

(1915) 08 BOM CK 0024
In the Bombay High Court

Yesubai Bhratar Sadashiv Ganesh Despande

APPELLANT

Vs

Sadashiv Ganesh Despande

RESPONDENT

Date of Decision : 23-08-1915

Acts Referred:

Citation : 30 Ind. Cas. 934

Hon'ble Judges : Hayward, J;Batchelor, J

Bench : Division Bench

Judgement

1. This is an appeal by a Hindu wife who sued her husband for separate maintenance. She was defeated in the trial Court, because the learned Judge there held, first, that the plaintiff voluntarily deserted her husband, the defendant, and secondly, that the unchastity pleaded in bar of the plaintiff's claim was proved.

2. The parties to the suit were married in 1872 or 1873. The rupture occurred either in 1885 or in 1896. According to the defendant it was in 1885 that he abandoned his wife, because he detected her in the very act of adultery. The wife, who denies all unchastity, says that the separation occurred in 1896 when she was abandoned and expelled by her husband. It is admitted that in 1887 the defendant married another woman. This suit was filed in April 1912. The main object of this appeal, as the learned Pleader Mr. Desai has candidly made known to us, is to remove the stigma of unchastity which the lower Court's judgment has attached to the plaintiff. And here, we think, the plaintiff is entitled to this Court's pronouncement in her favour. The judgment of the learned Judge below is upon this point unsatisfactory. For his conclusion is couched in these halting and hesitating words: For all these reasons it looks to me that she has not been quite faithful to her husband." It is not, we think, upon such a doubtful expression of opinion that a woman is to be branded as unchaste by judgment of a Court, and the learned Judge's attention might with advantage be directed to the language of their Lordships of the Privy Council in *Nawab Khwaja Muhammad Khan v. Nawab Husaini Begum* 7 Ind. Cas. 237 : 12 Bom. L.R. 638 : 14 C.W.N.

865 : 7 A.L.J. 871 : 8 M.L.T. 147 : 12 C.L.J. 205 : 20 M.L.J. 614 : 32 A. 410 : (1910) M.W.N. 313 : 37 I.A. 152 where their Lordships had occasion to comment upon a similarly objectionable finding which in that case was expressed in these words: "although unchastity is not duly proved, yet I have no hesitation in holding that the plaintiff's character is not free from suspicion." Upon that the Judicial Committee observed: Their Lordships cannot help considering an opinion of this kind regarding a serious charge as unsatisfactory. Either the allegation of unchastity was established or it was not; if the evidence was not sufficient or not reliable there was an end of the charge, so far as the particular matter in issue was concerned, and it was hardly-proper to give expression to what the Judge calls suspicion. In our present case the learned Judge's excursion into the regions of mere suspicion, is the more unfortunate, because direct ocular testimony was adduced to prove that this woman was an adultress, and the testimony was expressly disbelieved, and in our opinion very rightly disbelieved by the learned Judge. No attempt has been made to rehabilitate either these witnesses or the witnesses who spoke to vague rumour as to the appellant's character, and, indeed, Mr. Rao has frankly admitted that he is not in a position to press this charge of unchastity. We must, therefore, in the appellant's interests dissociate ourselves from the learned trial Judge's finding upon this point and formally record our opinion that there is not upon this record any evidence sufficient to warrant any imputation against the plaintiff's moral character.

3. But the plaintiff in order to succeed in this suit must show that the defendant, her husband, abandoned, or deserted or expelled her without justifying cause. Her story in the plaint is that in 1890 the husband ill-treated her and finally beat her and, in her own words, kicked her out of the house, but notwithstanding that, she continued occasionally to visit him up till 1899. In that year she ceased to visit him, because he stopped her from entering his house. That account apparently includes a charge of cruelty as well as abandonment. But there is no evidence of cruelty and Mr. Desai for the appellant admits that the charge of cruelty is unsustainable. We have, therefore, only to consider the case of desertion or expulsion.

4. According to the plaintiff's deposition, the defendant expelled her from his house about three years after he had married the 2nd wife. The account, however, is not quite consistent and there are various indications in the lady's deposition that her testimony is such as ought not to be accepted without corroboration. Now, her story, if it be true, was capable of easy corroboration. For she, tells us that there were four witnesses to the events upon which she relied, viz., Grundoba, Jay want, Duyanoba and Bhan Desai. Not one of these four men was examined as a witness, and although the plaintiff did cite Bhan Desai, she subsequently refrained from calling him. So far, therefore, the plaintiff's story is weakened by the absence of the corroboration which should be forthcoming: and has not been offered.

5. What remains of her case seems to us to be disposed of by reference to the notice which she served upon her husband on the 29th of July 1910. It is Exhibit 34 in the suit and the ground for it is stated in these terms: Notice is given you that you are my husband. After the marriage you and I, living together for several years, managed wordly affairs. But as you married a second time some years after our marriage, I could not pull on the house, and quarrels took place often-times. Therefore I had to maintain myself by residing at my mother's place. This notice, in our opinion, gives the true key to this suit and the real explanation of the division between this couple. The evidence shows that the plaintiff, an only daughter of well-to-do parents, was petted and beloved by them. Used to such an environment, it was natural that on the introduction of a rival into her house she should resent the consequences and should refuse to accept that position of submission which the Hindu Law ascribes to a wife so placed. We are satisfied on the evidence that it was her natural revolt from this position which led to the quarrel and induced her to leave her husband's house of her own accord. If she had been expelled or ill-treated by the husband, she had numerous and powerful friends, who, we must suppose, would have been ready to take her part and to vindicate her claims against the husband. This inference seems to us to be supported by the long delay, which occurred before the plaintiff was minded to seek relief. On her showing she was expelled in 1896; yet from that year down to 1910 she makes no move or claim or attempt to assert her rights. The only explanation which we can find of this, consistent with the evidence, is that, she was conscious that she had voluntarily deserted her husband and had so forfeited whatever rights she might otherwise have, had against him.

6. On these grounds we agree with the learned Judge below in thinking that the plaintiff is shown voluntarily to have deserted her husband, and on that ground she is disentitled to claim separate maintenance from him.

7. The appeal must, in our opinion, be dismissed, the decree of the Court below being confirmed.

8. No order as to costs.