

Shanti Devi v. Ram Nath (P. C. Pandit, J.)

*Balwant Singh's case* (supra) is hardly an authority for the proposition which is being canvassed by the learned counsel for the appellant. In fact, this matter was never decided by the learned Judge.

(14) As detailed above, we are definitely of the view that the restriction in section 29 of the Pepsu Act against alienation begins as soon as a notification is issued and we, therefore, find no reason to differ from the finding arrived at by the learned Single Judge and dismiss this appeal. There will be no order as to costs.

SARKARIA, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

SHANTI DEVI,—Appellant.

versus

RAM NATH,—Respondent.

Civil Revision No. 361 of 1971.

January 6, 1972.

*Hindu Marriage Act (XXV of 1955)—Section 13(1) (iii)—Wife's petition Hindu Marriage Act, 1955, in order to succeed, she has to establish that band—Court—Whether can direct the husband to undergo observation in a Mental Hospital—Refusal of the husband to undergo such observation—Adverse inference—Whether can be drawn.*

*Held*, that when a wife applies for divorce under section 13(1) (iii) of Hindu Marriage Act, 1955, in order to succeed, she has to establish that the husband had been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of her petition. The real evidence on this point is of medical expert. If the medical expert says that he can only give definite opinion regarding the incurability of the husband's disease after observing him in a Mental Hospital for a specified time and the wife applies to the Court to direct the husband to undergo such observation, the request is reasonable and should be granted. If the husband is not prepared to go to the Mental Hospital, the Court cannot physically force him to do so. but it is for the Court to draw any adverse inference against him which is available under the law.

*Petition u/s 115 C.P.C. read with section 21 of the Hindu Marriage Act, 1955 for revision of the order of the court of Shri J. S. Chatha, Additional District Judge, Patiala, dated 19th February, 1971, rejecting the request of the petitioner.*

Shanti Sarup and Jaswant Jain, Advocates, for the petitioner.

A. N. Mittal, Advocate, for the respondent.

#### JUDGMENT

PANDIT, J.—(1) Shrimati Shanti Devi was married to Ram Nath in 1962. In December 1967, a petition for the dissolution of this marriage under sections 12 and 13 of the Hindu Marriage Act, 1955, hereinafter called the Act, was made by the wife. The annulment of the marriage was claimed on the ground that the husband was impotent and also an idiot, and the ground for divorce was that he had been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition as given in section 13(1)(iii) of the Act.

(2) The husband contested this petition and denied the allegations made by the wife.

(3) On the pleadings of the parties, issues were framed, but the relevant issue, with which we are concerned in this revision petition is issue No. 2, which says:

“Whether the respondent (husband) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of this petition.”

(4) It may be stated that the counsel appearing for the wife did not press the grounds for annulment of the marriage under section 12 of the Act before me. So the only question to be determined was whether the husband had been incurably of unsound mind for a continuous period of three years immediately preceding the presentation of the petition. The onus of proving this issue was obviously on the wife.

(5) In order to prove this issue, she examined Dr. Raj Kumar, Deputy Medical Superintendent, Punjab. Mental Hospital, Amritsar, A.W. 1, on 11th December, 1970. In his evidence, the Doctor stated that he examined the husband from 7th August to 17th August, 1970, and he was admitted in the Mental Hospital, Amritsar, during

## Shanti Devi v. Ram Nath (P. C. Pandit, J.)

that period. After examination, his view was that the husband was suffering from schizophrenia, a form of unsoundness of mind. He went on to say—"it is difficult to say at the moment whether the condition of the respondent (husband could improve and he should become of sound mind. This can be said only after treatment in the hospital is tried. The treatment should at least be for a month or two. It is not possible for me to say whether his condition is incurable unless I try the statement. No treatment was tried during his 10 days stay in the hospital. Schizophrenia has been found to be incurable in some cases.....Schizophrenia is not curable in all cases."

(6) Sometimes after the statement of the Doctor was recorded, the wife made an application to the Court that the husband be directed to undergo observation at the Mental Hospital, Amritsar. According to her, this was necessary in order to find out whether his soundness of mind was incurable or not.

(7) This application was opposed by the husband and after hearing the parties, the learned Additional District Judge, who was trying the case, dismissed the same. Against this order, the present revision petition has been filed by the wife.

(8) In order to succeed, the wife has to establish that the husband had been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of her petition. It is plain that the real evidence on this point would be that of a medical expert and it is presumably for that purpose that the Deputy Medical Superintendent, Punjab Mental Hospital, Amritsar, was examined by her. As mentioned above, the Doctor has stated that the husband is suffering from schizophrenia, which, according to him, is a form of unsoundness of mind. Now whether this disease is incurable in the case of the respondent, can also be proved by the Doctor and it was with that intention that he was asked as to whether this unsoundness of mind was curable or not and to that question his reply was that he could give an answer only after the husband had undergone treatment in the Mental Hospital under his care for a month or two. It was, therefore, that the wife then made an application that the respondent be directed to undergo observation at the said hospital for the requisite period to enable the Doctor to pronounce upon the incurability of the unsoundness of his mind. This prayer, as I have already said, was declined by means of the impugned order.

(9) It was contended by the learned counsel for the respondent that even if the Doctor could say now, after observing the husband for a period of one month or two, that his disease was incurable, that would not advance the case of the wife, because she had to establish that he was incurably of unsound mind for a period of not less than three years before the presentation of the petition.

(10) The argument so far as it goes is all right, but the Doctor would, in any case, be able to say only after observing the patient for the requisite period whether his disease was incurable or not. The subsequent question as to whether he was suffering from this type of disease for three years before the presentation of the petition would have to be, as admitted by the counsel for the petitioner, proved by some other evidence as well and it is also possible that if the Doctor is questioned on that point, he too may be able to give his opinion on this matter. But the fact remains that the petitioner will have to produce other evidence also in this connection. It will then be for the learned Additional District Judge trying the case to accept that evidence or not. If, however, the Doctor is of the opinion that this disease of the husband is curable, then no other question might arise. In any case, the prayer of the petitioner for directing the husband to undergo observation at the Mental Hospital, Amritsar, for the requisite period, as asked for by the Doctor, was quite reasonable and should not, in my opinion, have been declined by the learned Additional District Judge.

(11) It is undisputed that if the husband is not prepared to go to the Mental Hospital for the said period, the Court cannot physically force him to do so. I am saying this, because a point was made by the learned counsel for the respondent that his client, if he does not like to go to the Mental Hospital, should not be forced by the Court to undergo that treatment. But it would be for the learned Judge to draw any adverse inference against him, which is available to him under the law, for his not doing so. This view of mine is supported by a Single Bench decision of the Gujarat High Court in *Bipinchandra Shantilal Bhatt v. Madhuriben Bhatt*, (1), where it was observed :

“In a case where it is alleged by a petitioner in a matrimonial petition that the respondent is suffering from incurable unsoundness of mind, it is for the petitioner to establish such unsoundness of mind, it does not there become incumbent on the Court to find out whether the respondent is capable of taking care of his matrimonial home.

(1) A.I.R. 1963 Guj. 250.

Shanti Devi v. Ram Nath (P. C. Pandit, J.)

---

A compulsion to undergo medical examination is certainly an interference with the personal liberty of a citizen and such personal liberty could only be interfered with under the provision of any penal enactment or in the exercise of any other coercive process vested in the Court under the law. There is no provision under the Hindu Marriage Act or the rules framed thereunder, or in the Code of Civil Procedure or the Indian Evidence Act or any other law which would show any power in the Court to compel any party to undergo medical examination. Medical examination for ascertaining the presence or the extent of insanity, even if it be by mere questioning, is as much interference with personal liberty as a real physical interference such as the drawing of blood or the personal examination of the body as in other cases.

The fact that a party with ulterior motives adopts an obdurate and relentless attitude, cannot and does not render the Courts helpless to counteract it. Where a party refuses to submit to a medical examination in a case where the whole case depends on the state of his mind and body, it will be open to the Court to draw an adverse inference or presumption against the recalcitrant party. Such a party is on a par with a party who wrongfully withholds evidence in his possession. It would be improper to draw an unfavourable inference against the party who refuses to submit to an order for medical examination made in excess of the jurisdiction of the Court. The adverse inference that may be drawn by any Court is from the circumstances in each case and having regard to the refusal to let the best evidence being brought before the Court."

(12) In view of what I have said above, I would accept this petition and quash the order of the learned Additional District Judge, dismissing the application of the wife praying that the husband be directed to undergo observation at the Mental Hospital, Amritsar, for the requisite period of about a month or two as stated by the Deputy Medical Superintendent in his evidence as A.W. I. In the circumstances of this case, however, there will be no order as to costs.

---

K.S.K