

Jeet Singh and Others

Vs

State of U. P. and Others

Civil Appeal Nos. 3732-3733 of 1982

(Kuldip Singh, V. Ramaswami-II, N.M. Kasliwal JJ)

25.11.1992

JUDGMENT

V. RAMASWAMI, J.

1. The fact as found by the courts below are as follows. Jeet Singh - the appellant in the Civil Appeal No. 3732 of 1982 had two wives. The first wife is the appellant in the Civil Appeal No. 3733 of 1982. She filed some time in 1966 a criminal complaint against her husband under Sections 494 and 109 of the Indian Penal Code. During the pendency of the criminal proceedings they entered into a compromise before a Nyaya Panchayat constituted under the U.P. Panchayat Raj Act, 1947 and the same was recorded by the Adalat Nyaya Panchayat Angadpur Mukam, Meerut District and that consent order dated November 14, 1966 recorded by the Nyaya Panchayat reads as follows:

"Today dated November 14, 1966, A. D. Nyaya Panchayat held meeting under the chairmanship of Shri Bhanwar Singh Sarpanch. Shri Hem Raj, son of Ram Sharma Brahman, resident of Village Barawad, Jeet Singh, son of Hem Raj and Smt Ramo Devi wife of Jeet Singh Brahman, resident of Village Barawad party one and Smt. Mayawati daughter of Nam Chand, resident of Village Chhaprauli second party with some of their relations are also present. Before the panch both parties stated that Smt. Mayawati Devi had filed a case under Section 494/109, Indian Penal Code, against hem Raj and others and continuance of criminal case shall ruin the family. Relatives of both parties have come and wish to resolve the dispute by mutual settlement. They want to enter into settlement and get it verified. Both the parties by agreement have entered into the following settlement which both the parties and their relatives have admitted before the Sarpanch and panchs and verified the same."

The settlement is like this:

"Smt. Mayawati, who has filed a criminal case before a Magistrate at Meerut, shall get it dismissed. Hem Raj out of his property shall execute sale deed in favour of Smt. Mayawati Devi of two Bhumidhari plots Khasra numbers 157, 17 biswa and 159, 6 biswa 14 biswansis for her maintenance. Smt. Ramo Devi alone shall reside with Jeet Singh at his house as his wife and the children born from Smt. Ramo Devi and Ramo Devi only shall be heirs and claimants of the property of Jeet Singh. Smt. Maya Devi shall not be recognised as wife of Jeet Singh and she will not acquire any right in Jeet Singh's property. Relationship of husband and wife between Jeet Singh and Maya Devi shall be deemed to be finished. Both the parties are agreed to this settlement which has been brought about by the intervention of the relatives and both

the parties and their relatives after hearing and understanding are putting their signatures and thumb impression before the Nyaya Panchayat."

2. In pursuance of this consent order Hem Raj, the father of Jeet Singh executed a sale deed on November 22, 1966 in favour of Mayawati conveying two bhumidhari plots bearing khasra numbers 157 measuring 17 biswa and 159 measuring 6 biswa 14 biswansis.

3. In the proceedings taken under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the 'Ceiling Act') the Ceiling Authorities included the plots bearing khasra Nos. 157 and 159 in the holding of Jeet Singh as the land belonging to his wife includible in the holding of her husband. Both Jeet Singh and Mayawati objected to the inclusion of the land in the holding of Jeet Singh on the ground Mayawati is a judicially separated wife and that, therefore, it could not be included in the holding of Jeet Singh. The prescribed authority under the Ceiling Act rejected these contentions. Both Jeet Singh and Mayawati filed separate appeal before the Distt. Judge, Meerut who by his order dated March 22, 1979 dismissed the same in the view that the consent order made by the Nyaya Panchayat will not make Mayawati a judicially separated wife. Two separate writ petitions were filed by the two appellants in these appeals and the High Court by order dated August 20, 1980 dismissed the writ petitions in the view that since the Nyaya Panchayat had no jurisdiction to deal with matrimonial or divorce cases and by consent of parties no jurisdiction also could be vested in it, and held that on the basis of the consent order made by the Nyaya Panchayat, Mayawati could not be held to be a judicially separated wife.

4. The question, therefore, for consideration is whether on the facts and in the circumstances of this case Mayawati could be said to be a "judicially separated wife" within the meaning of Section 3(7) of the Ceiling Act. That provision defines "family" as follows:

"3. (7) 'family' in relation to tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)."

5. Husband and wife may be living separately by consent due to various reasons. Such separate living may have been preceded by a family settlement or a panchayat or sanctioned by custom in the community. It may be due to desertion by the husband or due to certain valid reasons like cruelty the wife may be forced to live separately. Can this separate living be called "judicially" separated.

6. By the time the Ceiling Act was enacted the words "judicial separation" had acquired a definite meaning. Section 10 of Hindu Marriage Act, 1955, provides for "judicial separation" among Hindus. Under this provision read with Section 19 only a District Court (civil court) has jurisdiction to grant a decree for judicial separation. Parties governed by the Indian Divorce act, 1869 may file a petition under Section 23 thereof for judicial separation before a Distt. Court or the High Court. Mohammedan Law also recognises a right to live separately without an obligation to have cohabitation with her husband though such claim can be made only in rare circumstances like cruelty or that her life is unsafe or other strong grounds. This order could be obtained by the wife in a suit instituted by her or in a suit instituted by the husband for restitution of conjugal rights.

7. The judicial sanction of separation creates many rights and obligations. A decree of an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation

and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.

8. The obvious intention of the provision in Section 2(7) of the Ceiling Act therefore is that a wife who is judicially separated shall have a right to keep the properties given to her as and in lieu of maintenance or otherwise during her separate living and correspondingly it shall not be included in the holding of her husband. But in order to have the benefit of this provision the parties shall prove that the wife is "judicially" separated. It may be stated that in the instant case the consent order obtained from Nyaya Panchayat was not intended to get over any of the provisions of the Ceiling Act. There was a bona fide dispute between the parties. The wife had gone to the criminal court with a petition under Section 494 IPC and the settlement was effected during the pendency of these criminal proceedings before the Nyaya Panchayat. It may be stated that the Ceiling act came into force with effect from June 8, 1973. It is, therefore, necessary to consider as to what is the scope and meaning of the words "judicially separated wife" in Section 2(7) of the Ceiling Act.

9. The word "separated" is qualified by the word "judicially". Unless the separate living was a judicially ordered or recognised one it would not qualify for exclusion under the provision. The word "judicial" according to Webster's New Twentieth Century Dictionary means "allowed, enforced or set by order of a Judge or law court". According to Shorter Oxford dictionary, the word judicial means "of (use as an adjective of) or belonging to judgment in a court of law, or to Judge in relation to his function, pertaining to the administration of justice; proper to a legal tribunal; resulting from or fixed by a judgment in Court". In the context, therefore, it means an act done in pursuance of an order or direction of a court of competent jurisdiction. It is used in contrast to separate living by agreement of parties or at the intervention of mediators without the intervention of a judicial proceeding in a competent court of law.

10. That leaves us to the question whether the consent recorded by the Nyaya Panchayat would be one within the meaning of the words "Judicially separated". There could be no doubt that the U.P. Panchayat Raj Act, 1947 does not confer any jurisdiction on the Nyaya Panchayat to decide any matrimonial matter. The civil jurisdiction conferred under Section 64 relates to claim of moonier claim for recovery of movable property or for compensation for wrongfully taking or injuring a movable property and damages caused by cattle trespass. Even for this there is a restriction in respect of monetary jurisdiction and that is the value of the claim shall not exceed hundred rupees subject however to the power of the Government to extend such jurisdiction up to a value not exceeding five hundred rupees. The learned counsel however, relied on Section 82 of the said Act which reads as follows:

"Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be lawful for the Nyaya Panchayat to decide any dispute arising in its local area and not pending in any court in accordance with any settlement, compromise or oath agreed upon in writing by the parties."

We are unable to agree that this section confers any extraordinary or special jurisdiction. The section does not deal with jurisdiction at all. It only enables the Nyaya Panchayat to pass an order by consent in any dispute which was cognizable and which was within their jurisdiction. If the Nyaya Panchayat had no jurisdiction to decide a dispute under any of the other provisions of Act this provision does not enable it to extend or assume any such jurisdiction to decide disputes which are not covered by the other provisions in the Act.

11. A similar question came up for consideration in Sarju Prasad v. IVth Addl. Distt. & Sessions Judge[(1980 AII LJ 515 (All)] A Division Bench of the High Court took the view that the expression 'judicial separation' must of necessity be brought about through the intervention of a judicial act as a consequence of legal proceedings in a competent court of law and that the employment of the word 'judicial' rules out the idea of a legal separation through the intervention of a Panchayat etc., according to the custom if any prevalent in the community. The Bench also observed:

"It may be mentioned here that the expression 'judicially separated wife' in Section 3(7) of the Act has been used not only to cover cases of Hindu tenure-holders but is equally applicable to parties professing other religious beliefs. There are provisions under the Divorce Act, Special Marriage Act and the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 which also deal with decree for 'judicial separation' through law courts."

12. The learned counsel relied on a decision of a Single Judge of the Allahabad High Court in Gangotri Devi v. State ((1982) All LJ 103 (All)) where the learned Judge has expressed the view that the expression 'judicially separated' cannot be understood in the technical sense of grant of decree for judicial separation. That was a case where in a suit for injunction from interfering with the peaceful enjoyment of certain properties by the wife against her husband the Court held that she was entitled to the land in dispute on the basis of her claim that she had separated from her husband. It was argued that her status as a legally separated wife had been recognised by the Court in the suit and that should be sufficient to take her out from the definition of family in Section 3(7). If the facts were that there was already an order of court, and that was the basis for the decree the matter would be different but the learned Judge has not restricted the decision to the facts of that case but observed.

"The question of judicial separation, therefore, arises in relation to a Bhumidhar, Sirdar or Asami. Such a person may be Hindu or a Muslim or Christian or of any other caste. Can the expression 'judicially separated' therefore, be understood in the technical sense as used in Section 10 of the H.M. Act as has been held by the appellate authority or in wider sense descriptive of a state of affairs between husband and wife. A judicial separation means suspension of the relationship between husband and wife. It is not an annulment of the marriage. In other words they continue as husband and wife although they do not discharge their marital obligations. There is no provision like Section 10, H.M. Act, in Muslim Law or Indian Christianity Act, If the words 'judicially separated' are understood as in Section 10 of H.M. Act, then obviously it would apply only to Hindus and not to Muslims or person of other religions. Such a construction cannot be accepted particularly when the legislature deliberately did not use the words 'judicially separated' as in H.M. Act.

The expression judicially separated comprises of two words 'judicially' and 'separated'. Separation between husband and wife may take place in numerous ways, for instance desertion by husband of the wife or being cruel to her which may force her to live separately from him. But it is not every separation which is recognised by the Ceiling Act. It should be judicial. It has been seen above that the words judicial separation cannot be understood in technical sense of grant of decree under Section 10 of H.M. Act. The word 'judicial' according to Chambers Dictionary means, 'arising from process of law'. It has at times been contrasted with administrative ministerial

or executive."

We are unable to agree with the ratio of this judgment. As already stated it is not correct to say that there are no provisions for Muslims or the Christians for obtaining orders of judicial separation in a court of law. Apart from that if under any personal law the person is not entitled to get any order of a court for a judicial separation it would only mean that they would not be entitled to the benefit of exclusion provided under the definition. We are unable to agree with the learned Judge that separation other than the one which was in pursuance of an order of court could be recognised for the purpose of Section 3(7). In the result the appeals fail and they are dismissed.

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