

Mohinder Kaur v. Major Singh (Pandit, J.)

respondent and finding him guilty, for the above stated reasons, of the offence under section 16(1)(a)(i) of the Act, we convict him and sentence him to six months' rigorous imprisonment with a fine of Rs. 1,000 and in default of payment of fine to further rigorous imprisonment for two months. However, in the absence of any appeal against his conviction under section 16(1)(a)(ii) of the Act, the sentence awarded to him by the Court below stands. So far as the other respondent Darshan Lal, in this appeal is concerned, we are satisfied that he was rightly acquitted by the Court below, as no case was proved against him that he was a partner of the Firm Sikandar Lal-Darshan Lal and that Sikander Lal, respondent, had committed the offence in connivance with Darshan Lal. Thus Criminal Appeal No. 149 of 1970 stands dismissed in so far as it relates to Darshan Lal, respondent.

S. S. SANDHAWALIA, J.—I agree.

N. K S.

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

MOHINDER KAUR,—Appellant.

versus

MAJOR SINGH,—Respondent.

Letters Patent Appeal No. 35 of 1970.

July 28, 1971.

Hindu Marriage Act (XXV of 1955)—Sections 5(iii), 9, 10, 11 and 13—Contravention of section 5(iii)—Whether can be pleaded in defence to a petition for restitution of conjugal rights.

Held, that contravention of section 5(iii) of the Hindu Marriage Act, 1955, cannot be pleaded in defence to a petition for restitution of conjugal rights, because it is not a ground for judicial separation or for nullity of marriage or for divorce. The infringement of section 5(iii) of the Act does

not affect the tie of marriage itself and render the marriage either void or voidable. (Paras 5 and 7)

Letters Patent Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice A. D. Koshal, passed in F.A.O. No. 95-M of 1965 on 8th December, 1969 whereby he affirmed with costs that of Shri Raj Kumar Sharma, Senior Sub-Judge, Sangrur, dated 28th October, 1965 accepting the petition with costs and passing the decree for restitution of conjugal rights against the respondent.

ACHHRA SINGH, ADVOCATE, for the appellant.

S. P. GOYAL, ADVOCATE, for the respondent.

JUDGMENT

P. C. PANDIT, J.—Major Singh filed a petition for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955, hereinafter called the Act, against his wife Mohinder Kaur. His allegations were that he was married in 1959 and the Muklawa ceremony was performed three years later. Thereafter the parties lived as husband and wife till July 1963, when his wife left his house without any reasonable excuse and started living with her parents.

(2) This petition was resisted by Mohinder Kaur, whose case was that she had never married Major Singh, with the result that the question of her withdrawing from his society never arose.

(3) This petition was tried by the Senior Subordinate Judge, Sangrur. He found that Major Singh was married to Mohinder Kaur and further that she had withdrawn from his society without any reasonable excuse. Accordingly, he granted a decree for restitution of conjugal rights in favour of Major Singh.

(4) Against this decision, Mohinder Kaur filed an appeal in this Court, which was heard by A. D. Koshal J. Two contentions were urged before the learned Judge by the counsel for the appellant. The first was that the finding given by the trial Judge that the alleged marriage of Major Singh with Mohinder Kaur had been proved, was wrong. This contention was repelled by the learned Single Judge, who went through the evidence produced by the parties in the case and affirmed the finding given by the trial Court on this point. The other submission of the learned counsel was that Mohinder Kaur

was about 11 years old at the time of her alleged marriage and consequently, the same was void under the provisions of clause (iii) of section 5 of the Act, which reads :

5. "Conditions for a Hindu Marriage—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :—

(i) * * * * *

(ii) * * * * *

(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage;"

(5) This argument also did not find favour with the learned Judge, who held that section 5 of the Act did not lay down the consequences of any of the conditions mentioned therein not being fulfilled. The result of the contravention of section 5(iii) of the Act, according to the learned Judge, was mentioned only in section 18 of the Act, where it was stated that a person, who procures a marriage of himself or herself in such violation, would be punishable with imprisonment, which may extend to 15 days or with fine, which may extend to rupees one thousand or both. This infringement did not affect the tie of marriage itself and render the marriage either void or voidable. The appeal was, accordingly, dismissed. Mohinder Kaur has filed the present appeal under clause X of the Letters Patent, praying that the decree of restitution of conjugal rights passed in favour of the respondent be set aside.

(6) The only submission made before us by the counsel for the appellant was about the second contention raised by him before the learned Single Judge.

Section 9(2) of the Act says:

9“(1) * * * * *

(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for nullity of marriage or for divorce.”

(7) The question for decision is whether a contravention of section 5(iii) of the Act is a ground for judicial separation or for nullity

of marriage or for divorce. If it is not so, then it cannot be pleaded in defence by the appellant to a petition for restitution of conjugal rights made by the respondent in this case. The grounds for judicial separation, nullity of marriage and divorce are given in sections 10, 11 and 13 of the Act respectively. The contravention of section 5 (iii) of the Act does not admittedly find any mention in any of these three sections. That being so, it cannot be pleaded as a ground in answer to a petition for restitution of conjugal rights. The decree passed by the trial Judge and affirmed by the learned Single Judge is, therefore, in conformity with law.

(8) The result is that this appeal fails is dismissed with costs.

GOPAL SINGH, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANDIR MAUSUMA GITA BHAWAN, Etc.—*Petitioners.*

versus

THE TAXING OFFICER (REGISTRAR) PUNJAB AND HARYANA
HIGH COURT, CHANDIGARH, Etc.—*Respondents.*

Civil Writ No. 3962 of 1970.

July 29, 1971.

Court Fees Act (VII of 1970)—Section 7(v) and Article 17(iv) of Schedule II—Suit for possession of a mosque or temple—Court fee payable thereon—Whether under Article 17(vi) of Schedule II—Value of extra-commercium property fixed in the plaint for purposes of jurisdiction—whether means market value of such property.

Held, that a mosque cannot be sold because no person has the right to sell it nor can any person pass title of ownership to a purchaser. It is generally described as a house of God and is primarily used for saying prayers by the Muslim community. According to Mohamedan Law, a mosque is *extra commercium* and its ownership vests in God. The mere fact that a mosque can be adversely possessed does not mean that it is