

(2014) 12 MP CK 0064
Madhya Pradesh High Court
Case No: First Appeal No. 28 of 1997

Kamal Singh Sisodia

APPELLANT

Vs

Rama Sisodia

RESPONDENT

Date of Decision: Dec. 4, 2014

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(b)

Citation: (2015) 1 MPHT 231 : (2015) 1 MPLJ 630

Hon'ble Judges: Vandana Kasrekar, J; Rajendra Menon, J

Bench: Division Bench

Advocate: Amit Verma, Learned Counsel, Advocate for the Appellant

Judgement

Vandana Kasrekar, J.

The appellant and respondent entered into a marriage in the year 1964 and out of the said wedlock, the respondent-wife given birth to two daughters and one son. The relations between the appellant or respondent become strain after sometime. The appellant therefore in the year 1996 filed an application under Section 13(b) of the Hindu Marriage Act, for divorce on the ground of cruelty, adultery and desertion.

2. In the plaint allegations, the appellant denied that he entered into the marriage with the respondent. He further submits that respondent is living in adultery and she had deserted him without any reason.

3. Respondent filed the reply to the application and denied the plaint allegations. She submits that they had entered into a marriage in the year 1964 as per the Hindu rites and rituals. She also denied the allegation of adultery, cruelty and desertion. The trial Court after framing the issues and after recording the evidence dismissed the application of the appellant for divorce on the ground that he failed to prove the plaint allegations. Against the said judgment and decree, the appellant has filed the present appeal.

4. In the appeal notice was issued to the respondent and as the notice could not be served on her by ordinary mode, therefore this Court vide order dated 19/03/2004 has directed to serve the notice on the respondent through publication in Danik Bhaskar Bhopal Edition. In pursuance to the direction issued by this Court, notice was published in the Local Hindi Daily Newspaper Dainik Bhaskar Published from Bhopal on 18/05/2004. In spite of service of notice through publication, the respondent-wife did not appear before this Court, and therefore vide order dated 27/10/2014, this Court has directed to proceed the matter as ex-parte against the respondent.

5. We have perused the impugned order passed by the trial Court and the records, it appears that appellant has failed to prove cruelty and desertion and the trial after due appreciation of evidence has passed the impugned judgment and decree, which does not require any interference. However, the fact remains that the appellant and the respondent are residing separately for more than last 18 years and the respondent does not choose to appear before this Court inspite of service of notice which shows that she has lost interest in keeping marriage alive .

6. The Hon"ble Supreme Court in the case of [K. Srinivas Rao Vs. D.A. Deepa](#), has held as under:-

"30. It is also to be notes that the appellant husband and the respondent wife are staying apart from 27/04/1999. thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree."

7. In the present case also the appellant and respondent are residing separately for more than 18 years. In such circumstances, it shows that the marriage between them is irretrievably broken down and, therefore the appellant is entitled to get a decree of divorce.

8. Even though we uphold the judgment and decree passed, but we direct for dissolution of the marriage on account of the facts as are mentioned hereinabove and desertion of the appellant now, as is evident from the material available on record. Accordingly, the marriage between the parties stand dissolved. A decree for

dissolution of marriage is passed.

9. This appeal stands allowed. No order as to costs.

Certified copy as per rules.