

1

Court no. 1

Second Appeal No. 38 of 2005

Dr. Vinod Kumar Gupta

versus

Smt. Deepa Gupta

Hon'ble Rakesh Tiwari, J.

The case peremptorily listed today. List has been revised. Heard learned counsel for the appellant and perused the record. Sri A.K. Sharma, learned counsel for the respondent is not present. The appellant filed Original Suit No. 447 of 1995, Dr. Vinod Kumar Gupta versus Smt. Deepa Gupta, under Section 13 of Hindu Marriage Act for divorce against the respondent. The suit was decreed vide judgment and order dated 29.8.1998 passed by the Ist Additional Civil Judge (Senior Division), Muzaffarnagar.

Aggrieved by the judgment and order dated 29.8.1998 the respondent filed Civil Appeal No. 333 of 1998, Smt. Deepa Gupta versus Dr. Vinod Kumar Gupta before first lower appellate Court which was allowed vide judgment and order dated 25.10.2000.

It appears from the order-sheet dated 9.9.2009 that the Court had granted opportunity to the learned counsel for the parties as to whether there is any possibility of husband and wife stay and live together. Thereafter, the case was listed on 22.2.2010 when it was directed to be listed in the next cause list on the prayer of learned counsel for the parties. Since then, learned counsel for the respondent has not appeared before this Court. On 11.5.2010, learned counsel for the respondent was also not present and on 26.5.2010 he sought adjournment of the case on the ground of illness slip. Learned counsel for the appellant states that the matter may be decided as the adjournments sought are deliberate. The case has been directed to be listed peremptorily. Today also, learned counsel for the respondent is not present. It appears from the order sheet that continuously for the last 3 days the case is being adjourned at the behest of learned counsel for the respondent.

2

The contention of learned counsel for the appellant is that the appellant is posted as Doctor in Madhya Pradesh. However, the wife is employed as teacher in Government Girls College, Kichha, Nainital, Uttarakhand.

It appears that husband and wife are not living together since 1993. The suit for divorce had been granted and the decree for divorce had been reversed in appeal.

Learned counsel for the appellant states that the wife is not ready to live with husband at his place of posting despite several attempts by him and his relatives. The judgment and decree of the first lower appellate Court is assailed on the ground that it has acted with material irregularity of law and jurisdiction in setting aside the judgment and decree of the trial Court without reversing the findings recorded by it on individual issues. He submits that the behaviour of the wife with the appellant amounts to cruelty and that the lower appellate court has committed an error in holding that her not living with the husband in the facts and circumstances of the case, did not amount to cruelty within the meaning of term as defined under Section 13(1)(1a) of the Hindu Marriage Act. It is stated that from the facts and circumstances of the case as available from the pleading and evidence on record it is established from conduct of the wife that marriage had broken irretrievably due to

cruelty which was a valid ground for dissolution of marriage under the Act and that the decree for divorce ought to have been passed on basis of record as the husband and wife have been living separately for the last so many years as such the judgment of the lower appellate Court being against the evidence on record and misinterpretation of the provisions of law can not be sustained and is liable to be quashed.

In support of his submission, learned counsel for the appellant has relied upon the judgment rendered in AIR 2005,SC-3297, Durga Prasanna Tripathy versus Arundhati Tripathy in which it has been held that where the spouses had been living separately for almost 14 years and wife was not prepared to lead conjugal life with husband and in that backdrop an attempt was made by husband and his relatives in getting back wife to matrimonial home failed. It was found to be a fit case for decree of divorce 3

on the ground desertion as record showed that there was no chances of reconciliation and was irretrievable breakdown of marriage. He has also placed reliance upon paragraphs 21 and 22 of the judgment rendered in (2002)(48) ALR-485, Praveen Mehta versus Inderjit Mehta wherein the Court considered the definition of 'cruelty' within the meaning of section 13(1)(1a) of the Act. It was held that mental cruelty is a state of mind. In this case also the court came to the conclusion that despite several attempts by relatives and well-wishers no conciliation between husband and wife was possible, The petition for the dissolution of the marriage was filed in the year 1996. In the mean time, so many years have elapsed since the spouses parted company as such it can reasonably be inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the husband, hence the decree for divorce was not liable to be repaired.

He then submits that in the instant case the husband and wife are living separately since 1993. There is no plausible reason for the wife not to live with the husband, who is a Doctor in Madhya Pradesh and her insistence to leave service for living along with her at Nainital, Uttarakhand was unreasonable and amounts to desertion. The trial Court has rightly granted decree for divorce which has been reversed by the lower appellate court on irrelevant consideration.

After perusal of the judgment it is noted that the parties are not cohabiting together for almost 17 years. Since there has been a long period of continuous separation, it may fairly be concluded that in the facts and circumstances of this case that the matrimonial bond is beyond repair and the marriage has become a fiction as has been held by the Apex Court in (2007) 4 SCC-511, Samar Ghosh versus Jaya Ghosh. The Court in that case held that-

" The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. In present 4

case, trial Court had rightly concluded that the various instances in their matrimonial life, and led to grave mental cruelty to the appellant husband. Further, the High Court failed to take into consideration the most important aspect of the case that the parties had admittedly been living separately for more than 16-1/2 years. The entire substratum of marriage had already disappeared."

The law laid down by the Apex Court in the aforesaid cases squarely applies to the facts and circumstances of this case where the spouses have been living separately for a long long period of time. It appears that their bond of marriage can not be repaired which has been extensively damaged by passage of separation. The parties are in their mid's 40. The wife is not ready to cohabit and inspite repeated efforts made by him and their relatives. Every person has a right to live healthy sexual life; hence love and affection from his or her partner in the marriage which has completely vanished in the instant case. It appears that the lower appellate Court has lost sight of this important factor and the guide lines laid down by the Apex Court from time to time through their Lordships' judgments. The marriage in the instant case cannot continue. Ground realities have to be considered before allowing the parties to continue their relationship of married couple till they become too old to have any biological need. Parties are already in their med forty's and if a new lease to their life is to be

granted then matter has to be settled now.

For all the reasons stated above, the second appeal is allowed and the judgment and order of the lower appellate court is set aside and that of the trial court is confirmed. No order as to costs. Dated 12.7.2010

CPP/-