
(1981) 09 MP CK 0008
Madhya Pradesh High Court
Case No: None

Pastor J.S. Singh

APPELLANT

Vs

Jyoti Singh

RESPONDENT

Date of Decision: Sept. 13, 1981

Acts Referred:

- Divorce Act, 1869 - Section 10, 17, 3, 3(3)

Citation: (1982) JLJ 500

Hon'ble Judges: S.S. Sharma, J; C.P. Sen, J; B.C. Verma, J

Bench: Full Bench

Advocate: N.P. Pandey, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

C.P. Sen, J.

This matter comes up before us u/s 17 of the Indian Divorce Act, 1869, for confirmation of the decree nisi for divorce granted in favor of the petitioner. Pastor J. S. Singh and against his wife Smt. Jyotsna Singh (respondent No. 1) by the District Judge, Jabalpur, on 7-3-1981.

2. Before the District Judge, the petitioner filed a suit u/s 10 of the Indian Divorce Act seeking dissolution of his marriage with respondent No. 1. Smt. Jyotsna Singh. The marriage between them was performed on 27-12-1972 in the Methodist Church, Khursipar Baihar, district Balaghat. As a result of this marriage, they have three children. They lived peacefully up to the year 1976. Both of them are teachers. While respondent No. 1 continued serving at Baihar, the petitioner was transferred to Jabalpur and then to Narsimhapur for about a month and again retransferred to Jabalpur. As a result of the transfer, the petitioner resided at Jabalpur, while his wife, respondent I continued to live at Baihar upto December 1976 when she was transferred to Raipur. The petitioner's case is that when he resided at Jabalpur. the respondent No. 1 would often visi(sic) him during the holidays. They resided

together at Jabalpur under the same roof and also cohabited. This went on upto December 1976. The further allegation is that after respondent No. 1 was transferred to Raipur, she did not permit the petitioner any access to her. The petitioner noticed that at Raipur she came in contact with respondent No. 2, H K. Sharma who was often found at the residence of respondent No. 1 and the two respondents started living together practically as husband and wife. It is also alleged that she conceived from respondent No. 2 and according to the petitioner she even has married him. The allegation, therefore, is that the respondent No 1 had started living in adultery entitling the petitioner to a decree for divorce. After the filing of the suit, certain allegations were added in paragraph 4 of the original plaint, By the amendment, the plea introduced is that the petitioner and the respondent No, 1 last resided together at Jabalpur and, therefore, the District Judge, Jabalpur, has jurisdiction to try the suit in view of section 3(3) of the Act. Both the respondents remained absent and filed no written statement although they were duly served. The District Judge, therefore, proceeded in their absence, recorded the statement of the petitioner and relying upon it, has passed a decree nisi for divorce which is now sought to be confirmed by this Court.

3. Although the jurisdiction of the District Judge, Jabalpur was not questioned before that Court, the question of jurisdiction is of paramount importance and since we had our own doubts in that behalf, we required the learned counsel for the petitioner to satisfy us on that count. It may be mentioned that the respondents also did not appear before us. The learned counsel for the petitioner submitted that from the deposition of the petitioner himself, it is clear that the respondent No. 1 visited him at his place at Jabalpur and lived with him upto December 1976 and, therefore, they "last resided together" within the jurisdiction of the District Judge, Jabalpur and hence the District Judge, Jabalpur had jurisdiction to try the suit, u/s 3(3) of the Act. District Court means, in the case of any petition under the Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction under the Act, the husband and wife reside or last resided together. The question, therefore, is as to the meaning of the words "reside" or "last resided together" as are used in this section. The word "residence" signifies a man's abode or continuance in a place and where there is nothing to show that it is used in a more extensive sense, it denotes the place where an individual eats, drinks and sleeps or where his family or his servants eat., drink and sleep, The word "residence" has a variety of meaning according to the statute in which it is used. The term is flexible and must be construed according to the object and intent of the particular legislation where it may be found, Primarily, "residence" or place of abode" means the dwelling and Home where a man is supposed usually to live and sleep; they may also include a man's business above the place where he is to be found daily [See Stroud's Judicial Dictionary (Sweet and Maxwell Ltd) Fourth Edition. Volume 4, pages 2353-9] The "residence" to which the Divorce Act points, must be something more than occupation during occasional usual visits within the local limits of the Court,

more specially where there is residence outside those limits marked with a considerable measure of continuance. A mere casual visit to a place with no intention of dwelling there by a husband and wife who have a fixed place of residence elsewhere will not amount to residence in that place within the meaning of section 3 of the Divorce Act so as to give jurisdiction under the Act to the Court within the local limits of whose jurisdiction such place is situated: See *Devil v. Esther Dennis* AIR 1951 Nag 248. u/s 488 of the Code of Criminal Procedure, 1898, proceedings for maintenance could be taken against any person in any district where he resided or where he last resided with his wife or as the case may be the mother of the illegitimate child. Interpreting the word "resides" as appearing in section/488(8) of the Code, the Supreme Court in *Jagir Kaur v. Jaswant Singh* AIR 1961 SC 152, held that the term "resides" does not mean only domicile in the technical sense of that word. It was observed that the term means something more than a flying visit to or a casual stay in a particular place. The Supreme Court ruled that there shall be animus manendi or an intention to stay for a period, the length of the period depending upon the circumstance of each case. Their Lordships said that a person resides in a place if he through choice makes it his abode permanently or even temporarily: whether a person has chosen to make a particular place his abode depends upon the facts of each case. What is important, therefore, to see in a given case is whether by choice a particular place is made an abode permanently or even temporarily, the casual residence excluded. If there is an animus revertendi, his temporary stay at another place, however long, will not have the effect of changing one's own permanent residence at the original place.

4. In the present case, the unquestioned testimony of the petitioner establishes that while he was living at Jabalpur and had his Home there, his wife (respondent No. 1) who stayed at Baihar in connection with her service, often came and stayed with the petitioner at his home under the same roof. They so lived at Jabalpur upto December 1976. It is no doubt true that the respondent No. 1 also had a place of residence at Baihar where she was serving. In our opinion, from these facts, it can well be inferred that the petitioner and the respondent No. 1 last resided together at Jabalpur where the petitioner lived. The house of the petitioner was the residence of the spouses where they last resided together. Under some what similar circumstances, *Somnata Iyer, J. in S. Saroja v. P. G. Emmanuel* AIR 1965 Mys 1, held that where the wife and the husband were serving in two different districts and the wife visited that husband's place for short intervals during her vacations, the husband's place where she stayed even for short intervals would be the place where they will be said to have last resided together within the meaning of section 3(3) of the Act. The learned Judge observed that where both the husband and the wife hold employments in different districts and the wife visits the husband's place or vice versa the purpose obviously is that each of the spouses should have the company of the other and the husband and wife should eat, drink and sleep together. It was further observed that nothing more is necessary to support the view

that during that period of the visit the husband and the wife intended to reside together and the fact that the visit was for a short duration or did not have any appreciable degree of permanence cannot alter the situation. We are in respectful agreement with the view expressed by Senath Iyer, J. in *S. Sarcoma's* case (supra). We accordingly hold that the visits made by respondent No. 1 during vacations to the petitioner at Jabalpur and their residing together during that period at Jabalpur would mean that they resided together at Jabalpur. The suit was, therefore, well within the cognizance of the District Judge, Jabalpur, who had jurisdiction to try it.

5. Coming to the merits of the case, we find that the evidence given by the petitioner is quite cogent and convincing. The refusal of the wife (respondent No. 1) for any access to the petitioner after she had gone to Raipur showed her inclination. She was seen in the company of respondent No. 2 who even stayed at her place. She used to live there alone while the petitioner lived at Jabalpur. She had thus ample opportunity. Her conduct as deposed to by the petitioner also leads to an inference that she had committed adultery. There is also evidence. The petitioner as PW. 1 has deposed that when he visited Raipur/Gariaband where respondent No. 1 was serving, he found respondent No. 2 visiting her. He also noticed that respondent No. 1 was inclined towards respondent No. 2. He also came to know that the two respondents were practically living as husband and wife and that is how they were known in that region. Neither of the two respondents has come forward to controvert these allegations. The evidence given by the petitioner could well have been controverted by the sworn testimony of respondent 1 and of the respondent No. 2 as was done in the case of *England v. England* (1958) All ER 784. That, however, was not done in the instant case. In our opinion, under these circumstances, an inference can legitimately be drawn that respondent No. 1 (wife) has since the solemnization of the marriage been guilty of adultery.

6. For the aforesaid reasons, the decree nisi of divorce passed by the District Judge in Civil suit No. 34-A of 1980 is made absolute. Since the respondents have not appeared before this Court, we make no order as to costs.