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BIPIN CHANDER JAISINGHBHAI VS PRABHAWATI

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Introduction:

Background:

The Bombay Hindu Divorce Act, 1947 under its *Section 3*¹ provides grounds for divorce. Desertion has been defined under *Section 2(b)* of this act as “desert means to desert without reasonable cause and without the consent or against the will of the spouse.” The case of **Bipin Chander Jaisinghbhai vs Prabhawati**² is a landmark case defining and laying the essentials for desertion.

Facts:

- 1) The two parties got married on 20th April 1942 and had a son. The couple started residing together in Bombay where after 1946 a family friend Mahendra started living with them after his retirement.
- 2) On 8th January 1947 the husband left for England and during this the husband alleged the wife to have become intimate with Mahendra because on his return she made a separate bed for him and he also received a letter by his father written by his wife to Mahendra which was assumed to be romantic.
- 3) On 24th May the wife told her husband she was going to her father’s house in Jalgaon and when her husband offered to send a car and pay for expenses she refused and left in the afternoon leaving nothing behind.
- 4) On 15th July 1947 the husband sent a notice mentioning that he was no longer taking the responsibility of her and she was no longer under his care since she had left without his consent and she must give him back their son.

¹ Bombay Hindu Divorce Act, 1947, § 3, No. 88, Acts of Parliament, 1947 (India)

² Bipin Chander Jaisinghbhai vs Prabhawati, AIR 1957 SC 176

- 5) Further on 15th November 1947 a letter was sent by the husband's father to the wife's father mentioning that the wife needed the consent of the husband to come back to the house.
- 6) Three interviews took place leading to no solution and on 4th July 1951 the husband filed for divorce under *Section 3(1)(d)*³ of the Bombay Hindu Divorce Act on the grounds of desertion.

Issue:

- Whether the defendant had deserted the plaintiff for a period of four years before filing the suit?
- Does the husband become the deserter after he sends wife when he sends notice stating withdrawal of care?

Sections & Rules Applied

Section 3(1)(d) Bombay Hindu Divorce Act, 1947

The relevant provision that prima facie related to the case is *Section 3(1)(d)* of the Bombay Hindu Divorce Act, 1947 which essentially provides desertion as a ground on which the sue the husband for divorce. Sub clause (d) further elaborates the time period under which must apply for desertion. The Sub clause states that the defendant must desert the wife for a period of 4 years continuously minimum to invoke divorce under this provision.

Section 2(b) Bombay Hindu Divorce Act, 1947

Desertion is defined – to desert a spouse without reasonable cause and consent of the spouse and contrary to the will of the spouse ⁴

Judgement and observation of the court:

Trial court:

- In this case the trial court dissolved the marriage and granted divorce on the grounds of desertion by defendant (wife).

³ Bombay Hindu Divorce Act, 1947, § 3(1)(d), No. 88, Acts of Parliament, 1947 (India)

⁴ Bombay Hindu Divorce Act, 1947, § 2(b), No. 88, Acts of Parliament, 1947 (India)

- The court said that the letter was a proof of relations between Mahendra and defendant leaving the house was due to the her relations and guilt and hence she had no intention to return and had deserted her husband.
- Her husband sending her a notice was just a heat of the moment reaction due to loss of temper caused by the unfaithful behavior of the wife and therefore content of letter are open to interpretations

Lower Appeal court:

- The lower appeal court reversed the judgement of the trial court and stated that there was no desertion on the part of the wife.
- The court stated that the letter of the wife to Mahendra was just proof of platonic love and not betrayal. The wife had left the house but mere leaving is not desertion.
- Further facts proved the the wife would have returned but the husband through his letter and his father would not have accepted the same. And therefore the roles of the deserting spouse and the deserted spouse are interchanged.
- Proof of adultery was presented but under the act adultery is not valid ground for divorce and therefore the lower appellate court overturned the order.

Supreme Court:

- The appeal was dismissed
- The defendant was not held liable under desertion of spouse under the act.

Analysis

Desertion evolved from the case of *Pulford v. Pulford* and is defined as “*Desertion is not the withdrawal from a place, but from a state of things*”⁵. Further it evolved in the case of *Perry v. Perry*.⁶

It has been seen in the *Charter v. Charter*⁷ that in case of desertion the expression and intention of the party shall also be considered. It states that unless one party communicates event temporary parting can be considered desertion. In this case the facts have shown that the wife has not completely deserted the husband. She was willing to return but her husband sent a notice not

⁵ Pulford v. Pulford, [1932] p.18

⁶ Perry v. Perry, Civ. 3945

⁷ Charter v. Charter 84 L. T. 272

allowing her from doing the same.

As said in the case of *Wilkinson v. Wilkinson*⁸ the court states that the party who actually brings cohabitation to an end is the one whose final conduct leads to the end of this cohabitation. In this case the husband sends the notice to the wife who was willing to come back as proven due to her actions of non-reply as said by court. In this case husband sending the notice was the last act leading to the end of cohabitation.

Desertion is not valid if it can be seen that the deserting party has taken efforts towards the resumption of marriage by acts or by words and in case any act is done to renew the cohabitation then dissolution on grounds of desertion cannot be claimed. This was observed in the case of *Pratt v. Pratt*⁹. In this case it has been proven that the wife was willing to return. She even during the period of four years went to Patna to live with her husband's mother and this can be seen as a sign of resumption.

In *Bowron v. Bowron*¹⁰ it is stated that the one who necessarily leaves the matrimonial house is not the deserter but the one who brings the cohabitation to an end. In this case the person who last brings the cohabitation to an end is the husband as he through his father's sends the defendant's father a message conveying to ask the plaintiff for permission before coming back and also the notice can be seen as a sign of ending cohabitation. The wife had come home for a function and wished to return but the notice refrained her from doing so. In this case husband is responsible for deserting the wife and cannot claim to dissolve marriage on grounds of desertion.

Conclusion:

Desertion is not mere leaving of the house but leaving with the intention of ending the marriage and cohabitation. In this case the Supreme court. In this case the relationship between Mahendra and Prabhawati have been proven but since adultery is not considered a ground for dissolution the marriage is valid.

In this case the decision given by the trial court was based mainly on the adulterous relationship and how Prabhawati was not a faithful wife and not on desertion. The trial court did not take the

⁸ *Wilkinson v. Wilkinson* 58 J. P. 415

⁹ *Pratt v. Pratt* [1939], A. C. 417

¹⁰ *Bowron v. Bowron*, [1925] P. 187

notice sent by the husband as a valid proof of end of cohabitation as they considered it a heat of the moment decision. Therefore, the decision of the trial court was not based on the principles of desertion but on the wife's actions which although incorrect cannot be a ground for divorce.

In this case although the wife left the house, but the husband acts according lead to dissolution as the wife showed willingness to return but husband although disagreed to the same. Although both at fault but desertion was not a valid ground. The case had some miscommunication as the wifes action of leaving can be considered desertion and the husbands action can be considered a heat of the moment decision. But the action of the appellants father was seen as a final decision to end the cohabitation and therefore the husband was the last to end the cohabitation. Therefore case was correctly dismissed.

References

Case Laws:

- Bipin Chander Jaisinghbhai vs Prabhawati, AIR 1957 SC 176
 - Pulford v. Pulford, [1932] p.18
 - Perry v. Perry, Civ. 3945
 - Charter v. Charter 84 L. T. 272
 - Wilkinson v. Wilkinson 58 J. P. 415
 - Pratt v. Pratt [1939], A. C. 417
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Statutes:

Bombay Hindu Divorce Act, 1947, § 3, No. 88, Acts of Parliament, 1947 (India)

Articles:

- <https://legalvidhiya.com/bipin-chander-jaisinghbhai-shah-vs-prabhawati-1956/>
- https://www.lawinsider.in/judgment/bipin-chander-jaisinghbhai-shah-vs-prabhawati#google_vignette
- <https://www.studocu.com/in/document/op-jindal-global-university/drafting-and-pleadings/bipin-chander-jaisinghbhai-shah-v-prabhawati/40768951>