

HIGH COURT OF CHHATTISGARH, BILASPUR

FA(MAT) No. 36 of 2019

- Pramod Kumar Tiwari, S/o Rajendra Prasad Tiwari, aged About 34 years, R/o Ratakhar, Bajrang Chowk, Korba, Tahsil And District Korba, Chhattisgarh. ----- **Appellant**

Versus

- Smt. Preeti Tiwari, W/o Pramod Kumar Tiwari, aged about 22 years, D/o Late K. K. Tiwari, R/o Quarter Number L I G-12, Dindyal Puram Colony, Balaghat, Madhya Pradesh. At Present- Village Amandulla, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh. ----- **Respondent**

For the Appellant : Mr. Sanjay Agrawal, Advocate.

For the Respondent : Mr. Pawan Kumar Kashyap, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

27.01.2020

With the consent of the parties this appeal is heard finally.

2. This appeal is directed against impugned judgment and decree dated 24.09.2019 passed in Civil Suit No.10-A/2018 whereby appellant's application for grant of decree of divorce has been rejected for want of territorial jurisdiction.

3. Shorn of unnecessary details, the appellant moved an application for grant of decree of divorce against the respondent/wife before the Family Court, Korba on the pleadings *inter alia* that on 20th May, 2011, marriage between the parties was solemnized at Village Amandullah, Tahsil Sakti, District Janjgir-Champa. It was pleaded that thereafter, the appellant and his wife started residing at Ratakhar, Korba. Further pleading was that on 25.04.2012 the respondent/wife left the matrimonial house. Though

the appellant had gone to take her back at Balaghat on 20th May, 2012, she did not come back, though, assured that she would be coming back. Thereafter, respondent/wife did not return to matrimonial house at Korba despite all efforts made failing which, the appellant moved an application for grant of decree of divorce before the Family Court, Korba. In that case judgment and decree of judicial separation was passed on 20th January, 2015. The appellant thereafter moved present application for grant of decree of divorce.

4. Written statement was filed and in view of the pleadings of the parties, the learned Family Court framed specific issues with regard to territorial jurisdiction.

5. Upon consideration of the evidence of the parties, the learned trial Court, on issue of territorial jurisdiction, held that according to the pleadings and evidence of the parties, marriage was solemnized at Amandullah, District Janjgir-Champa and as the respondent/wife, at the time of presentation of the application was residing at Amandullah, Tahsil Sakti, Janjgir-Champa, in view of provisions contained in Section 19 of the Hindu Marriage Act, the Family Court, Korba had no jurisdiction to decide the case. It is this order which is under challenge before this Court.

6. Learned counsel for the appellant, assailing legality and validity of impugned judgment and decree, on the aspect of territorial jurisdiction, made pointed submission that even if the entire pleadings and evidence on record are accepted, it is clear that the parties last resided at Korba when the wife left the matrimonial house on 25th April, 2012 and thereafter she did not come back. He would submit that the husband had gone to meet

his wife at Balaghat and also celebrated marriage anniversary but thereafter, the respondent/wife did not come back and the appellant had to return back to Korba. The short duration of temporary stay of the appellant at Balaghat, would not satisfy the requirement of "last resided". He would argue that the word last resided has to be understood in a broad sense meaning as the place where the wife is residing with her husband in matrimonial relation with certain degree of continuity and permanence. Mere occasional visit of the husband to the house of the wife for few days, cannot be treated as the place where the husband and wife last resided.

7. On the other hand learned counsel for the respondent supporting the judgment and decree would submit that even according to the pleadings and evidence on record and the details of the respondent as given by the appellant in the petition for divorce, respondent is shown to be residing at Amandullah, Sakti, Janjgir-Champa, which is outside the territorial jurisdiction of Family Court Korba. He would further submit that it being an admitted position that the marriage was also solemnized at Village Amandullah and the husband wife last resided at Balaghat, though for only few days, the Court below has not committed any illegality in holding that the Family Court Korba would have no territorial jurisdiction.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Even if, we are to accept the pleadings and evidence led by the parties with regard to the place of residence where the respondent/wife was residing at the time of presentation of the

application for grant of divorce, from the pleadings of the parties and evidence, it is an admitted position that respondent/wife resided with the husband at Korba till 25.04.2012 then she left the matrimonial house at Korba. It is this period of residence of respondent with the appellant/husband at the matrimonial place at Korba which is the place where the parties were residing together in their matrimonial relation. 25.04.2012 is the date when the respondent/wife left the matrimonial house and went to Balaghat. Therefore, the parties last resided at Korba till 25.04.2012.

10. The finding of the learned Court below that visit of the appellant/husband to Balaghat where he lived with his wife for few days would be treated as the place where they last resided, is wholly unacceptable as it is against the spirit of the provision contained in Section 19 of the Hindu Marriage Act.

11. A petition under the Hindu Marriage Act can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

- “(i) the marriage was solemnized, or**
- (ii) the respondent, at the time of the presentation of the petition, resides; or**
- (iii) the parties to the marriage last resided together; or**
- [(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; 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 person who would naturally have heard of him if he were alive.”**

12. It would thus be clear that a petition under Section 13 of the Hindu Marriage for grant of decree of divorce could be filed at any of the place mentioned in the aforesaid provision contained in

Section 19. A petition can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction, the parties to the marriage last resided together. If this condition is satisfied, irrespective of the fact that the marriage was solemnized elsewhere or that the respondent is residing outside the local limits of jurisdiction, application would be maintainable before the concerned Family Court which exercises local jurisdiction over the place where the parties to the marriage last resided together.

13. The expression “last resided together” has to be understood in the broad sense as residence in a matrimonial life with certain amount of permanency and continuity. The place where the husband ordinarily resided would be the place where the parties have reside in their matrimonial relation. By no stretch of imagination a casual or temporary stay of the parties, including stay in the house of the wife, can be treated to be the place of residence. This is so because in the context of marriage relationship, one has to keep in mind that a Hindu wife, after marriage, is expected to live with the husband at the place where the husband ordinarily resides. Even in a case where the husband and wife both are in employment and are working at different places, as is the scenario in the modern society, even in such cases, the marital home would be the place where the husband resides.

This aspect was taken into consideration by the High Court of Madhya Pradesh in the case of **Pushpa Datt Mishra Vs. Smt. Archana Mishra**, AIR 1992 MP 260 at page 262. It was held :-

“..Understanding the words "last resided together", in the context of marriage relationship, one has to keep in mind that a Hindu wife, after the marriage, is expected to

live with the husband at the place of the husband. The traditional concept of a Hindu wife is The literal meaning is that she has always to be in company of the husband and to follow him wherever he goes. In the modern society, however, husband and wife both may seek service, gain employment and work at different places away from each other, but even in such cases, the marital home would be the place where the husband lives. The place where the wife is posted in service cannot be said to be her marital home. The place where the husband is posted can be, in my opinion, taken to be the marital home of the parties and a visit of the wife to that place can be taken to be the place of their residence."

14. The Supreme Court had an occasion to examine this aspect of residence in matrimonial relationship. In that case also, the word 'reside' was given wider meaning as to include an element of continuity and permanence. Their lordships in the Supreme Court held as below:-

"In order to give jurisdiction on the ground of 'residence', something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length at time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a

change. If a person lives with his life and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses or others, his actual and physical habitation is the place where he actually or personally resides.”¹

15. In view of the aforesaid judicial pronouncements, it is vividly clear that the place where the husband and wife resided together in their matrimonial relationship was Korba and casual and temporary living of the husband in the parental house of the respondent/wife, where he had gone to celebrate marriage anniversary and to take his wife back, can by no stretch of imagination, be said to be the place where they last resided together.

16. In that view of the matter, we are unable to uphold the impugned judgment passed by learned Court below where the Court has rejected the application on the finding that it does not have the territorial jurisdiction.

17. In the result the appeal is allowed, impugned judgment and decree is set aside and the matter is remitted to the Court below for decision on all other issues framed by it.

The records of the Court below be remitted forthwith.

The parties shall appear before the Family Court, Korba on 25th of March, 2020.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Ajay

Sd/-

(Vimla Singh Kapoor)
Judge

¹ [Jeewanti Pandey Smt. Vs. Kishan Chandra Pandey, AIR 1982 SC 3: 1981 All L.J. 1341]