

(2006) 07 AHC CK 0198

Allahabad High Court

Case No: First Appeal No. 182 of 2001

Vinod Kumar Rai

APPELLANT

Vs

Manju Rai

RESPONDENT

Date of Decision: July 20, 2006

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13

Citation: (2006) 4 AWC 3814

Hon'ble Judges: Barkat Ali Zaidi, J

Bench: Single Bench

Advocate: Faujdar Rai, Chandra Kumar Rai, R.P. Singh and Brij Raj Singh, for the Appellant; Atul Srivastava, for the Respondent

Final Decision: Allowed

Judgement

Barkat Ali Zaidi, J.

A husband's suit for divorce was dismissed by the 1st Additional District Judge, Ghazipur, which brings him in appeal here.

2. I have heard Sri Brij Raj Singh, learned Counsel for the Appellant and Sri Atul Srivastava, learned Counsel for the Respondent.

3. It is regrettable that not a single case law on any matter, involved in the case has been produced, which is obviously not in keeping with the dignity and standards of the High Court.

4. The husband in his plaint alleged infidelity and loose moral character on the part of wife and that was the principal ground for seeking divorce. It was further alleged by the husband that despite the fact that he had not visited the wife for more than a year and was on duty in the army where he is a sepoy and yet a son was born and the husband emphasised this circumstance as proof positive of the illicit relations of his wife with others. It was also alleged that the behaviour of his wife towards his

parents left much to be desired.

5. The wife in her reply contradicted and condemned all the aforesaid allegations of the husband and maintained that the son born to her was the legitimate child of the Plaintiff-Appellant and the vicious allegations made by the husband against her are all totally false. She denied that she had been rough and rude to her in-laws.

6. The couple have an 11 years old daughter and she is admittedly a legitimate daughter of the Plaintiff-Appellant.

7. The evidence in the case consisted only of the Plaintiff-husband and the Defendant-wife and they both reiterated in their statements what has been mentioned in the plaint and the written statement.

8. It may be mentioned at the outset that the approach of the trial court to the case was misconceived. The trial court should have realized that in cases of such disputes between the husband and wife, the approach should not be the same as in property disputes. The matter should be dealt with as relating to animate and not inanimate objects. Instead of trying to resolve the dispute firmly and finally, the trial Judge just dismissed the suit with the findings that the allegations of the husband had not been proved.

9. The judgment of the trial court consists of mainly of statements of the parties in-extenso.

10. In cases of this nature, it should not be deemed necessary to give categorical findings with regard to illicit relations of the wife. For the family and the society as a whole, such matters need to be kept under wraps to avoid discomfiture and disgrace, particularly, when the Court can do without being specific in this regard.

11. What the Court needs to see is vicious and violent allegations of illicit relationship are being heard by the husband with impunity. If divorce is refused, the husband and wife will not be able to live together, because, the scars inflicted by such cruel allegations will never heal and the husband and wife will never remain united hereafter because of the dissensions and disputes.

12. It is not the policy of law to break up homes but a house which is torn asunder by constant strifes and bickerings is a hell and must be broken up. It is in this perspective that the dispute should be visualized. Looked at, from this point of view, the only remedy which seems appropriate, is to grant divorce.

13. In such matters, the paramount consideration should be the welfare of the family. The provisions of Hindu Marriage Act are wide enough to provide legal justification for the same. We can resort to principle of cruelty enunciated in Sub-clause (1-a) of Clause (1) of Section 13 of the Hindu Marriage Act, 1955 and it could be said that the conduct of the wife was cruel enough to give rise to such suspicions and misgivings on the part of the husband. We need not be categorical or

specific about it, but the husband had, his own reasons to suspect the fidelity of his wife. He even denied the legitimacy of the son born to her with the allegations that he has not visited his wife for more than a year before the birth of the son.

14. We would refrain from saying anything further about the matter and it would suffice to state that the conduct of the wife may be deemed cruel as contemplated under Sub-clause (1-a) of Clause (1) of Section 13 of the Hindu Marriage Act, 1955 so as to justify a divorce.

15. Reference has been made to a compromise which was arrived at between the parties in presence of the District Magistrate, because the matter was referred to him by Army Authorities on the complaint of the wife. It was pointed out that under the terms of the compromise, the husband-Plaintiff had agreed to maintain the wife. A compromise of this nature obviously seems to be a temporary measure by the husband to wriggle out of the controversy for the time being. It was not and could not be a permanent solution for the rest of their life and seems to have been arrived under influence of the District Magistrate who wanted to settle the matter between the parties.

16. As mentioned earlier, the difference between the parties are so deep rooted that there is virtually no possibility of reconciliation. They should, therefore, have an option to live their lives.

17. The appeal has, therefore, to be allowed.

ORDER

The appeal is allowed. The judgment and decree of the trial court, under appeal, is set aside and a decree of divorce, as requested by the husband, is granted, in consequence whereof, the marriage shall stand annulled.