This is how both these appeals are before us for disposal.

7. We have heard Counsel for the parties at length and after going through the evidence recorded in this case we find no ground to take a different view from the one taken by the Trial Court and held that the wife has wilfully withdrawn from the society of the husband and that she refused to live in the matrimonial home only for the reason that she was employed as a teacher at Palwal. In view of this finding, the matter is squarely covered against the appellant and in favour of the husband by the Full Bench Judgment of this Court in *Kailash Wati's* case.

8. In F.A.O. No. 90-M of 1985, the wife has filed the appeal against the order dated January 18, 1985 passed by the District Judge, Narnaul who allowed the petition for restitution of conjugal rights filed by the husband after recording a finding that the wife had no reasonable excuse to withdrawn from the society of

the husband. In this case also, the wife was in service at village Hajipur and it was her case that it was not possible for her to go to Narnaul and live in the matrimonial home. After recording this finding which is based on evidence recorded by Trial Court and after following the law laid down in Kailash Wati's case the petition for restitution conjugal rights filed by the husband was allowed. The wife has come up in appeal. Having gone through the evidence were find no reason to take a different view. Here also, the matter is clearly covered against by the Full Bench judgment of this Court in Kailash Wati's.

9. Consequently, both the appeals are dismissed with no order as to costs.