

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.49 OF 2017

Sou.Sunanda Baban Gujar : Appellant (org.Respondent)
versus
Baban Bhikaji Gujar : Respondent(Org.Petitioner)

Mrs. Anita A Agarwal for the Appellant.
None for the Respondent – though served.

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**
DATE : 25th JULY 2017

P.C.

1 The above Family Court Appeal takes exception to the judgment and order dated 13/09/2012 passed by the learned Judge of the Family Court No.5, Pune. By the said order the Marriage Petition No. A-912 of 2010 came to be allowed and consequently the marriage between the Appellant and the Respondent which took place on 22/05/1984 came to be dissolved.

2 The Appellant -wife and the Respondent-husband were married on 22/05/1984. Out of the said wedlock they have three children out of whom two sons are married. The Appellant-wife and the Respondent-husband are today in the age group of 50-60 years. The Respondent-husband filed the said Marriage Petition for divorce invoking Section 13(1)(i-a) of the Hindu Marriage Act 1955 on the ground of cruelty. In support of the said ground averments were made in the said Marriage Petition.

3 The Appellant-wife has filed her written statement and denied the case of the Respondent-husband. The cause on the basis of which the Respondent-husband had filed the Marriage Petition was denied by the Appellant-wife and it was contended by her that the plot in question was purchased by her and in fact she was paying the installments for the same.

4 On the basis of the pleadings of the parties, the learned Judge of the Family Court, Pune framed the relevant issues. The said issues were revolving around whether the Appellant-wife treated the Respondent-husband with cruelty and whether the claim of the Respondent-husband could be accepted.

5 The parties led evidence in respect of their respective assertions. The Respondent-husband has led his own evidence. However, it seems that in spite of the opportunity granted, the Respondent-husband was not cross examined by the Appellant-wife. In so far as the Appellant-wife is concerned, she filed her affidavit of evidence but thereafter she failed to remain present before the Trial Court and therefore did not take any further part in the proceedings.

6 The Trial Court i.e. the learned Judge of the Family Court No.5,

Pune on the basis that the case of the Respondent-husband was required to be accepted in the absence of any cross-examination by the Appellant-wife, allowed the said Marriage Petition and resultantly the marriage between the Appellant-wife and the Respondent-husband dated 22/05/1984 stood dissolved. As indicated above, it is the said judgment and order dated 13/09/2012 passed by the learned Judge of the Family Court No.5, Pune which is taken exception to by way of the above Family Court Appeal.

7 Heard the learned counsel appearing on behalf of the Appellant-wife Mrs. Anita Agarwal. None appears for the Respondent-husband though the notice for final disposal was served upon the Respondent-husband. As indicated above, the Trial Court i.e. the learned Judge of the Family Court No.5, Pune has allowed the said Marriage Petition on the ground that the case of the Respondent-husband has gone uncontroverted in the absence of any cross examination by the Appellant-wife. In the said context it is required to be noted that Section 23 of the said Act obligates a judge trying a marriage petitions to record a finding in respect of the ground urged and not merely proceed on the basis that the case of the Respondent-husband has gone uncontroverted. In the instant case the said exercise has not been carried out by the Trail Court.

8 In that view of the matter, the judgment and order dated

13/09/2012 passed by the learned Judge of the Family Court No.5, Pune would have to be quashed and set aside and is accordingly quashed and set aside and resultantly the Marriage Petition would have to be relegated back to the Family Court, Pune for a de-novo consideration. Hence the following directions are issued :-

- 1] The impugned judgment and order dated 13/09/2012 passed by the learned Judge of the Family Court No.5, Pune is quashed and set aside and the matter is relegated back to the Family Court, Pune for a de-novo consideration.
- 2] The Appellant to appear before the Family Court on 11/09/2017 with a copy of the instant order with prior intimation to the Respondent. If the Respondent does not appear then the Family Court to Issue notice to the Respondent-husband i.e. the original Petitioner in the Marriage Petition to remain present before the Family Court, Pune on the date fixed by the Family Court, Pune.
- 3] On the Appellant-wife i.e. the Respondent in the Marriage Petition appearing before the Family Court, Pune, the learned Judge of the Family Court, Pune would offer an opportunity to the Appellant-wife to lead evidence as also subject herself to cross examination

by the Respondent-husband. The Family Court, Pune would accordingly give proper opportunity to the parties.

4] The learned Judge of the Family Court, Pune is directed to decide the Marriage Petition on its own merits and in accordance with law subject to the observations as afore-stated, latest by 31st January 2018.

5] The above Family Court Appeal is allowed to the aforesaid extent and is accordingly disposed of.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]