

PUNJAB AND HARYANA HIGH COURT

Janak Dulari

Vs

Narain Dass

(Bishan Narain, C.J. D Falshaw and I Dua, JJ.)

08.09.1958

ORDER

Bishan Narain, J.

1. This appeal has been filed by Janak Dulari under Section 28 of the Hindu Marriage Act and arises out of her husband's application under Section 9 of the said Act for restitution of conjugal rights. The parties were admittedly married on 30-4-1945 at Nakodar (District Jullundur) and the present application was made on 10-11-1955 in Amritsar Courts. The wife objected to the jurisdiction of the Amritsar Court on the ground that the parties had last resided together at Gurdaspur and that she was residing at the time of the application at Palampur. The trial Court framed a preliminary issue regarding its jurisdiction and the Additional District Judge after recording evidence came to the conclusion that the parties had last resided together at Amritsar and therefore he had jurisdiction to hear the application. It is against this interlocutory decision that the present appeal has been filed.

2. Section 19 of the Hindu Marriage Act deals with the jurisdiction of Court and it reads:

"Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together".

In the present case the marriage was solemnized to the district of Jullundur but this application has been made in the Amritsar Court. Therefore the Court where the husband and wife reside or last resided together is the Court where the application would lift, It is common ground that at one time both parties resided together in Amritsar where the applicant is employed. The wife's case, however, is that she last resided together with her husband in the house of her sister's husband in Gurdaspur, and that therefore the Amritsar Court has no jurisdiction. Narain Das applicant is admittedly employed in the Medical College, Amritsar. It is common ground that after marriage the parties lived together at Amritsar from July 1955 to 13th October, 1955, when

they separated. The husband's case is that his wife left him and went away to Gurdaspur while her case is that Narain Das gave her a beating on that day and she left for Gurdaspur. It is again common ground that the husband went to Gurdaspur on 14-10-1955, to fetch and that he stayed there till 16-10-1955. Ultimately he returned to Amritsar on 17-10-1955. The husband's case is that he was not allowed to see his wife by her relations while Janak Dulari's case is that reconciliation was brought about and that they lived together as husband and wife till the 16th, It is difficult to believe the story of reconciliation at any time during these three days as otherwise there would be no occasion for this petition for restitution of conjugal rights. It is not the case of Janak Dulari that any dispute arose between the parties after this alleged reconciliation. Even if Janak Dulari's version is accepted, the stay for three days in the house of her sister's husband cannot be considered as last residence' within the Act. The word 'reside' implies something more than a mere brief or flying visit, (*vide Sardari Lal v. Mst. Kaushalya Devi*) In the present case obviously the husband's visit to Gurdaspur was a brief and flying visit to bring about reconciliation and it was not his purpose to go to Gurdaspur and reside there particularly when he was employed in the Medical College, Amritsar, and could not remain absent from there for any length of time. I have therefore, no hesitation in holding that the husband and wife last resided in Amritsar and not in Gurdaspur within Section 19 of the Hindu Marriage Act and the Amritsar Court has jurisdiction to hear the case.

3. The learned counsel for the appellant then raised two new points which were not raised in the trial Court. As these points are law points involving the Court's jurisdiction, I allowed him to argue them.

4. The learned counsel argued that the plaint was not properly presented. It appears that the application was presented to Senior Sub-Judge, Amritsar, who sent it to the District Judge, who in his turn transferred it to the Additional District Judge, Amritsar. It is, therefore, clear that the application ultimately reached the District Judge who admittedly had jurisdiction to hear the application. He, however, transferred it to the Court of Additional District Judge. In these circumstances it cannot be said that the application was not presented to the proper Court. I, therefore, see no force in this contention and I reject it (*vide Kishen Lal v. Jai Lal*², and *Shiv Nath Rai v. Lalfo Mal Madan Lal*³,

5. The next point raised is not free from difficulty. It is argued that an application under the Hindu Marriage Act cannot be heard by any Court other than the District Court which under Section 3 (b) of that Act means a principal civil Court of original jurisdiction. It is common ground that there is no 'city Court' in Amritsar nor has the State Government specified by notification any other civil Court which can deal with matters under the Hindu Marriage Act. The application was heard by the Additional District Judge, Amritsar. The contention is that the Punjab Courts Act does not mention a Court of Additional District Judge and a new Court cannot be created by the Government and, therefore, the proceedings taken by the Additional District Judge were without jurisdiction. After considering the provisions of the Punjab Courts Act, the

Supreme Court in *Kuldip Singh v. State of Punjab*⁴, hid down that the Court of Additional Judge constitutes a distinct class of Court and that the Punjab Courts Act nowhere speaks of an Additional District Judge, It is also laid down that the Court of Additional Judge is not a division Court of the Court of District Judge. Thus the Punjab Courts Act does not contemplate a Court of Additional District judge. The Court of Additional District Judge, therefore, cannot be considered to be a Civil Court of original jurisdiction under the Hindu Marriage Act particularly when Section 20 lays down that there shall be only one District Judge in each district and Section 24 provides that the Court of District Judge shall be deemed to be district Court or principal Civil Court of original jurisdiction in the district. It is true that under Section 21 (2) an Additional Judge is authorised to discharge the functions of a District Judge and in the discharge of these functions he exercises the same powers as the District Judge but this section does not refer to a Court of Additional District Judge and the Supreme Court has held that the Court of Additional Judge is a distinct Court. Speaking for myself I always consider the Court of Additional District Judge to be a Court of Additional Judge under the Punjab Courts Act and that when a case was transferred to it by the District Judge then the Additional District Judge exercised the same powers as the District Judge as provided in Section 21 (2) of the Punjab Courts Act. In view of some observations of the Supreme Court, I feel some difficulty in considering this position to be correct. The matter is important and in my opinion it, should be decided by a larger Bench. This point involves the following two questions : --

- (1) Whether the Court of Additional District Judge can be considered to be the principal civil Court of original civil jurisdiction within Section 19 of the Hindu Marriage Act?
- (2) If not, can the District Judge transfer a case under the Hindu Marriage Act to the Court of Additional District Judge, and on such a transfer he would have jurisdiction to hear and decide the case?

6. Let the papers be placed before the Hon'ble the Chief Justice for orders.

(The reference was heard by a Division Bench consisting of Falshaw and Dua JJ., who passed the following order on 28-8-1958.)

D. Falshaw, J.

7. In connection with an appeal under Section 28 of the Hindu Marriage Act XXV of 1955, which came before Bishan Narain, J., a question for jurisdiction arose which has been referred by him for decision by a larger Bench and has been formulated by him in the following two questions : --

- (1) Whether the Court of 'Additional District Judge can be considered to be the principal civil Court of original civil jurisdiction within Section 19 of the Hindu Marriage Act?
- (2) If not, can the District Judge transfer a case under the Hindu Marriage Act to the Court of Additional District Judge, and on such a transfer he would have jurisdiction to hear and decide

the ease?

8. Section 19 of the Hindu Marriage Act prescribes that every petition under the Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. In Section 3 (b) "district court" is defined as meaning, in any area for which there is a city 'civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.

9. The relevant provision regarding civil courts in this State are contained in Chapter 3 of the Punjab Courts Act VI of 1918. Section 18 reads –

"Besides the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1687, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:--

- (1) The Court of the District Judge;
- (2) The Court of the Additional Judge;
- and (3) The Court of the Subordinate Judge".

The first part of Section 20 reads-- .

"The 'State Government shall appoint as many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district." Section 21 reads --

"(1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may appoint such Additional Judges as may be necessary.

(2) An additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge." Section 24 provides that the Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district,

10. From this it is perfectly clear, that in this State any petition under the Hindu Marriage Act has to be filed in the Court of the District Judge, and at first sight there would seem to be no difficulty, in view of the provisions of the Punjab Courts Act set out above, in concluding that in the districts where, on account of the size of the pending file in the Court of the District Judge, additional Judges have been permanently or temporarily appointed, the petitions filed in the Court of the District Judge under the Hindu Marriage Act can be allotted by him for disposal to an Additional Judge. Indeed, as the learned Judge who has referred the matter evidently thought, there would have been no difficulty at all on the point but for the decision of a Bench of five

learned Judges of the Supremo Court in 58 Pun LR 595 : ((S) AIR 1956 SC 391).

11. This case relates to the question whether a certain person should be prosecuted for offences under Sections 471 and 193, Indian Penal Code, which had evidently been mismanaged in the subordinate Courts. In a suit for a considerable sum of money on the basis of a mortgage filed by Amar Singh, the second respondent in the appeal in the Supreme Court, Kuldip Singh defendant had produced and relied on a receipt purporting to show a payment of Rs. 35,000/-. The trial Judge did not accept this as a genuine document and passed a preliminary decree in the suit on the 15th of March, 1950 followed by a final decree on the 15th of July, 1950. The defendant's appeal was dismissed by the High Court on the 9th of May, 1951, when again it was held that the alleged receipt was a suspicious document. Amar Singh, the plaintiff, thereafter applied in the Court of the successor of the learned Subordinate Judge who had decreed the suit for the prosecution of the defendant for using a forged document and for perjury. However, the presiding officer of the Court was transferred before this application was decided, and no other Subordinate Judge of the first-class was posted- in his place though a Subordinate Judge of the fourth-class was posted to the district, and when the application of Amar Singh came before the latter he took the view that he was not competent to deal with it as the alleged offence had been committed in the suit tried by a first-class Subordinate Judge and he therefore forwarded the case to the District Judge, who in turn referred it to the Senior Subordinate Judge. This officer ordered the filing of a complaint against Kuldip Singh and himself filed such a complaint. Kuldip Singh filed an appeal against the order for his prosecution in the Court of the District Judge who sent it for disposal to an Additional District Judge who accepted the appeal, partly on the ground that the Senior Subordinate Judge not being the successor of the Judge who had tried the suit could not file the complaint and partly because on the merits there was no prima facie case.

12. Amar Singh then carried the matter to the High Court in revision and the learned Judge who decided the matter held that the Senior Subordinate Judge had jurisdiction to file the complaint and that there was a prima facie case on the merits and he accordingly set aside the order of the Additional District Judge and restored the order of the Senior Subordinate Judge making the complaint.

13. In Kuldip Singh's appeal in the Supreme Court it was held that the Court of the Additional District Judge was not a divisional Court of the Court of the; District Judge but a separate and distinct Court of its own, and that when 'an offence punishable under Section 193 of the Indian Penal Code was committed in, or in relation to, a proceeding in a Court of a Subordinate Judge of the first-class in the Punjab, the complaint could not have been made either by the Senior Subordinate Judge or by the Additional District Judge. In the circumstances it was held that what the High Court ought to have done was to send the case to the District Judge for him to decide as an application by the plaintiff for the prosecution of the defendant, and the Supreme Court ordered that this should be done.

14. The case of course involved consideration of the question of interpretation of certain provisions in the Criminal Procedure Code chiefly regarding which was the Court to which the Court which decided the suit was subordinate, and it was held that this Court was the Court of the District Judge and not the Court of the Additional District Judge who, under no circumstances, could file a complaint regarding an offence arising out of a suit tried by a Subordinate Judge. The passage in the judgment which has occasioned the difficulty in this matter reads as follows : --

"As we have already pointed out, Section 18 of that Act states that, in addition to Courts of Small Causes and Courts established under other enactments, 'there shall be the following classes of Civil Courts, namely : --

(1) The Court of the District Judge;
(2) The Court of the Additional Judge; and (3) The Court of the Subordinate Judge.' The Court of the Additional Judge is therefore constituted a distinct class of (Court, and it is to be observed that the Act speaks of the Court of the Additional Judge and not of the Additional District Judge as is the case with certain other Acts in other parts of India. This language is also to be compared with Articles 214 and 216 of the Constitution which constitute and define the constitution of the High Courts in India.

"214(1) There shall be a High Court for each State.' '216. Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.' The Punjab Courts Act nowhere speaks of an Additional District Judge or of an Additional Judge to the District Court; also, the Additional Judge is not a Judge of co-ordinate judicial authority with the District Judge. Section 21(1) states that --

When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may appoint such Additional Judges as may, be necessary.' But these Judges cannot discharge all the judicial functions of the District Judge. Their jurisdiction is a limited one and is limited to the discharge of such functions as may be entrusted to them by the District Judge. Section 21(2) states that-- 'An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him. It is true that sub-section (2) goes on to say that 'in the discharge of those functions he shall exercise the same powers as the District Judge,' but these powers are limited to the cases with which he is entitled to deal. Thus, if his functions are confined to the hearing of appeals he cannot exercise original jurisdiction and vice versa. But if he is invested with the functions of an appellate tribunal at the District Court level, then he can exercise all the powers of the District Judge in dealing with appeals which the District Judge is competent to entertain. This is a very different thing from the administrative distribution of work among the Judges of a single Court entitled to divide itself into sections and sit as division Courts. When the Chief Justice of a High Court or the District Judge of a District Court makes an administrative allotment of work among the Judges of his Court, their jurisdiction and powers are not affected, and if work allotted to one

Judge goes to another by mistake his jurisdiction to entertain the matter and deal with it is not affected. But that is not the scheme of the Punjab Courts Act and the mere fact that Mr. J. N. Kapur called himself the Additional District Judge and purported to act as such cannot affect the matter of his jurisdiction. As the Punjab Courts Act does not contemplate the appointment of Additional Judges to the District Court, none can be appointed. The Court contemplated is the Court of the Additional Judge which is in the nature of a special tribunal set up for a special purpose and invested with the powers of a District Judge when dealing with the matters specially entrusted to its jurisdiction. We hold therefore that the Court of the Additional Judge is not a division Court of the Court of the District Judge but a Separate and distinct Court of its own."

15. Although we are bound to accept and act upon this pronouncement, I cannot refrain from observing with the utmost respect that it runs counter to the way in which the Punjab Courts Act has been interpreted and acted upon in the State of Punjab and also the State of Delhi to which the Punjab Courts Act has also been extended, and where the work is so heavy that it has to be apportioned by the District Judge among himself and four or five additional Judges. So far as I am aware, the Additional Judges referred to in the Act have always been both popularly known as Additional District Judges, and also officially so designated in the Gazette notifications regarding their appointments. In actual practice, and so far as I am aware there have been no exceptions to this practice, nobody is ever appointed simply as an Additional Judge or as an Additional District Judge- The persons concerned are invariably appointed as Additional District and Sessions Judges for the purpose of exercising both the civil and criminal powers of a District Judge, who also is invariably designated as District and Sessions Judge. All cases cognizable by the Court of the District Judge" or the Sessions Judge are instituted in his Court and it is the work, in the form of cases of various kinds, civil and criminal, rather than functions, which is given to Additional District and Sessions Judges for disposal, and once a case, whether civil or criminal, or appellate or Original, is thus sent to an Additional District and Sessions Judge, he proceeds to dispose of it using all the appropriate powers of the District or the Sessions Judge, as the case may be.

16. However, in view of the pronouncement of the Supreme Court set out above I feel bound to hold that the first of the questions referred to us "Whether the Court of an Additional District Judge can be considered to be the principal civil Court of original civil jurisdiction within Section 19 of the Hindu Marriage Act?" must be answered in the negative, and since by the Act the petitions under it lie only to the principal civil Court of original jurisdiction, the answer to the second question must also be in the negative and a District Judge, to whom a petition under the Act is presented cannot transfer it to an Additional District Judge.

17. Before concluding I may venture to suggest that if this interpretation gives rise to any practical difficulties regarding the distribution of work in the districts where the work is sufficient to justify the appointment of an additional Judge, it is open to the State Government to overcome this difficulty as regards cases under the Hindu Marriage Act in either of two ways—

(1) Under Section 3 (b) of the Act the State Government may by notification in the Official Gazette specify the Courts of Additional Judges as having jurisdiction under the Act; or else (2) The Central Government might be moved to amend the Act itself so as to make it clear that Additional Judges have jurisdiction under the Act, if this was the intention of the Legislature in the first instance.

Inder Dev Dua, J.

18. I agree. (The case was finally disposed of by Dua J., who passed the following on 8-9-1958).

JUDGMENT

19. This case had initially been heard by Bishan Narain J. on the 10th of February, 1958 when he referred two questions for decision by a larger Bench. Those two questions have since been answered by a Division Bench consisting of Falshaw J. and myself on the 28th of August, 1958. The case has now been placed before me for disposal in the light of the decision given by the Division Bench. Bishan Narain J. had on the 10th of February, 1958 held that the husband and wife last resided in Amritsar and not in Gurdaspur within the meaning of Section 19 of the Hindu Marriage Act and the Amritsar Court had, therefore, jurisdiction to hear the case, He also found that the application having ultimately reached the District Judge who admittedly had jurisdiction to hear the application, there was no force in the objection that the plaint had not been properly presented. In view of these two findings both the counsel are agreed that now there is no alternative except to allow the appeal and to send the case back to the learned District Judge for proceeding with the case in the light of the decision given by the Division Bench. The case will now be decided by the District Judge himself.

20. The parties have been directed to appear in the Court of the District Judge on the 6th of October, 1958 when they will be given another date for further proceedings.

Cases Referred.

11956-58 Pun LR 562 : ((S) AIR 1957 Punj 84)

2ILR I Lah 158: (AIR 1919 Lah 27)

3AIR 1938 Lah 838

41956-58 Pun LR 595 : ((S) AIR 1956 SC 391)