

Romesh Chander vs Smt. Savitri on 13 January, 1995

Equivalent citations: 1995 AIR 851, 1995 SCC (2) 7, AIR 1995 SUPREME COURT 851, 1995 (2) SCC 7, 1995 AIR SCW 647, (1995) MATLR 111, (1995) 1 PAT LJR 85, (1995) 1 APLJ 48, 1995 BLJR 1 403, (1995) 2 CIVLJ 14, (1995) 1 CURCC 97, (1995) 1 HINDULR 325, (1995) 1 SCR 212 (SC), (1995) 1 DMC 231, (1995) 25 ALL LR 536, (1995) 2 CURLJ(CCR) 42, (1995) 1 CIVILCOURTC 347, (1995) 1 IJR 282 (SC), (1995) 21 MARRILJ 135, (1995) 2 MAD LW 42, (1995) 1 JT 362 (SC)

Author: R.M. Sahai

Bench: R.M. Sahai, S.B Majmudar

PETITIONER:

Romesh Chander

Vs.

RESPONDENT:

Smt. Savitri

DATE OF JUDGMENT 13/01/1995

BENCH:

SAHAI, R.M. (J)

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MAJMUDAR S.B. (J)

CITATION:

1995 AIR 851

1995 SCC (2) 7

JT 1995 (1) 362

1995 SCALE (1) 177

ACT:

HEADNOTE:

JUDGMENT:

1. Should a marriage which is otherwise dead emotionally and practically be continued for name-sake is the issue for consideration in this appeal.

2. Twenty five years have elapsed since the appellant, a sanitary inspector, and the respondent, his wife-a teacher, have enjoyed the company of each other as husband and wife. Within these 25 years this is the second round of litigation which routing through the Trial Court and the High Court has reached this Court. The earlier one founded on desertion was decided by this Court against the husband on 23rd April 1980. This appeal is based on cruelty. Both the courts below have found that even though the wife had cast serious aspersions on the character of the appellant in the written statement filed by her earlier and alleged that he was in the habit of mixing with undesirable girls in the presence of respondent yet since neither any evidence was led nor it was proved consequently it could not be made basis for claiming divorce on cruelty.

3. In *V Bhagat v. D. Bhagat (Mrs)*. (1994) 1 SCC 337 this Court has explained the concept of cruelty both mental and physical which could entitle an applicant to claim divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In *Chanderkala Trivedi (Smt.) v. Dr. S.P. Trivedi* (1993) 4 SCC 232 it was held that if a marriage was dead and there was no chance of its being retrieved it was better to bring it to an end. In this case the marriage is dead both emotionally and practically. Continuance of marital alliance for name-sake is prolonging the agony and affliction. It cannot be disputed that the husband has not been dutiful and conscious of his responsibilities either towards his wife or his son, He did not contribute anything towards upbringing of the child. Yet the marriage being dead, the continuance of it would be cruelty, specially when the child born out of the wedlock of the appellant and the respondent as far back as 1968 having now grown and being in service. The appellant has expressed remorse for his conduct and is willing to compensate for his past mistakes by transferring the only house in his name in favour of his wife.

4. Considering the facts and circumstances of this case we, in exercise of power under Article 142 of the Constitution of India, direct that the marriage between appellant and the respondent shall stand dissolved subject to the appellant transferring the house in the name of his wife. The house shall be transferred within four months from today. The dissolution shall come into effect from the date the house is transferred and possession is handed over to the respondent.

5. The appeal is disposed of accordingly. Parties shall bear their own costs.