

Sanjay Singh

Vs

Garima Singh

Civil Appeal No. 1311 of 1998

(M. Jagannadha Rao, S. B. Majmudar JJ)

03.03.1998

ORDER

1. Leave granted.

2. With the consent of learned counsel for the parties, this appeal was heard finally. The High Court in a proceeding under Article 227 of the Constitution of India which was converted from one under Section 115 of the Code of Civil Procedure, has set aside an ex parte decree for divorce granted by the learned trial Judge in a suit alleged to be filed by the respondent-wife.

3. A few relevant facts leading to these proceedings may be stated. The appellant and the respondent got married at Allahabad on 14-12-1973. Out of that wedlock two daughters and a son were born. It appears that subsequently there was some estrangement between the spouses. The allegation of the respondent-wife is that the appellant-husband got filed a Civil Suit No. 78 of 1995 in the name of the respondent for getting divorce on the ground of desertion and cruelty on the part of the appellant. It appears that the said suit got hurriedly disposed of by an ex parte decree dated 27-3-1995 and thereafter the appellant-husband is said to have entered into a second marriage with another spouse on 21-4-1995. Having come to know about the same, the respondent-wife filed two proceedings. She filed a substantive Civil Suit No. 271 of 1995 in the same Court of learned Civil Judge, Sitapur for a declaration that the ex parte decree was null and void as she had never filed the said suit for getting her marriage dissolved through the Court. She also filed an application under Section 151 of the Code of Civil Procedure before the trial court alleging that the ex parte decree was null and void as she had never filed the said suit which is said to have got decreed ex parte. It is that application which was treated by the learned trial Judge to be not maintainable because the respondent had already filed a civil suit wherein all these disputed questions of fact could be examined on evidence.

4. The respondent carried the matter in revision under Section 115 of the Code of Civil Procedure challenging the said decision of the trial court passed in an application under Section 151 CPC. The appellant raised a preliminary objection that the revision application was not maintainable. Learned Single Judge of the High Court before whom the revision application was moved thought it fit not to consider that preliminary objection and decided to exercise her powers under Article 227 of the Constitution of India. She called for the records of the civil suit in which the impugned ex parte decree was said to have been passed and after hearing the parties through their counsel for a number of days and as we are told, spreading over about a month, the impugned order was passed by the learned Single Judge of the High Court setting aside the ex parte decree and allowing the application of the respondent-wife under Section 151 CPC. Learned Single Judge after minutely examining the records came to the conclusion that even assuming that the suit was filed by the real respondent Smt

Garima Singh, when the suit had proceeded in hot haste and resulted in an ex parte decree in a quick succession of events, which were spread over from 25-2-1995 to 27-3-1995, it became clear that the ex parte decree was a result of complete non-application of mind on the part of the learned trial Judge and it reflected a clear case of fraud on the Court as it amounted to snatching a decree of divorce from the Court in the absence of any real case being made out by either side. However, while coming to this conclusion, learned Single Judge also held that it appeared that the appellant got this decree by getting an impostor to file the said suit. On all these grounds, therefore, the ex parte decree was set aside and the suit was remanded for fresh trial. It was also directed that the suit may be tried by a Judge other than the Judge who earlier tried the suit.

5. Learned Senior Counsel for the appellant in support of his appeal vehemently contended that even if the High Court was justified in taking the view that the application under Section 151 CPC was maintainable, as the trial court had not decided the said application on merits, the matter ought to have been remanded for a fresh decision on merits and all the contentions and allegations made by the respondent should have been permitted to be controverted by the appellant and after leading of proper evidence for and against the said application by the parties, it should have been ordered to be decided on merits. Instead without giving the least opportunity to the appellant to join issue on merits, the learned Single Judge of the High Court has assumed all the contentions and allegations of the respondent to be reflecting gospel truth and has passed the impugned order. It was also vehemently contended by the learned Senior Counsel for the appellant that in any case, once the High Court held that the appellant had got passed a decree by putting forward an impostor as the plaintiff, there remained no occasion to remand the proceeding for fresh trial. Learned Senior Counsel for the respondent on the other hand submitted that on the record of the case which was minutely examined by the learned Single Judge of the High Court in the presence of counsel of both the sides and after giving them full opportunity to argue on merits, the impugned decree was set aside. He submitted that on well-established facts emerging from the record of the case, no other conclusion was possible save and except the one that the ex parte decree was obtained by committing fraud on the Court and hence it could not be sustained in the interest of justice. He further submitted that this being a proceeding under Article 136 of the Constitution of India this Court may not interfere when substantial justice was done and when such an ex facie incompetent decree was set aside by the High Court.

6. Having given our anxious consideration to the rival contentions advanced we find that so far as the record of the case which was minutely examined by the High Court goes, no other conclusion was possible save and except the one that in hot haste by collusion between the parties, a decree for divorce was almost snatched from the Court. It certainly amounted to perpetration of fraud on the Court. This conclusion to which the learned Single Judge of the High Court reached on perusing the record of the case was based on the following well-established and indisputable facts and circumstances revealed from the record :

- (i) The unauthentic photograph of the petitioner (present respondent) of her young age was affixed on the first page of the divorce petition though it was not required under any rule of law.
- (ii) The register of the Oath Commissioner did not bear the signatures of respondent Smt Garima Singh on the dates when the affidavit was alleged to have been sworn by her at Sitapur.
- (iii) There was non-compliance of Order V CPC regarding issuance of process,

service etc. There was no service report of service of summons on the respondent (present appellant) and as to how and when the service was effected.

(iv) No notice inviting objections to the decree or pro forma-proposed decree were invited on 3-4-1995 as required under the rules and one week's time which was mandatory for being granted for filing objections was not granted and the decree was drawn on 5-4-1995.

(v) Written statement was not filed on the date fixed, i.e., 15-3-1995, though the written statement was ready and sworn on 14-3-1995. Interestingly as per the record the process was filed on 14-3-1995 and the written statement was also sworn on the same day at Sitapur. The record does not reveal as to when and how it was filed.

(vi) The petitioner (present respondent) was not called upon to appear herself to depose to prove the averments made in the plaint even though she was said to be at Sitapur that day and the evidence on affidavit was accepted.

(vii) The provisions of Section 23(2) of the Hindu Marriage Act and Order 32-A of the Rules and XXXV of the Code of Civil Procedure were given a complete go-by and no attempt whatsoever was made by the Presiding Officer to bring reconciliation between the parties which is the mandate of this special law.

(viii) The petition under Section 13 of the Hindu Marriage Act and the written statement filed by the respondent (present appellant) appear to be in the same language and to have been typed on the same typewriter.

On the basis of the aforesaid salient features clearly discernible from the record the learned Single Judge came to the conclusion that a fraud was practised by the parties to the litigation on the Court. It was observed by the learned Single Judge in this connection that the learned trial Judge failed to notice that the decree of divorce granted in Suit No. 78 of 1995 was wholly collusive. Divorces are not granted for the asking, but the parties are put to trial to prove that the ingredients for grant of the divorce as provided in the Hindu Marriage Act do exist. In this connection it was also observed that if the parties come to a mutual agreement to get divorced as they cannot live together any more, then they have to apply for consent decree of divorce under Section 13-B of the Hindu Marriage Act after fulfilling the prerequisites for the same, otherwise it is the duty of the Court to ensure that collusive decree of divorce is not granted. Under these circumstances it was observed that in this case even if it is assumed that the real Garima Singh filed the suit in question, the petition was clearly collusive and the decree had been granted without application of mind. Consequently, on this finding alone the application under Section 151 CPC was required to be allowed and is rightly allowed by the learned Single Judge of the High Court. Hence the ex parte decree also must be held to be rightly set aside.

7. However, in our considered view, no further finding was required to be given as to whether the respondent was the real plaintiff or the appellant by putting forward an impostor got passed the decree of divorce for dissolution of marriage. That finding was not required to be arrived at by the High Court as it depended upon investigation of facts which could not be conclusively established from the record as then existing. Once the conclusion was reached that the ex parte decree was required to be set aside even on the assumption that the real plaintiff had also colluded with the defendant for snatching a decree of divorce, no further finding about the alleged impersonation of

the respondent by somebody else was rendered necessary. Consequently, we vacate the finding about the appellant getting the suit filed by an impostor. We leave that question open for consideration by the trial court in remanded proceeding if at all that necessity arises. We make it clear that in the remanded proceeding if the respondent whose admitted photograph is attached to the plaint pursues the suit, then only the occasion would arise for the trial court to consider the case on merits in accordance with law. On the other hand if the respondent does not pursue that suit or gets it dismissed for non-prosecution or shows to the Court that she never filed such a suit and if her version is accepted by the Court after hearing the contesting parties, then the suit clearly would have to be dismissed on the basis of the relevant eventuality - We make it clear that at this stage, we do not express any opinion on the question whether the suit was filed by an impostor or not.

8. In the result, the order setting aside the ex parte decree as passed by the learned Single Judge is affirmed subject to the limited modification that the finding about the suit having been filed by an impostor is vacated and the said question is kept open. The appeal stands dismissed subject to the aforesaid modification. No costs.