Punjab-Haryana High Court
Promod Sharma vs Smt. Radha on 3 April, 1975
Equivalent citations: AIR 1976 P H 355
Author: A S Bains
Bench: R Narula, A S Bains
JUDGMENT Ajit Singh Bains, J.

1. The parties to the present appeal, who are Brahmins, were married on 13th February, 1960, at Amritsar. Due to unfortunate circumstances, the parties did not lead a harmonious married life and frustrated by the extremely unhappy situation, the appellant made an application under Section 12 of the Hindu Marriage Act, 1955 (hereinafter briefly called 'the Act') on 11th July, 1961, before the trial Court for annulment of the marriage on the ground that his wife Shrimati Radha respondent was impotent at the time of the marriage and continued to be so until the institution of the proceedings. Various other pleas were also taken in the petition. It was also mentioned in the petition that his wife Shrimati Radha had an innate aversion and invincible repugnance to sexual intercourse. Shrimati Radha denied the allegations in her written statement and categorically asserted that she was capable of sexual intercourse and that actually she and her husband were leading good sexual life. On the pleadings of the parties, following issues were framed by the trial Court:--

"(i) Whether the application is not in proper form ?

(ii) Whether any fraud was committed on the petitioner. If so, what was that fraud and with what effect ?

(iii) In case issue No. 2 is proved in favour of the petitioner, when did he come to know of the fraud ?

(iv) Whether it is not necessary to appoint any guardian of the respondent ?

(v) Whether the application is within time?

(vi) Whether the application has not been presented in collusion with the respondent ?

(vii) Whether the application has been presented without unnecessary delay?

(viii) Whether the respondent was impotent at the time of the marriage and is still so and was so till the presentation of the petition ?

(ix) Whether the respondent was idiot or lunatic at the time of the marriage and continued to be so even afterwards ?

(x) Relief.

2. The trial Court by its judgment dated 6th March, 1965, allowed the application of the appellant and passed a decree for annulling the marriage between the parties and thus the suit was decreed. Against the judgment and decree of the trial Court, Shrimati Radha filed an appeal (F. A. O. No. 29-M of 1965) which came up for hearing before the learned single Judge. This appeal was dismissed on 1st August, 1966, by P.D. Sharma, J., On the preliminary objection that a copy of decree sheet of the trial Court was not annexed with the grounds of appeal. Against this judgment the respondent-wife filed Letters Patent Appeal No. 263 of 1966 which was allowed on 18th April, 1968, and the case was sent back to the learned single Judge for fresh decision on merits. It was in these circumstances that first appeal from order came up before Gurdev Singh, J., who allowed the appeal and set aside the judgment and decree of the trial Court vide his judgment dated 13th of October, 1972. It is against this judgment that the present appeal has been filed under Clause X of the Letters Patent by the husband.

3. The learned counsel for the appellant has raised a preliminary objection that the appellant having remarried after the grant of the decree for nullity of the marriage between the parties by the trial Court, no relief can be granted to the respondent. It may be stated here that after the dismissal of the first appeal of the respondent-wife on preliminary objection by P.D. Sharma, J., on 1st August, 1966, the appellant remarried soon thereafter. On remand by the Letters Patent Bench, first appeal of respondent-wife, was allowed by Gurdev Singh, J. on 13th October, 1972, when the appellant, Promod Sharma, had already remarried. This point is not dealt with by the learned single Judge and it seems that it was not raised before him. Since it is a legal point, it is allowed to be taken at the Letters Patent stage.

4. I find merit in the preliminary objection raised by the learned counsel for the appellant. The marriage between the parties was declared null and void by the trial Court on 6th March, 1965. The respondent-wife filed first appeal which was initially dismissed on preliminary ground, by the learned single Judge on 1st August, 1966. It was some time thereafter that the appellant got himself married. The marriage between the parties was declared a nullity as if no such marriage had taken place, the appellant still waited for the result of the wife's appeal and it is only after the appeal was dismissed on 1st August, 1966, that he remarried. The learned counsel for the respondent has drawn our attention to Section 15 of the Act which is in the following terms: -

"15. Divorced persons when may marry again.

When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again:

Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the Court of the first instance."

He has thus, argued that the parties to the marriage cannot marry again unless and until the time for appeal against the decree annulling the marriage has expired without an appeal having been presented; or if the appeal has been presented it has been dismissed; and at least one year has elapsed from the date of the decree in the Court of the first instance. In support of his argument, he has cited Smt. Chandra Mohini Srivastava v. Avinash Prasad Srivastava, AIR 1967 SC 581. I am afraid there is no merit in the argument advanced by the learned counsel for the respondent. From the reading of Section 15 of the Act it is evident that it relates to the divorced persons and not to the persons who are not divorced. In the present case, the decree of nullity has been passed under Section 12 of the Act and the marriage has not been dissolved by a decree of divorce. Hence the provisions of Section 15 of the Act are not applicable in the present case. The Supreme Court case was also a case of divorce and not a case of nullity of marriage under Section 12 of the Act. There is absolutely no quarrel with the proposition of law as laid down in the Supreme Court case. Their Lordships of the Supreme Court were dealing with the case where the marriage was dissolved under Section 13 of the Act. The facts of the Supreme Court case were that a suit was filed by Shri Avinash Prasad Srivastava against his wife Smt. Chandra Mohini Srivastava under Section 13 of the Act for the decree of divorce and in the alternative it was prayed that a decree for judicial separation be granted. The trial Court dismissed the petition for dissolution of marriage or in the alternative for judicial separation as in its opinion no ground for divorce was proved. The husband Avinash Prasad Srivastava filed an appeal before the High Court. The High Court allowed the appeal and granted the decree for dissolution of marriage. After the marriage was dissolved by the High Court, the husband married another woman on 2nd July, 1964. The wife Chandra Mohini filed a special leave petition to the Supreme Court against the order of the High Court which was granted by the Supreme Court. Sometime afterwards the husband made an application to the Supreme Court that the special leave granted to the appellant by the Supreme Court be revoked as he had already married another woman and a son was born to the woman on 20th May, 1965, and that since the new child was born, the special leave granted be revoked so that the child may not become illegitimate. It was in these circumstances that the Supreme Court held as follows:--

"We are of opinion that special leave cannot be revoked on grounds put forward on behalf of the first respondent. Section 28 of the Act inter alia provides that all decrees and orders made by the Court in any proceedings under the Act may be appealed from under any law for the time being in force, as if they were decrees and orders of the Court made in the exercise of its original civil jurisdiction. Section 15 provides that "when a marriage has been dissolved by a decree of divorce and there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again." These two sections make it clear that where a marriage has been dissolved, either party to the marriage can lawfully marry only when there is no right of appeal against the decree dissolving the marriage or, if there is such a right of appeal, the time for filing appeal has expired without an appeal having been presented, or if an appeal has been presented it has been dismissed. It is true that Section 15 does not in terms apply to a case of an application for special leave to this Court. Even so, we are of opinion that the party who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's decree and thus take away from the losing party the chance of presenting an application for special leave. Even though Section 15 may not

apply in terms and it may not have been unlawful for the first respondent to have married immediately after the High Court's decree, for no appeal as of right lies from the decree of the High Court to this Court in this matter, we still think that it was for the first respondent to make sure whether an application for special leave had been filed in this Court and he could not by marrying immediately after the High Court's decree deprive the appellant of the chance to present a special leave petition to this Court. If a person does so, he takes a risk and cannot ask this Court to revoke the special leave on this ground. We need not consider the question as to whether the child born to the new wife on May 20, 1965, would be legitimate or not, except to say that in such a situation Section 16 of the Act may come to the aid of the new child. We cannot, therefore, revoke the special leave on the grounds put forward on behalf of the first respondent and hereby dismiss his application for revocation of special leave."

5. In view of the aforesaid circumstances, the Supreme Court observed that on dissolution of a marriage, a spouse can lawfully marry only when there is no right of appeal against a decree dissolving marriage; or if there is right to appeal, time for filing an appeal has expired, or if an appeal has been presented it has been dismissed. A party who has won in the High Court and got a decree for dissolution of marriage cannot remarry immediately thereafter taking away from losing party a chance or presenting an application for special leave to appeal to Supreme Court. Hence, this case is distinguishable from the facts of the present case. The present case is not a case of dissolution of marriage under Section 13 of the Act but it is a case under Section 12 of the Act where the marriage between the parties has been declared a nullity and remarriage by either of the spouse is not barred either under Section 15 or any other provision of the Act. The learned single Judge of this Court in Karam Singh v. Smt. Amro, (1970) 72 Pun LR 503, has observed in para. 7 of his judgment as under:--

"..... I am of the view that the preliminary objection must prevail. From the plain reading of Section 15 it is clear that it has no application to the decree of nullity of marriage passed under Sections 11 and 12 of the Act and its operation is limited to a marriage dissolved by a decree of divorce. There is no other provision similar to Section 15 of the Act which could be applicable in case of decrees passed under Sections 11 and 12 of the Act. The moment a decree of nullity was passed in favour of the respondent under Section 12 of the Act, there was no disability on the respondent to contract a remarriage. Section 5 of the Act prescribes the conditions which are necessary to be fulfilled in order to make marriage valid and binding. The respondent by contracting marriage after obtaining decree of nullity did not violate any condition of Section 5. The parties' status as husband and wife ceased to exist after the passing of the decree of nullity and their marriage was legally annulled. In case the appellant desired that the respondent should not have married during the pendency of the appeal he could have obtained a stay order from this Court."

The observations of a Division Bench of Madhya Pradesh High Court in para. 9 of their judgment in Mohanmurari v. Smt. Kusumkumari, AIR 1965 Madh Pra 194, are also in similar terms. In this view of the matter, there was no legal impediment for the appellant to remarry soon after the dismissal of the first appeal of the respondent-wife. In this situation no relief could be granted to the respondent in her appeal by the learned single Judge. Hence the appeal of the respondent-wife before the learned single Judge becomes infructuous. The appellant cannot now revert to his status as husband

of the respondent-wife even if his appeal fails because his remarriage under the law is neither void nor voidable but is valid and irrevocable. Hence I uphold the preliminary objection raised by the counsel for the appellant.

6. Since the appeal is decided on the preliminary objection I need not go into the merits of the case. As observed earlier the appellant had remarried in the year 1966 and nine years have gone by. Parties have not lived together as husband and wife for the last 14/15 years and it would amount to unsettling the settled life of the appellant if at this stage his appeal is not allowed. Consequently the appeal succeeds and the order of the learned single Judge is set aside and the decree of the trial Court annulling the marriage between the parties is restored. In the circumstances of the case, there will be no order as to costs.

7. At the conclusion of the arguments, the learned counsel for the respondent-wife pointed out that he had made an application under Section 25 of the Act (Civil Miscellaneous No. 2837 of 1966) for grant of permanent alimony in the first appeal from order (No. 29-M of 1965) but no order thereon was passed by the learned single Judge as the said appeal was allowed by him. Therefore, he prays that in case the decree of nullity of marriage between the parties is passed by this Bench, his aforesaid application under Section 25 of the Act may be allowed and permanent alimony, as deemed proper, be granted to the wife. The appellant-husband who is present today, does not contest the application and is willing to amicably settle the matter. Accordingly his statement, on solemn affirmation, is recorded. He agrees to pay permanent alimony of Rs. 10,000/- to the respondent-wife on the following terms:--

"(i) First instalment of Rs. 5,000/-within three months from today. i.e., on or before July 3, 1975;

(ii) Thereafter Rs. 1,000/- on or before August 3, 1975, and the balance of Rs. 4,000/- at the rate of Rs. 1,000/- per mensem on or before the 3rd of September, October, November and December, 1975, respectively.

In default of payment of any instalment, the whole of the amount shall become due at once. The amount in respect of which default is committed shall be paid with interest at 12 per cent, per annum.

The amount shall either be paid to the respondent by bank draft sent under a registered cover to her address or in the alternative will be deposited in the trial Court."

8. Accordingly Civil Misc. Application No. 2837 of 1966 filed in First Appeal From Order No. 29-M of 1965 is allowed and the appellant-husband is directed to pay permanent alimony of Rs. 10,000/- to the respondent-wife on the terms stated by him in his statement reproduced above.

R.S. Narula, C.J.

I agree.