

(1959) 11 AHC CK 0006
Allahabad High Court
Case No: Second Appeal No. 354 of 1958

Bikram Singh and
Another

APPELLANT

Vs

Sudarsan Singh

RESPONDENT

Date of Decision: Nov. 5, 1959

Acts Referred:

- Hindu Marriage Act, 1955 - Section 19, 4, 9

Citation: AIR 1961 All 150

Hon'ble Judges: S.S. Dhavan, J

Bench: Single Bench

Advocate: Maharaja Bahadur Lal and B.B. Lal, for the Appellant; R.B. Misra, for the Respondent

Final Decision: Allowed

Judgement

S.S. Dhavan, J.

This is a wife's second appeal against a decree for restitution of conjugal rights obtained by the alleged husband. The plaintiff respondent Sudarsan Singh filed a suit against the appellant Rajmati for restitution of conjugal rights. He made the father of the girl a co-defendant. His case was that he had been married to Rajmati but that, before the "gauna" ceremony could be performed, the father of the girl began to think of re-marrying her to some one else. The plaintiff was, therefore, compelled to file the suit for the enforcement of his conjugal rights.

The appellant Rajmati contested the suit and denied that she had ever been married to the plaintiff. After hearing the evidence of the parties learned Munsif observed that some of the allegations of the plaintiff were false, and there were contradictions in his evidence but he believed his story and held that the plaintiff was the husband of the appellant. He, therefore, decreed the suit for the restitution of conjugal rights and issued a permanent injunction restraining the father from

remarrying Rajmati to any other person. On appeal the learned Civil Judge, Gorakhpur confirmed the finding that the plaintiff Sudarsan Singh had been married to Smt. Rajmati and dismissed the appeal. Aggrieved by this decision both Rajmati and her "father Birkam Singh have come to this Court in second appeal.

2. In my opinion the appeal must be allowed and plaintiff-respondent's suit for restitution of conjugal rights dismissed on the simple ground that the learned Munsif had no jurisdiction to try it. The suit was filed on 3-3-1956, i.e., after the Hindu Marriage Act No. XXV of 1955 had come into effect. Sec. 9 of that Act confers the right on either the husband or the wife to apply for restitution of conjugal rights to the District Court. Section 19 enjoins that every petition under the Act (including, of course, the petition for restitution of conjugal rights) must be presented to the District Court within the local limits of "his ordinary original civil jurisdiction where the marriage was solemnised or the husband and wife reside or last resided together.

The words "District Court" have been defined in Section 3 as meaning,

"in any area in 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".

There has been no notification in the official gazette investing the Munsif Gorakhpur with the powers to hear and decide petitions under the Hindu Marriage Act.

In notification No. 2207/VII published in the U, P. Gazette dated 20-10-1956, the list of courts throughout Uttar Pradesh was published as having jurisdiction as "District Court" within the meaning of Section 2 of the Hindu Marriage Act but the court of Munsif, Gorakhpur or of any Munsif is not included in this list. That court, therefore, had no jurisdiction to try the suit. This matter is also concluded by the decision in [Smt. Balwant Kunwar and Others Vs. Addl. Munsiff, Dehra Dun and Another](#), It was held by Oak J., that a Munsif has no jurisdiction to entertain a suit for restitution of conjugal rights where the parties are Hindus.

3. The Hindu Marriage Act Was intended by die legislature to be a complete Code as regards matters dealt with by it. This is clear from Section 4 of the Act which provides (a) that any text, rule or interpretation of Hindu law shall cease to have effect with respect to any matter for which provision is made in the Act; and (b) that any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any provision of the Act. The combined effect of Sections 9 and 19, read with Section 4, is that the District Court has the exclusive jurisdiction to decide a suit for restitution of conjugal rights where the parties are Hindus. The present suit was between a Hindu plaintiff and a Hindu defendant. The learned Munsif, therefore, assumed jurisdiction which he did not possess under the law. The entire trial is, therefore, a nullity.

4. The learned counsel for the plaintiff-respondent urged that the appellants could not be permitted to raise the question of jurisdiction in second "appeal as they acquiesced in the trial and led evidence. He relied on an earlier decision of this Court in which it was observed that a party could not be permitted to raise the question of jurisdiction in second appeal, if his conduct shows that he had taken part in the proceedings before the trial court on his own free will. The exact decision was not cited before me, but as far as I recollect, this Court held, on merits, that the tribunal had jurisdiction. The case related to an industrial dispute in which the employer had contended that the notification constituting the Tribunal was ultra vires and void. This Court held that an employer who, had appeared and led evidence before the Tribunal without protest should not be permitted, after he had lost the case, to torpedo the award of the Industrial tribunal by challenging the legality of the reference of the order constituting the Tribunal. It was not contended that there had been any violation of any fundamental principle laid down by the legislature.

5. But in the present case the legislature has laid down a principle that suits of the nature of restitution of conjugal rights must be tried before the highest court in the district. It considered these suits to be of sufficient gravity not to be entrusted to an inferior court. The decree under appeal is a nullity. To allow such a suit to be tried by a Munsif would defeat a fundamental principle laid down by the legislature. The decree is a nullity and cannot stand.

6. I would also like to observe that the learned Judge in appeal, while assessing the comparative merits of the evidence of the parties, appears to have applied his mind to the husband's evidence and ignored the evidence of the wife. There is nothing in his judgment to show that he weighed the evidence of the wife against that of the husband. This is not a satisfactory way of assessing the evidence in appeal.

7. The courts below issued a permanent injunction restraining the father of the girl from remarrying her to another person. An injunction in such wide terms was improper, as it might affect the girl's right to re-marry even after obtaining a divorce from the respondent, assuming that she is married to Sudarsan Singh a question on which I express no opinion.

8. For these reasons I allow the appeal and dismiss the plaintiff's suit. The parties shall bear their own costs.