

RAJASTHAN HIGH COURT

Sushila Agrawal

Vs.

Ramesh Chandra Agrawal

D.B. Civil Misc. Appeal No. 455 of 2000
(Shiv Kumar Sharma and Guman Singh, JJ.)

01.05.2007

JUDGMENT

Guman Singh, J.

1. This appeal is directed against the judgment and decree dated 29.7.1999, passed by Judge, Family Court, Kota, in Civil Suit No. 138/1994 whereby the petition of the respondent under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed and a decree of dissolution of marriage was passed.

2. Briefly stated the facts essential for the disposal of this appeal are that 9.5.1994 the respondent-husband (for short the 'husband') filed a petition before the Family Court, Kota, wherein it was averred that he was married with the appellant-wife (for short the 'wife') on 27.5.1990 as per the Hindu rites. Prior to it, the respondent was married to Smt. Bhagwati Kumari, who died on 19.3.1989, leaving behind three children namely Sangeeta (born on 3.1.1970), Sonam (born on 2.4.1993) and Abhishek. The husband was working as Assistant Manager in J.K. Synthetics Ltd., Kota. Therefore, he decided to marry again specially in the interest of three children who needed help and care after the death of their mother.

3. The appellant-wife was also previously married with one Arun Kumar on 20.6.1978 and her marriage was dissolved on 18.5.1990 with mutual consent. Out of that wedlock, the appellant-wife had a daughter namely Kirthi. Therefore, for the well being of the children of the parties, the present marriage was solemnized as stated above.

4. Everything between the parties went on smoothly for seven eight months but thereafter the respondent-husband felt that the behavior of appellant- wife towards Sonam and Abhishek (his sons) was not proper as they felt terrorized and his son

Sonam, who was preparing for I.I.T. had to leave his studies. The respondent-husband tried to convince the appellant-wife not to use double standard between her own daughter and his children from earlier wife but she even started misbehaving with him and insisted that Sonam should not live in the house and as such the respondent-husband was compelled to shift his son Sonam in July 1991, to the house of his maternal uncle at Jaipur.

5. The appellant-wife also ill-treated Abhishek and used to send him market for petty works and disturb him while he was studying whereas her daughter Kirti used to sit idle. Under these circumstances, it became difficult for the respondent to concentrate his official duties properly. The appellant-wife always used to threaten him of committing suicide or to implicate him in a dowry case. Hence, the respondent-husband had to lodge a report with the Police Station, Vigyan Nagar, Kota, on 2.4.1992. It was further averred that when the respondent-husband tried to bring Sangeeta after completion of her studies from Udaipur, the appellant-wife threatened to commit suicide by putting herself ablaze and ultimately the respondent-husband had to even shift his younger son to Jaipur in the month of May, 1992. The behavior of the wife became cruel day by day and many a times the husband had to go without meals and as and when he used to be late, the door was not opened by her and he had to sleep outside the house. On 25.3.1993, the marriage of Sangeeta was fixed but the appellant wife refused to celebrate the marriage at the residence and as such the husband had to make arrangements at Agra and during marriage celebrations the behavior of appellant-wife remained undignified. On 28.4.1993, the husband met with an accident while coming from the factory, his scooter slipped and he got his left leg and ribs fractured but the wife did not take care of him and he had to shift to his brother's place at Jaipur. Thus, the decree of divorce was sought to be granted on the ground of mental cruelty as well as desertion by the wife for a period of two years by snapping all marital ties.

6. The appellant-wife controverted all the allegations. It was averred that at the time of marriage the husband was aged 50 years while she was 32-33 years old and there was difference of 18 years of age. Prior to her marriage, the respondent husband had three children, who were against the re-marriage of their father and thus they never accepted the appellant-wife as their mother and they started misbehaving with her so that she could be forced to leave the house. The behavior of husband was normal for one year only. He was a drunkard and after taking wine, he used to misbehave with the daughter of the wife from her earlier marriage so as to compel her (wife) to leave the

matrimonial home. It was also averred that all her ornaments and clothes were taken by the husband and he refused to return back and the same were sent to the house of his brother at Jaipur.

7. On the pleadings of the parties following issues were framed:

- (1) Whether the wife treated the husband with cruelty as described in Para Nos. 4 to 13 of the petition and it became impossible for the petitioner to live with her anymore ?
- (2) Whether the wife refused to cohabit with the husband for last two years and also deserted him for a period of more than two years ?
- (3) Whether the husband entered into the marriage by giving false assurance and temptations to the wife?
- (4) Whether the three children of the husband from his earlier marriage were against this re-marriage from the very beginning and they did not accept the wife as their mother and behaved with her in an undignified manner?
- (5) Whether after one year of the marriage, the husband began to misbehave and harass the wife and her daughter from earlier marriage after taking liquor, with a view to pressurize them to leave the house ?
- (6) Whether the ornaments, and clothes of the wife (her 'stridhan') were retained by the husband and the same were sent to the place of his brother's residence?
- (7) Relief?

8. In support of pleadings, parties led their evidence. The respondent-husband examined himself, his three children and (AW.5) R.S. Pandey, while the appellant-wife examined herself and two more witnesses (NAW 2) Dayal Chand Gupta and (NAW 3) Bhawani Singh.

9. We have heard learned counsel for the parties and gone through the record.

10. From the judgment of the Family Court, Kota, it is revealed that the Issue No. 1 pertaining to cruelty on which the petition for dissolution of marriage was based, was decided in favor of the respondent husband. Likewise, all other issues except issue No. 2 were decided against the appellant wife. On the basis of the findings of the aforesaid issues, the petition of the petitioner husband was allowed and the marriage was dissolved by a decree of divorce on the ground of cruelty.

11. From the evidence on record we find that the main issue was with regard to the cruelty alleged by the husband as a ground for the dissolution of marriage. The marriage between the parties took place in their advance age and both of them were

having children from their earlier marriage. The parties had joined hands in the hope for happy life for themselves as well as for their children but it turned out to be otherwise. The wife appellant found herself to be in the role of a step mother and as it appeared from the evidence, the children of the husband from earlier marriage had to be shifted to Jaipur on account of atrocious behavior of the wife. The wife is found to have adopted double standard in her behavior to her own child and the children of the husband from their earlier marriage. From the evidence it is further revealed that when the husband met with an accident, the wife did not look after him and he had to shift to Jaipur where his brother resided for care and treatment. In view of the evidence on record, we find that the learned Judge, Family Court, Kota, has discussed the evidence led by the parties in detail and has arrived at the findings on the proper appreciation of evidence and therefore, the findings of the learned Family Court is liable to be confirmed.

12. Consequently, the appeal of the appellant is dismissed.

Appeal dismissed.