

Smt. Jeewanti Pandey

Vs

Kishan Chandra Pandey

Civil Appeal No. 2754 of 1981

(A.P. Sen, A. Varadarajan JJ)

20.10.1981

JUDGMENT

A.P. SEN, J. –

1. The short point involved in this appeal by special leave from a judgment of the Allahabad High Court, is whether the Court of the District Judge, Almora had jurisdiction to entertain in the Petition for nullity of marriage filed by the respondent under Section 12 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act).
2. To bring out the point, it is necessary to state a few facts. It appears that the parties originally belonged to Village Bagyan, District Pithoragarh, in the State of Uttar Pradesh. The appellant's case is that they fell in love and she became enticed, as the respondent had access to her during the period of courtship. Her case that she wanted to marry the respondent, but her father was opposed to the alliance as her elder brother and sister unmarried. She was therefore brought in an advanced stage of pregnancy to Delhi and though the intervention of her uncle Basant Kumar, the marriage was solemnised on January 27, 1976 according to Arya Samaj rites at the Arya Samaj Mandir, Hanuman Road, New Delhi, Three days after marriage, i.e. On January 27, 1976, the respondent left the residence of Basant Kumar on the pretext that he had to fetch his belonging from the residence of his uncle Dharm Nand Pant who also lives at Delhi, and never returned, On February 6, 1976, he served a notice on the appellant alleging that the marriage was a nullity as she got pregnant through someone else, that fraud was practiced on him by her uncle Basant Kumar and that he had been coerced to marry her against will. On February 17, 1976 she sent a reply denying the allegations made therein. On March 2, 1976 she filed a petition for restitution of conjugal rights under Section 9 of the Act in the Court of Subordinate Judge, Class I, Delhi.
3. It may here be stated that although the appellant is a resident of Delhi as she lives with her uncle Basant Kumar at Lajwanti Garden, and the respondent was also a resident of Delhi being employed, at all material times, as Radio Technician in the Ministry of Home Affairs, Rail Bhawan, New Delhi, he started the present proceedings not at Delhi but at Almora.
4. On March 18, 1976 the respondent filed a petition for nullity of the marriage under Section 12 of the Act in the Court of the District Judge, Almora alleging that the parties were residents of Village Bagyan, District Pithoragarh, i.e. within the territorial jurisdiction of the Court of District Judge Almora. On March 23, 1976, i.e. just after five days of the filing of the petition under Section 12 of the Act the appellant delivered a dead child at Delhi.
5. On February 25, 1977 the Subordinate Judge, Class I, Delhi decreed the appellant's suit for

restitution of conjugal rights under Section 9 of the Act. In decreeing her claim for restitution of conjugal rights, the learned Subordinate Judge observed :

That the to sum up the evidence adduced by the petitioner proves that the petitioner and respondent were known to each other and had developed sexual intimacy. It is further proved that the respondent married the petitioner at Delhi on January 24, 1976 of his own sweet free will according to Hindu rites. The petitioner delivered a dead child on March 23, 1976 would show on that on the date of marriage, the petitioner was running in 7th month of pregnancy. Such advanced stage of pregnancy could not be hidden from the vision of any person. The plea of respondent that he did not know on January 24, 1976 that the petitioner was pregnant cannot be believed. The respondent thus knew at the time of marriage that the petitioner was pregnant. The very fact that he married her of his own free will would justify the conclusion corroborated by other evidence and circumstances discussed above that the petitioner had conceived from the respondent and the respondent thus married her of his own free will.

The judgment of the learned Subordinate Judge decreeing the appellant's claim for restitution of conjugal rights Section 9 of the Act was not appealed from and has, therefore, become final.

6. Upon the these facts, it is quite evident that the Court of the District Judge, Almora had no jurisdiction to try the petition for nullity of marriage filed by the respondent under Section 12 of Act. The appellant by her written statement filed on August 23, 1976 challenged the jurisdiction of the District Judge, Almora to try the suit. The learned District Judge, accordingly framed a preliminary in as to jurisdiction. By his Order dated April 8, 1978 he negated the objection raised by the appellant holding that since the parties were originally resident of Village Bagyan, District Pithoragarh, that is, a place within the territorial jurisdiction of the Court of the District Judge, Almora, he was competent to entertain and try the suit.

7. The appellant being aggrieved by the Order of the learned District Judge preferred an appeal before the High Court. The High Court by its judgment dated August 6, 1979 upheld the finding of the learned District Judge observing :

The allegations made in the written statement do unmistakably show that the respondent was ordinarily residing at village Bagyan which was within the limits of the territorial jurisdiction of the Court of District Judge, Almora. Even if she happened to be in Delhi on the date when the petition was presented, she must have gone to Delhi on a temporary visit as she had no place of residence Delhi and the respondent could not be said to have been residing at Delhi when the petition was presented in the District Court.

8. In arriving at that conclusion, the High Court was obviously influenced by the fact that the parties never had any permanent residence. While it is true that mere casual or temporary visit do not constitute "residence" within the meaning of clause (ii) of Section 19 of the Act, it cannot be said that the parties came to Delhi on a temporary sojourn for a day or two, The appellant's case is that she left her parental home at Village Bagyan as her father did not consent to the marriage. If that be so, the irresistible conclusion is that she came to reside with the respondent at Delhi. It was frankly conceded us that finding of the High Court that she should be so regarded as having her residence at Village Bagyan in the district of Pithoragarh is based on no evidence. It is agreed on all hands that

ever since marriage, the appellant has been residing with her uncle Basant Kumar at Lajwanti Garden, New Delhi.

9. Section 19 of the Act, insofar as material, reads as follows :

19. Every petition under that Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction -

(i) the marriage was solemnised, or

(ii) the respondent, at the time of the presentations of the petition, resides or,

(iii) the parties to the marriage last resided together . . .

10. It is common ground that the marriage was solemnised on January 24, 1976 at New Delhi. The fact that the parties last resided together at the residence of the appellant's uncle Basant Kumar at Lajwanti Garden, New Delhi is not in dispute. It is, therefore, clear that the conditions laid down in clauses (i) and (iii) of Section 19 of the Act are not present to invest the Court of the District Judge, Almora to entertain the petition for annulment of marriage filed by the respondent under Section 12 of the Act.

11. The question that arise is whether the learned District Judge was invested with jurisdiction by reason of clause (ii) of Section 19 of the Act, i.e. whether, at the time of presentation of the petition, the appellant was a resident of Village Bagyan within the territorial jurisdiction of the Court of the District Judge.

12. 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 "resides" 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 own 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 anode for a considerable time; to dwell permanently or for a length of item; to have a settled abode for a time. It is the place where a person has fixed home or abode. In Webster's Dictionary, "to reside" has been defined as meaning "to dwell permanently or for any length of time", and words like "dwelling place" or "abode" are held to be synonymous. Where there is such fixed how or such abode at one palace the person cannot be said to reside at any other place where he had gone on a causal 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 are houses of others, his actual and physical habitation is the place where he actually personally resides.

13. It is plain in the context of clause (ii) of Section 19 of the Act, that 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 "reside" is a flexible one and has many shades of meaning, but it mist tale 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, Almora, had

jurisdiction or not. That being so, the High Court was clearly in error in upholding the finding of learned District Judge that he had jurisdiction to entertain an try the petition for annulment of marriage filed by the respondent under Section 12 of the Act.

14. In the result, the judgment of the High Court is set aside and the District Judge, Almora, is directed to return to the respondent the petition filed by him for nullity of marriage under Section 12 of the Hindu Marriage Act, 1955 for presentation to the proper court, i.e. The Court of the District Judge, Delhi. There shall be no order as to costs.

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