

RAJASTHAN HIGH COURT

Surendra Singh

Vs.

Smt. Pawan Verma (Rajasthan)

S.B. Civil Misc. Appeal No.182 of 1998

(Dalip Singh, J.)

21.05.2009

JUDGMENT

Dalip Singh, J.

1. This appeal has been filed under Section 28 of the Hindu Marriage Act, 1955 against the judgment and decree dated 9.1.1998 passed by the Additional District Judge No.1, *Bharatpur* in civil misc. case No.14/1996 dismissing the application submitted by the appellant under Section 13 for the Dissolution of the Marriage.

2. The brief facts giving-rise to this appeal are that the marriage between the parties the appellant husband and the respondent wife took place on 3.12.1992 and it is urged in the petition that on or before 21.2.1993 the respondent wife tried to pour kerosene oil on herself immolate herself but was prevented by the husband appellant with great difficulty. On the next day on 22.2.1993 on information having been sent by the appellant to his in laws, the brother of the respondent wife and her brother-in-law came and took her to her parental home. It is alleged that the respondent used to behave in an abnormal manner and it is further alleged that even prior to her marriage she suffered from mental disorder. In the petition it was alleged that the appellant made an enquiry and came to know that even prior to the marriage the respondent wife was being treated for the aforesaid ailment. It was also stated in the petition that the respondent was treated by Dr. Madhuvan Singh in his Hospital for the aforesaid purpose. It is submitted that on 17.2.1994 the respondent was taken to the Hospital and looking to her ailments, it was impossible for the appellant husband to continue the marriage and hence on the grounds mentioned in Clause (iii) of Section 13 (1) that the respondent being incurably suffering from mental disorder of unsound mind the decree for dissolution of marriage was sought by the husband appellant.

3. The respondent filed a reply and denied the allegations. In response the respondent filed her reply and alleged that the husband appellant used to treat her with cruelty because of the fact that sufficient amount of Dowry was not given in the marriage. It was alleged in the reply that the husband treated her very badly and even poured kerosene on her body to burn her. She denied that she was mentally unsound or was treated for this ailment. She also submitted that as a result of the marriage she gave birth to a girl child. It is further alleged that she was subjected to ill-treatment on account of having given birth to a girl child and was driven out of her home. It was submitted in the reply that the husband and her-in-laws told her that she could come back only if she came with Rs. 20, 000/- in cash. She denied that had left her matrimonial home without reasonable cause. In the reply she stated that she is willing to stay with her husband in case her in-laws gave her guarantee of security for her life and that of her child. It was thus prayed that the application be dismissed.

4. After the appeal was filed the notices were issued to show cause to the respondent vide order dated 24.8.2000. However, despite service of the notices to show cause the respondent wife did not appear before this court and this court vide order dated 22.7.2005 admitted the appeal and again issued the notices to the respondent wife after admission of the appeal. On the notices being sent was served upon the respondent she has failed to appear before the court despite the service.

5. I have heard the learned counsel for the appellant and perused the record. More particularly the statement of Dr. Madhwan Singh AW-3 who is alleged to have treated the respondent in respect of her ailment on the instance of the appellant. As the main submission of the learned counsel for the appellant is that the respondent is of unsound mind.

6. The learned counsel for the appellant also tried to contend that the very fact that the respondent after 19.9.1993 has not returned to the matrimonial home for the last about 16 years goes to show that marriage has irretrievably broken down.

7. With a view to appreciate the above contention and the statement of Dr. Madhwan Singh as contended by the learned counsel for the appellant suffice it to say that only ground which was alleged in the petition for dismissal of the marriage was based upon the Section 13 Sub Section (1) clause (iii) that respondent being of unsound of mind and suffering from mental disorder a decree for divorce be passed.

8. This is also evident from the issues that were framed by the learned trial court. As issue No.1 relates to the aforesaid ground. The same reads as follows :

^^vk;k** xSjlk;yk vthZ nkok dh en uEcj 6 ds eqrkfcd ekufld :i ls iw.kZ ikxy gS
A blh otg ls lk;y fookg foPNsn dh fMdzh izkIr djus dk vf/kdkjh gS **

9. I have heard the learned counsel for the appellant and considered the submissions made at bar based upon the statement of witness namely the appellant himself his elder brother AW-2 Ashok and Dr. Madhuwan Singh. So far as the above are concerned it may be stated that AW1 the appellant and AW2 Ashok are not qualified medical practitioners to depose about the State of mental health of the respondent as the ground contained in sub clause III of Section 13(1) relates to the respondent being of incurably unsound mind. In the Explanation the expression "mental disorder" has been defined to mean a persistent disorder, incomplete development of the mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia. The expression "psychopathic disorder" has been defined as a persistent disorder or disability of mind (whether or not including sub-normally of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or}.

10. So far as the above mental condition as defined in clause (iii) and the explanation is concerned, that in my opinion cannot be proved by a layman and only a qualified medical practitioner who has examined or treated the patient (respondent) can give his opinion regarding the aforesaid state of mental health of the respondent as to whether the patient suffers from a condition of unsound mind which is incurable or from such "mental disorder" which resulted in the petitioner not being in a position to live with the respondent. The "mental disorder" has been defined to mean a persistent disorder, incomplete development of the mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia. The aforesaid condition of the mind of the respondent can only be certified by a qualified medical practitioner and not by a layman such as the appellant or AW2 Ashok the elder brother of the husband appellant.

11. Therefore so far as the statement of the appellant AW1 and AW2 Ashok the elder brother of the appellant can not help in arriving at the conclusion regarding mental State of the respondent and her suffering from decease in question as required by clause (iii) of Section 13(1) of the Act.

12. That leads us to the remaining part of the evidence led on behalf of the appellant namely AW3 Dr. Madhuwan Singh.

13. So far as the statement of Dr. Madhuan Singh is concerned, I am of the view that Dr. Madhuan Singh has deposed before the court that he cannot identify the patient. The relevant part of the statement reads as under:

^^eSa jksxh dh ugha igpku ldrk A**

From the above I am of the view that unless and until the witness is able to identify the patient, in this case the respondent, that she was the patient who had been examined by him, the observation made in his prescription Ex.10 or the indoor ticket relate to the respondent, it cannot be conclusively held that the opinion which the witness AW3 Dr. Madhuan Singh expressed is in respect of the respondent wife as the court is required to give a finding on the mental state of the respondent wife who is before the court. It was the duty of the appellant to have confronted the witness with the respondent and the witness to have identified the respondent and to state in so many words that his observation made in the prescription in the Ex.10 related to the respondent who is before the court who was examined by him. In absence of the same this piece of evidence cannot be read against the respondent.

14. That apart the evidence of AW-3 Dr. Madhuan Singh further goes to show that the witness has deposed that he has not noted any mark of identification of the patient who was examined by him in respect of Ex.10. He has also stated that disease which the patient had was not incurable. In the examination-in-chief the witness has stated :

^^eSa jksxh dks ugha igpku ldrk A bD;wM lkbdkstfl dk ,d ,filksM vpkud 'kq: gksrk gS os D;ksafd blesa gkbiksfefu;k ds y{k.k Fks bl fLFkfr esa eSa ;g dg ldrk gw fd bl chekjh dk bykt gks ldrk gS o ,slk ,sihlksM dHkh Hkh ftUnxh esa nqckjk bykt ds ckn Hkh gks ldrk gS A gkbiksfefu;k uked iVhZdwjy chekjh esa ejht vius lkjs fj'rsnkjksa dks] le; dks] og okrkoj.k dks igpkurk gS A ejht dh chekjh fdl LVst ij Fkh ;g ugha dgk tk ldrk A**

From the statement of the witness therefore it cannot be said that the condition of the patient who was examined by AW3 the Doctor was incurable.

15. In the light of the above I am of the view that the appellant has failed to prove the respondent was suffering from such mental disorder or condition as required by the Section 13 (1) Clause (iii) of the Hindu Marriage Act.

16. Consequently, this appeal fails and is accordingly dismissed.

17. Since the respondent has not appeared there shall be no order as to costs.

Appeal dismissed.

