
(1995) 03 MP CK 0031

Madhya Pradesh High Court

Case No: Civil Revision No. 98 of 1914

Neeta

APPELLANT

Vs

Dinesh Kumar

RESPONDENT

Date of Decision: March 23, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2, Order 7 Rule 11
- Hindu Marriage Act, 1955 - Section 13, 19, 19(II), 24

Citation: (1995) 1 DMC 640 : (1995) JLJ 588

Hon'ble Judges: Jayant Govind Chitre, J

Bench: Single Bench

Advocate: K.M. Puntambakar, for the Appellant; M.V. Apte, for the Respondent

Final Decision: Allowed

Judgement

J.G. Chitre, J.

This revision petition is heard finally on the request of both the Counsel.

2. The facts of the matter need to be stated for the purpose of unfolding the issue in controversy. Dinesh Kumar s/o R.T. Shukla, R/o Ratlam, filed matrimonial petition in the District Court of Ratlam praying for a decree of divorce from and against his wife Neeta, resident of Freeganj, Ratlam. On 18.1.94 an application was moved by Neeta, challenging the jurisdiction of District Court, Ratlam. A contention to that effect was also raised in written statement in para 11. filed by wife Neeta. The matter was fixed for recording of evidence on 18.1.94. On that day the prayer of no jurisdiction was pressed on behalf of wife Neeta and it was prayed that said issue be decided as preliminary issue. The Court passed an order on same day and ordered that the objection in respect of jurisdiction of the Court would be decided at the time of decision of matrimonial petition.

3. Being aggrieved by the said order the petitioner has preferred this revision petition.

4. Learned Counsel Shri Puntambakar, appearing for petitioner referred to provisions of Section 19 of Hindu Marriage Act, 1955 (hereinafter referred to as Act); so also he pointed provisions of Order 14 Rule 2 C.P.C. as well as provisions of Order 7 Rule 11 of C.P.C, and submitted that the marriage between the spouses took place at Dahod (Gujrat) and the spouses last resided together at Gwalior and presently the wife is residing at Jhansi. He submitted that in view of these facts, District Court, Ratlam does not have jurisdiction to entertain the said matrimonial petition and, therefore, the said petition should have been returned to petitioner for filing it in Court having jurisdiction.

5. Replying to that, Shri Apte, Counsel for the husband, Dinesh Kumar Shukla, submitted that the parties resided last together at Ratlam and, therefore, Ratlam District Court has the jurisdiction to entertain and decide said matrimonial petition. He placed reliance on the judgment in the matter of Ashok Jagannath Prasad v. Narsingh Rao Vasantryao Pawar reported in 1986 MPLJ 666 and a judgment of Full Bench of this Court in the matter of Ramdayal Umaramal v. Pannalal Jagannath, reported in 1977 JLJ 720 for substantiating his arguments. Shri Apte, further submitted that learned Court was right and justified in ordering that the said point of jurisdiction would be decided at the time of deciding the said matrimonial petition.

6. Section 19 of Act provides 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 5 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).

has no relevancy at all.

7. Order 7 Rule 11 C.P.C.--Sub-rule (d) provides that--

"The plaint shall be rejected (d) where the suit appears from the statement in plaint to be barred by any law."

8. Order 14 Rule 2 provides--

(1) Notwithstanding that a case may be disposed of on a preliminary, the Court shall, subject to the provisions of Sub-rule (2), pronounce the judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--(a) the jurisdiction of the Court, or (b) a bar to the

suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

9. The judgments on which Shri Apte, Counsel for the opponent placed reliance are dealing with different set of facts The Full Bench judgment of this Court in the matter of Ram Dayal v. Panna Lal (supra) was revolving around the claim for damages for breach of contract. The judgment of this Court in the matter of Ashok Jagannath v. Narsingh Rao (Supra) was revolving around a suit for a declaration that the consent decree for eviction and recovery of house rent passed by the Court of 1st Civil Judge, Class II, Gwalior, should do declared as not binding on one of the defendants in the previous suit, and on that count, deserves to be set aside. A prayer for permanent injunction for executing the decree was also prayed in that suit.

10. The present matter is a matrimonial petition and needs a different consideration. It being a matrimonial petition it has to be decided as early as possible, and it is to be seen, keeping in view the spirit in which Hindu Marriage Act has been enacted, that the wife should not be put to hardship in contesting the matrimonial petition if she happens to be respondent. It is pertinent to note that Section 24 has been enacted in the same spirit and Section 19(11) has been enacted in the same spirit which provides that such matrimonial petitions can be presented in the District Courts where the respondent at the time of presentation of petition, resides. This provision enables the respondent to have convenience for contesting the matrimonial petition. The idea, in my view, is that when the petitioner approaches the Matrimonial Court for the purpose of getting a decree against the spouse, the spouse who is required to contest the petition should not be put to hardship, inconvenience and unnecessary expenditure. Matrimonial matters are delicate and they require a different consideration altogether.

11. The wife Neeta in the present matter presently resides at Jhansi and the marriage between the petitioner and opponent was solemnised at Dahod (Gujarat). The distance between Jhansi and Ratlam would be about 500 kms. or more than that. The distance between Dhod and Ratlam would be about 200 kms. It has to be kept in mind that present respondent wife Neeta, if at all is required to contest the matrimonial petition to full extent, would be required to go to Ratlam often at the time of recording of evidence, and she would be required to bring the witnesses from other relevant places. She will have to get instructions for contesting the said matrimonial petition from the witnesses even from Ratlam by coming down to Ratalm from Jhansi. That would be hardship, inconvenience as well as expenditure which can not be compensated by an order of interim alimony and cost of litigation which can be passed in view of Section 24 of the Act.

12. The jurisdiction needs to be considered from the averments made in the plaint and in the matter of matrimonial petition in this case. Shri Apte, Counsel for the opponent, Dinesh Kumar read out relevant paragraph from the matrimonial petition which does not make it clear that petitioner averred that both the spouses last resided together at Ratlam.

It is well settled that for the purpose of proving the point of "last residing together" the stay should be with "animus resi-dendi", Such averments are totally absent in present matrimonial petition.

13. In every matrimonial petition, the objection on the point of jurisdiction, tenability of the petition should be decided as preliminary issues for avoiding inconvenience and hardship to respondent who has been dragged in the Court. So also, other delicate issues likely to create damaging impact on matrimonial relations, the disputes in respect of possession of residential house, custody of children should be handled carefully and quickly. Because such disputes are likely to make the relations of fighting spouses bitter to such an extent from where return is next to impossible.

14. Therefore, in the circumstances, it was necessary for the Court dealing with matrimonial petition in question to frame preliminary issue in respect of jurisdiction about which a grievance was made in written statement and in the application by wife Neeta which was separately moved on 18.1.94. But the Court dealing with matrimonial petition has not done it, and, therefore, the impugned order deserves and needs to be set aside.

15. Thus, the petition is hereby allowed. The impugned order is hereby set aside. The District Court, dealing with matrimonial petition at present is hereby directed to frame preliminary issue in respect of the jurisdiction and adjudicate over it, as early as possible and positively within a month. In the circumstance of the matter on order as to the cost of this litigation. Parties to appear before the Matrimonial Court deciding the said matrimonial petition on 28.3.95 either personally or through their Counsel. Copy of order to litigant as and when applied for, but urgently.