
(2000) 12 P&H CK 0126

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No. 168-M of 1998

Shyma Chopra

APPELLANT

Vs

Shri Sanjay Chopra

RESPONDENT

Date of Decision: Dec. 6, 2000

Acts Referred:

- Hindu Marriage Act, 1955 - Section 19

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: V.S. Rana, for the Appellant; S.P. Singh, for the Respondent

Judgement

R.L. Anand, J.

This is an appeal filed by Smt. Shyma and has been directed against the order dated 13.8.1998 passed by Additional District Judge, Ludhiana, who returned the petition u/s 13 of the Hindu Marriage Act filed by Smt. Shyma to her for presentation to the competent court of jurisdiction.

2. Some facts can be noticed in the following manner;-

Smt. Shyma filed petition u/s 13 of the Hindu Marriage Act against her husband Sanjay Chopra for dissolution of her marriage with the respondent on the averments that she was married with the respondent on 20.4.1982 and the parties lived as husband and wife. A male child was born out of the wedlock on 18.1.1994. The appellant has sought divorce on the ground that the respondent treated her with cruelty and has also deserted her.

3. The respondent filed the written statement and denied the allegations. He took preliminary objection that since the marriage was solemnised at Delhi where he permanently resides and the parties last resided together at Delhi, therefore, the court at Ludhiana has no territorial jurisdiction to try the matter. Issues were framed and issue No.4 was treated as preliminary. This issue runs as follows;-

"Whether this court has no territorial jurisdiction to entertain and try the petition? OPR"

4. The parties addressed arguments before the trial court and for the reasons given in para 9 to 16 of the impugned order the petition was ordered to be returned for presentation before the competent court of jurisdiction.

5. Not satisfied with the impugned order, the present appeal.

6. I have heard Mr. V.S. Rana, Advocate on behalf of the appellant, Mr. S.P. Singh, Advocate on behalf of the respondent and with their assistance have gone through the records of this case.

7. Before I deal with the submissions raised by the learned counsel for the parties, it will be appropriate for me to reproduce paras 13 to 16 of the impugned order, which read as under:-

"13. Respondent has admitted in Para 9 of the written statement on merits that he came to village New Basti Akalgarh on 18.8.94 with the petitioner but pleaded that he returned to Delhi on the same day. Now the question to be determined is if it is taken that respondent husband came with the petitioner wife to village New Basti Akalgarh on 18.8.94 on the occasion of Raksha Bandhan and stayed there for two days as pleaded by the petitioner wife, whether the same falls within the meaning of last resided" as find mentioned in Clause 3 of Section 19.

14. His Lordship of our own High Court in "Mrs. Sushma Dewan v. Major Ajit Kumar Dewan" reported in AIR 1973 Punjab & Haryana 256, observed that casual stay of husband as a visitor with his wife at her father's residence does not give that place the true character of the place where spouses "Last resided together" and observed in para 7 of the judgment as follows:-

"The phrase "resided together" is not to be interpreted in a pedantic manner. In the broad sense, it means a place where the parties resided even in the course of a short or casual visit. This cannot be the intent of the statute for, in that case the question of jurisdiction would remain in a fluid state causing great inconvenience to both the parties. In the narrow sense, it means a place to which the element of home or abode can be attributed. This is a more reasonable way of interpreting this phrase because this makes the forum in which the parties can ventilate their grievances more certain. Under Hindu Law, a wife is supposed to live either with the husband or at the place which can be regarded as the home or the permanent abode of the husband. When a husband does not possess a home or a permanent abode, then the wife cannot present a petition under any of the section of the Act at a place which the parties may have visited in a casual manner. In [Mr. J.W. Carol Vs. Mrs. J.W. Carol and Another](#), a case arising u/s 3(1) of the Divorce Act 1869, it was decided that mere casual or temporary visits do not constitute "residence" within the meaning of the Act. In Janak Dulari v. Narain Dass, AIR 1959 Punj. 50, it was held that where after the marriage of the parties they lived at Amritsar, where the

husband was employed, for about three months and a half, when the wife left her husband and went to live with her sister's husband at Gurdaspur and the husband paid brief and flying visits to Gurdaspur to bring about reconciliation the Courts at Amritsar had jurisdiction to hear the application filed by the husband for restitution of conjugal rights."

Similarly in "Smt. Munni Devi v. Ashok Kumar" reported in 1988 M.L.J. 183 it was observed as follows:-

"that the "last resided together" as envisaged by Section 19 means that place where the parties wanted to settle their matrimonial home. Thus the only place where they had the intention to live together and have their matrimonial home will be taken as the place where parties have last resided together."

Thus, in the present case, the husband only paid a visit to her in-laws house at village New Basti Akalgarh on the occasion of Raksha Bandhan and that place cannot be construed as the place where the parties "lastly resided together."

15. So far as the contention of the learned counsel that part of cause of action accrued at village New Basti Akalgarh from where the respondent husband has withdrawn from the society of the petitioner wife is concerned, the same is of no force. It has been held in "Upendra Kumar v. Mrs. Harpriya Kumar" reported in 1980 M.L.J. 136 that Section 20 of the CPC is not applicable to the proceedings under the Hindu Marriage Act and the jurisdiction under the act is to be governed by Section 19 of the Act and it was observed in para 17 of the judgment as follows:-

"The provisions in Section 19 of the Act that a petition under the Act shall be presented to the District Court within the limits of whose ordinary original jurisdiction the marriage was solemnised or the husband and wife reside or last resided together are really in the nature of conditions precedent to invoking the jurisdiction. Merely because the conditions cannot be fulfilled in a given case or are inconvenient to be fulfilled is no ground for holding that those conditions may not be fulfilled and a beneficial construction be given to enlarge the jurisdiction by reading Section 21 of the Act so as to incorporate the provisions of Section 20 of the Code."

16. Thus, the marriage between the parties was performed at Delhi where they lastly resided together and therefore the Court at Ludhiana has no territorial jurisdiction to try the present petition."

8. The learned counsel for the appellant submitted that Ludhiana Court had territorial jurisdiction to entertain the petition because after the marriage the respondent-husband had been going to Jagraon, which is the parental house of the appellant. The parties lived there for some period and residing of the parties together at Jagraon cannot be held to be a casual visit.

9. On the contrary, the learned counsel for the respondent submitted that the parties never resided at Jagraon or Ludhiana, therefore, the Ludhiana Court had no territorial jurisdiction to entertain the petition u/s 13 of the Hindu Marriage Act.

10. Section 19 of the Hindu Marriage Act lays down that every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction - (i) the marriage was solemnised, or (ii) the respondent, at the time of the presentation of the petition, resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

11. Admittedly, in this case the marriage was solemnised at Delhi. Also, it is proved on the record that the respondent is carrying on business and is residing at Delhi. The only point for determination in this case is whether the parties ever resided at Jagraon or Ludhiana. The words "resided" or "residence" have not been defined in the Hindu Marriage Act. It is the concept of Hindu mythology and Hindu Law that after the marriage the girl goes to the house of her husband and that is why it is called her matrimonial home. A marriage is nothing but a plantation of a child from one family to the other, When a father gives the hands of a girl in marriage, he virtually donates the girl in the family of her husband. The intention of the parties always is to live under the roof of the husband. It is our custom that after marriage the parties to the marriage visit the parental house of the wife in order to give phera or on customary functions or on such social functions, but it cannot be termed as residence. Residence requires factual residence plus intention to reside at a particular place. In these circumstances, the trial Court was justified in holding that the parties never resided at Ludhiana or Jagraon. Therefore, the Ludhiana court had no territorial jurisdiction to entertain the petition.

12. Resultantly, this appeal is hereby dismissed with the observation that it will always be open to the appellant to go to the Hon"ble Supreme Court to make a proper request for the transfer of the case from Delhi Court to Ludhiana Court. I would have passed this order, but the High Court has no jurisdiction to transfer a case from one State to the other. No order as to costs.

13. The original petition at moment is lying in this Court, therefore, directions are given to the Registry to return the same against receipt to the appellant so that she may be able to present the same before the learned District Judge at Delhi. Certificate shall also be given by the Court as to when this petition was originally filed before the learned District Judge, Ludhiana.