

RSA No. 3831 of 2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3831 of 2017 (O&M)

Date of Decision: 1.8.2017

Kulwaran Singh

.....Appellant

Vs.

Darshan Kaur

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Pallavi Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, recording their concurrent findings of facts, thereby partly decreeing the suit of plaintiff-respondent for recovery and maintenance, defendant-appellant has approached this Court by way of present regular second appeal

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that Darshan Kaur-plaintiff filed a suit against Kulwaran Singh-defendant for recovery of ₹10,80,000-00 as arrears of maintenance from 16.10.2004 to 15.10.2007 @ ₹30,000/- per month and for fixation of future maintenance @ ₹30,000/- per month and for creating a charge of maintenance of the land measuring 25K-12ML as 1/3 share out of land measuring 76K-16ML and land measuring 8K-0ML fully

detailed and described in the head note of the plaint. It was pleaded in the plaint by the plaintiff that she was legally wedded wife of defendant and marriage between them took place on 19.11.1967 at village Bham, Tehsil Mahilpur District Hoshiarpur according to Hindu Religious Rites and ceremonies and out of their wedlock, Devinder Singh was born on 12.01.1969. Behaviour of defendant was not cordial with plaintiff since the very beginning of marriage and he used to maltreat the plaintiff for insufficient dowry and compelled her to bring money from her parents.

In the year 1972, defendant left for Canada, leaving behind the plaintiff and his minor son at the mercy of God. The plaintiff kept on waiting for the defendant but all in vain. Nobody knew the whereabouts of defendant except that he has gone to Canada. The defendant never came to join the company of plaintiff nor took her to Canada with him. In the month of December, 1972, father of plaintiff took plaintiff and her minor son with him to village Bham and since then they were dependent on Rashpal Singh-father of plaintiff, who was maintaining his daughter and maternal grandson Devinder Singh. Since 1972, the defendant had not provided even a single penny to plaintiff or her son. The land fully detailed in the head note of plaint, was in the name of defendant in the revenue record being ancestral property and not self acquired property.

The defendant was running a departmental store and a catering business in Canada and was earning ₹6,00,000/- per month from said business, whereas, the plaintiff was totally dependent on her father and son. She did not possess any movable or immovable property in her name and she has no source of income. She was entitled to maintenance @ ₹30,000/- per month as arrears of maintenance from the period 16.10.2004 to

15.10.2007 and also entitled to fixation of future maintenance at the same rate. Since, the defendant was threatening to alienate the suit land to defeat the claim of plaintiff, a charge was also required to be created on the property mentioned in the head note of plaint qua amount of maintenance and future maintenance of the plaintiff. The plaintiff requested defendant to admit her claim, but defendant refused to do so.

Upon notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed her replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether plaintiff is entitled to recovery of ₹10,80,000/- as prayed for?OPP
2. Whether the plaintiff is entitled to future maintenance @ ₹30,000/- per month as prayed for?OPP
3. Whether the present suit is not maintainable in the present form?OPD
4. Whether the plaintiff is estopped by her act and conduct from filing the present suit?OPD
5. Relief.

In order to substantiate her stand taken in her pleadings, plaintiff brought on record documentary as well as oral evidence. However, despite availing numerous opportunities, defendant did not produce any evidence in support of his pleaded case. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court partly decreed the suit of the plaintiff for recovery of maintenance @ ₹5,000/- per month from the date of filing of suit, i.e. 8.10.2007 till the date of decree and future maintenance was also fixed at the same rate of ₹5,000/- per month, which would be charge upon the property owned and

possessed by the defendant, as detailed in the headnote of the plaint. Learned trial court partly decreed the suit vide impugned judgment and decree dated 24.7.2013.

Both the parties felt aggrieved against the judgment of the learned trial court. Plaintiff filed her first appeal praying for decretal of her suit in toto, whereas defendant filed his first appeal for setting aside the abovesaid judgment and decree of the learned trial court. Both the appeals were heard together and dismissed vide common impugned judgment and decree dated 29.3.2017 passed by the learned Additional District Judge. Hence this regular second appeal at the hands of the unsuccessful defendant.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would show that it was a case of no evidence so far as appellant was concerned. Present appeal is arising out of a matrimonial dispute between husband and wife. Out of this wedlock, one son was born way back in the year 1969, as pointed out by learned counsel for the appellant. Defendant-appellant was working in the Indian Army. However, he left the job and migrated to Canada in the year 1972, leaving behind his wife-plaintiff and minor son in India.

Unfortunately, appellant was not even aware as to what his son is doing and whether he is married or not. It seems that after migrating to Canada, appellant did not take care about his wife and his son. Conduct of the appellant would show that neither he proved himself to be a good husband, nor a good father. Having been left with no other option and apprehending that defendant may not sell his property also situated in his native village, plaintiff filed the present suit for recovery and maintenance.

During the pendency of the first appeal before the learned Additional District Judge, appellant-husband tried to play smart, contending that his marriage with plaintiff stood dissolved by way of ex parte decree of divorce passed by the learned court of competent jurisdiction in Canada. However, said plea raised on behalf of the appellant-husband was rightly declined by the learned first appellate court placing reliance on the law laid down by the Hon'ble Supreme Court in **Y.Anarashimharao and others Versus Y.Venkatalakshmi and another, 1991 (3) SCC-451**. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld.

Appellant has not been found to be a bonafide litigant. Such a litigant, who has no respect for the law and the justice delivery system, has no place in court of law. Further, appellant availed and was granted sufficient opportunities to produce his evidence but he failed to do so and for no good reasons. Had there been any substance in the stand taken by the appellant, he would not have kept silent. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 17 to 19 of its impugned judgment, which deserve to be noticed here, read as under:-

*“Now, coming to the cross appeal filed by the respondent/husband. The first contention raised is that since the marriage between the parties stands dissolved by decree of divorce passed by the competent Court in Canada, the appellant/wife is not entitled to any maintenance. However, this court does not subscribe to this contention. Any decree of divorce passed by a foreign country in between the parties governed by Hindu Marriage Act is not binding. Reference is made to the authority of the Hon'ble Apex Court reported as **Y.Anarasimharao and others Versus Y.Venkatalakshmi and another, 1991 (3) SCC-451**, wherein, it has been held as follows:-*

The decree dissolving the marriage passed by the foreign court is without jurisdiction according to Hindu Marriage Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that court. Further, irretrievable break down of marriage is not one of the grounds recognised by the Act of dissolution of marriage. Hence, the decree of divorce passed by the the foreign court was on a ground unavailable under the Act which is applicable to the marriage. Since with regard to the jurisdiction of the forum as well as the ground on which it is passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its passing, it cannot be recognized by the courts in this country and is therefore unenforceable.

As is pleaded case of the respondent/husband, decree of divorce has been granted by a court in Canada. First of all, that decree of divorce has not seen the light of the day at least in the present proceedings. Secondly, there is nothing that the appellant/wife submitted to the jurisdiction of the said court.

Further, there is nothing that the appellant/wife was summoned in the said proceedings or she participated in the same. Thus, the law laid by the Hon'ble Apex Court in the above authorities applies to the present case with full force and it is held that the decree of divorce, if any passed in favour of respondent/husband by a foreign country is not binding on the rights of appellant/wife.

So far the argument that the appellant/wife has inherited the property of her husband and that she is possessed of a kothi as well as agricultural land as well as bank account, there is not an iota of evidence adduced on record in this respect. Neither the respondent/husband himself nor anybody else on his behalf has appeared in the witness box in support of said assertion. Pleadings cannot take place of proof. Thus, in absence of any proof, the assertion are required to be rejected which are accordingly rejected.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. She also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

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considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

1.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No