Kr. Rajendra Bahadur Singh vs Kr. Roshan Singh And Anr. on 14 March, 1950

Equivalent citations: AIR1950ALL592, AIR 1950 ALLAHABAD 592

JUDGMENT

Harish Chandra, J.

1. This and the connected First Appeal No. 313 of 1944 arise out of a decree passed by the learned Additional Civil Judge of Bulandshahr in favour of the plaintiff, Cunwar Rajendra Bahadur Singh, Taluqdar of Haraha estate in the district of Bara Banki against the defendants Kunwar Roshan Singh and his son Kunwar Rajendra Pratap Singh, Zamindars of village Belon in the district of Buland Shahr. This appeal is on behalf of the plaintiff while Appeal No 313 of 1944 is on behalf of the defendants. Some of the facts of this case are admitted. Defendants 1 and 2 both lived as members of a joint Hindu family of which defendant 1 is the karta. Dibya Kumari, the daughter of the plaintiff, was betrothed to defendant 2. No settlement was made with respect to dowry and the arrangement was that the plaintiff would give as much as he wished to give to the defendants as dowry for the marriage. The first ceremony which is known as the Barchhedan ceremony--which presumably means the ceremony of selecting the bridegroom--was performed on 16th June 1941. Thereafter the Tilak ceremony was performed on 1st November 1941 and the plaintiff's son went to Belon with certain presents for defendant 2. On 11th December 1941, the goda ceremony was performed in village Rani Katra, the residence of the plaintiff, when some presents were made to the bride. Thereafter a date was fixed for the marriage in the month of February 1942. The plaintiff's case is that after the goda ceremony had been performed, defendant 1 asked the plaintiff to pay him a sum of Rs. 15 000 in addition to the cash, ornaments, clothes and the elephant which had been presented by the plaintiff to defendants. The plaintiff did not agree to this new demand of defendant 1 and cancelled the marriage. In the meanwhile the girl fell ill and ultimately died on 12th February 1942. Thereafter defendant 1 entered into some correspondence with the plaintiff with the object of arranging a marriage for defendant 2 with the second daughter of the plaintiff, but the negotiations ultimately failed. Thereafter the plaintiff brought the suit against the defendants for the return of the cash, ornaments, clothes and the elephant which he had given to them in anticipation of his daughter's marriage with defendant 2 on two grounds. One of the grounds was that as defendant 1 had made an unreasonable demand for the payment of a sum of Rs. 15,000 from him he refused to marry his daughter to defendant 2 and thus put an end to the contract. The second ground was that the girl having died on 12th February 1942, the contract became void and he was therefore entitled to the return of the cash, the elephant and other articles which he had given to the defendants.

2. The defendants contested the suit on various grounds. Their case was that the presents which had been made by the plaintiff to the defendants were in the nature of a gift, pure and simple, and that they were not returnable to the plaintiff. It was said that the ceremonies preceding the actual

ceremony of marriage were also in the nature of a sacrament like the marriage itself and that the gifts were not made as part of a contract of marriage. Much emphasis was laid on their behalf upon the fact that when the gifts were made they were accompanied by a sankalp made on behalf of the plaintiff. They also denied the correctness of the claim made on behalf of the plaintiff with respect to the gifts. They further claimed the return of the presents made on their behalf to the plaintiff's daughter and also claimed the amount which they had spent in entertaining guests and in other ways in connection with these ceremonies, particularly the Tilak ceremony.

3. The learned Civil Judge held that the betrothal of the plaintiff's daughter with defendant 2 was in the nature of a contract and that the Contract Act was applicable to the present case. He further held that in view of the death of the girl which had made the performance of the contract impossible the plaintiff was entitled to the return of the cash, the elephant and other articles which he had given to the defendants in anticipation of the marriage. He, however, accepted the defendants' contention that they were entitled to the return of the presents made on their behalf to the girl. As a matter of fact, their right to a return of the presents made on their behalf was admitted by the plaintiff in his plaint. The learned civil Judge also accepted the defendants' contention that they were entitled to the money spent by them in connection with the Tilak and other ceremonies. He, however, found that the defendants had not been able to produce satisfactory evidence with respect to their own claim and after considering the evidence was of opinion that they were entitled to a deduction of Rs. 3452-0-9 on account of the expenses legitimately incurred by them in connection with the Tilak and the Barchhedan ceremonies and a further sum of Rs. 5619-3-6 on account of presents made by them to the bride on the occasion of the goda ceremony. He accordingly decreed the plaintiff's claim for a sum of Rs. 12,495-12-0 less Rs. 9071-4-3 to which, according to his findings, the defendants were entitled on account of the expenses incurred, and the gifts made, by them in connection with the various ceremonies and he further directed the return of the articles, the elephant and the accessories given by the plaintiff to the defendants. In case they were not returned they were held liable to pay a further sum of Rs. 7983-13-3 to the plaintiff.

4. As we have seen, both the parties have appealed. The plaintiff's contention in Appeal No. 328 of 1944 is that he is entitled to a decree for the whole amount claimed by him without any deductions. The defendants' contention is that the whole of the plaintiff's suit should be dismissed.

5. The defendants' contention that a betrothal in a Hindu family is not in the nature of a contract cannot be accepted. It is also not possible to accept their contention that the gifts made by the plaintiff on the occasion of the various ceremonies preceding the marriage were absolute and irrevocable gifts. Much reliance has been placed on their behalf on the fact that the gifts were accompanied by a sankalpa. The plaintiff's witnesses have denied that there was any sankalpa. But as all such ceremonies are accompanied by religious worship, the recital of a sankalpa before the gifts were made may be assumed. The evidence of the defendants that such sankalpa was actually recited also appears to be fairly reliable. But as the learned Civil Judge has pointed out, a sankalpa is nothing than a resolve to do a certain thing. The fact that the sankalpa was recited does not indicate that the gifts were of an irrevocable nature. It is obvious that they were made in anticipation of, and as consideration for, the proposed marriage of the plaintiff's daughter with defendant 2. Learned counsel for the defendants has referred me to a Sanskrit book dealing with ceremonies of

marriage--Vivah Paddati published by the firm Baij Nath Prasad, Booksellers, Banares. The introduction is dated Rakshabandhan, Sambat 2001. I have been referred to the sankalpa occurring on p. 13. This sankalpa is on behalf of the guardian of the bride and a perusal of the formula clearly indicates that the gifts on such an occasion are made by the guardian of the bride to the bridegroom as a consideration for the proposed marriage or in furtherance of the proposed marriage. The actual words are kanyadanapratigrahartham, that is to say, with the object that he (the bridegroom) may accept the bride in marriage.

6. Mayne in his Hindu Law (Edn. 10, 1938) on p. 144 points out that while marriage is a completed transaction, betrothal is only a contract. Gooroo Dass Banerjee in the Hindu Law of Marriage and Stridhan (Tagore Law Lectures, 1878) clearly points out that a betrothal is a contract. After pointing out that mere betrothment does not constitute marriage he says on p. 90 :

> "But the more correct view is that which regards betrothment as a revocable promise of marriage not constituting actual marriage, though such revocation would be improper it without a just cause, and this is the view which is in conformity with actual practice, and has received judicial sanction. It is amply supported by texts . . . ."

On p. 92 he goes on to say :

> "But though specific performance cannot be enforced, the party injured by the breach of a contract of betrothal is entitled to recover compensation for any pecuniary damages that might have been sustained, and also for any injury to character or prospects in life which may naturally arise in the usual course of things from such breach."

In an old Division Bench case of this Court Nowbut Singh v. Mt. Lad Kooer, 5 N. W. P. 102, Sir T. Strange's description of a betrothment according to Hindu law was approvingly quoted and the view expressed is that "previous and up to betrothment, the affair rests legally in promise; which may be broken subject to consequences. . ." They, however, held that in the case of a breach, such a contract could not be specifically enforced, but that the plaintiff would in such a case be entitled to damages only. A betrothal was regarded as a contract and subject to the provisions of the Contract Act in the cases of Gulabchand Paramchand v. Fulbai, 33 Bom. 411 : (3 I. C. 748) and Mulji Thakersey v. Gomti, 11 Bom. 412. It is said that in these cases the marriage was an asura marriage. But I do not see how the particular form in which the marriage is to be performed is of any consequence. In the Mitakshara (Vyavahara Adhyay) translated by Sir W. H. Macnaghten and Mr. H. T. Colebrooke, 1870, on p. 388 occurs a quotation from the 146th verse of Yajnyawalcya which is explained in the Mitakshara as follows:

> "If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously given by him (to the bride) 'paying, however, the charges on both sides:' that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he

may take the residue."

Here again it is said that the reference is to asura marriage alone, but such an interpretation is not justified by the text. The verse from Yajnyawalcya is reproduced in original in Ganga Nath Jha's Hindu Law in its Sources, 1933, and the same interpretation is given. No doubt some of the commentators make reference to the asura form of marriage. But the reference has been made merely to indicate that according to this rule the father is also bound to return any property that he may have received in connection with his daughter's marriage in the asura or other inferior form, but there is nothing to indicate that the rule is not of general application.

7. Some of the witnesses produced on behalf of the defendants have stated that in their community such gifts are never returned. But this is not consistent with the contents of some of the letters written by defendant 1 and his wife to the plaintiff or his wife in which they state in clear terms that they were keeping the articles with them by way of amanat, and that they would be returned to the plaintiff in case the marriage of defendant 2 with his second daughter was not settled; vide EX. 54, dated 24th February 1942 and Ex. 64 dated 14th April 1942, The latter is a letter from defendant 1. No doubt he adds that he would return the saman in case the plaintiff did not give his second daughter in marriage to his son although he had no right to their return. But his wife did not lay down any such condition in her own letter. After giving the matter my careful consideration, I am fully satisfied that the learned Civil Judge was right in holding that the plaintiff is entitled to the return of the gifts made by him to the defendants in consideration for the proposed marriage of his daughter with defendant 2 after his daughter had died and the contract had become void on account of impossibility of execution.

8. The plaintiff has established by satisfactory evidence that he had paid cash to the defendants amounting to Rs. 12,495-12-0 in addition to the elephant and articles of the total value of Rs. 7983-13-3. He has produced his account books as also a list of articles presented on the occasion of the Tilak ceremony signed on behalf of the defendants and the correctness of these figures is not seriously disputed on behalf of the defendants.

9. The question that remains to be considered is to what deductions are the defendants entitled? It is not denied that they are entitled to deductions on account of any legitimate expenses incurred by them in connection with the ceremonies and to the return of presents made by them to the bride. But the account book produced by the defendants is extremely unsatisfactory. (After considering the evidence his Lordship proceeded:) The result is that the plaintiff is entitled to a decree for Rs. 12,495-12-0 less Rs. 1500 or Rs. 10,995-12-0- In case the articles received from the defendants on the occasion of the goda ceremony are not returned in full, he will be liable for a further deduction of RS. 1400 or leas from the amount of the decree. He is also entitled to a decree for the return of the elephant and the articles given by him to the defendants in connection with the various ceremonies. In case the elephant or the articles are not returned to the plaintiff by the defendants in full the plaintiff will be entitled to a further sum not exceeding Rs. 2983.18-3 on account of the articles and a sum not exceeding Rs. 5000 on account of the elephant. It will be for the execution Court to determine the actual amount to which the plaintiff will be entitled having regard to the values of the articles returned by the plaintiff to the defendants and by the defendants to the plaintiff, It will also

decide any disputes that may arise as to the identity of the articles so returned or the compensation to which the parties may be entitled owing to deterioration in the condition of the articles so returned.

10. I would, therefore, allow the plaintiff's appeal to the extent mentioned above with proportionate costs in both the Courts and interest pendente lite and future at the rate of 5 per cent. per annum and would dismiss' the defendants' appeal with costs.

Shankar Saran, J.

11. I agree.