

Dr. Tarlochan  
Singh  
v.  
Mohinder Kaur  

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Dua, J.

Dr. Tarlochan Singh to Shrimati Mohinder Kaur, both the parties should inform the office about the payment, and then the appeal should be set down for hearing.

For the foregoing reasons this petition is allowed in the terms mentioned above. There would, in the circumstances, be no order as to costs of Civil Miscellaneous 936 of 1961.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

BHARAWAN BAI AND OTHERS,—Appellants

versus

LILA RAM,—Respondent.

Regular Second Appeal No. 263 of 1957

1962  

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August, 6th

*Hindu Marriage Act (XXV of 1955)—S. 4—Suit for restitution of conjugal rights—Whether lies in the Civil Court in the ordinary way.*

Held, that the jurisdiction of the regular Civil Courts to entertain suits regarding matters which have been specially provided for in the Hindu Marriage Act, 1955, has been taken away under section 4 of the Act. Consequently a suit for restitution of conjugal rights is not entertainable by the Civil Courts in the ordinary way and that it can be instituted only in accordance with the provisions contained in the said Act and before the forum provided by that Act.

*Second Appeal from the decree of the Court of Shri Madan Mohan Singh, Additional District Judge, Hissar, dated the 18th day of January, 1957, reversing that of Shri Ram Pal Singh, Sub-Judge, 1st Class, Hissar, dated the 31st July, 1956, and granting the plaintiff a decree for restitution of conjugal rights against Bharawan Bai, defendant*

*No. 1 and for a perpetual injunction against the other defendants, restraining them from preventing Bharawan Bai, defendant No. 1, from going to the house of the plaintiff with costs, and further ordering that the costs of the appeal would also be paid by the respondents to the appellant.*

N. L. SALOOJA, ADVOCATE, for the Appellant.

P. C. JAIN, ADVOCATE, for the Respondent.

### JUDGMENT

GROVER, J.—On 13th July, 1955 the respondent who is the husband instituted a suit against his wife, the present appellant, for restitution of conjugal rights. The father of the wife as also certain other persons were impleaded as defendants as well. In the written statement filed before the trial Court by the defendants, an objection was raised that the Court of Subordinate Judge 1st Class where the suit was being tried had no jurisdiction to entertain it as the Hindu Marriage Act had come into force on 18th May, 1955 and only an application was competent under the provisions of that Act which lay to the District Court. Somehow no issue was framed on this point and the trial proceeded before the learned Subordinate Judge. After trying the various issues which were raised on the pleadings of the parties, he dismissed the suit. The husband appealed before the Additional District Judge. There also it was not pointed out on behalf of the wife or the other defendants that the proceedings of this nature were competent only under the Hindu Marriage Act. The Additional District Judge reversed the judgment of the trial Court and decreed the suit. A decree for restitution of conjugal rights was granted against the wife as also a decree for perpetual injunction was passed against the other defendants restraining them from preventing the wife from

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going to the house of the husband. All the defendants have come up in appeal to this Court and the only ground that has been raised before me is that the Courts below had no jurisdiction to decide the suit and that the proceedings for restitution of conjugal rights were competent under the provisions of the Hindu Marriage Act alone and were entertainable by the form provided by that statute. It is unnecessary to refer to the various provisions of the Act because the same have been considered at some length in *Shrimati Balwant Kunwar v. Additional Munsiff* (1) and *Bootan Bai v. Durgaprasad Chatura* (2) and it has been held that after the enactment of the Hindu Marriage Act it is the District Court alone which has been given exclusive jurisdiction with respect to restitution of conjugal rights and, therefore, by implication a Munsiff has no jurisdiction to entertain the suit of this nature. The jurisdiction of the regular Civil Courts to entertain suits regarding matters which have been specially provided for in the Act has been taken away under section 4 of the Act. Mr. P.C. Jain, who appears on behalf of the husband, has drawn my attention to the language of section 14 of the aforesaid Act in which the words "any Court" appears but that can have no bearing on the question of jurisdiction or the other question whether proceedings of this nature can be taken only under the provisions contained in the Hindu Marriage Act. I respectfully agree with the reason given in these decisions and hold that the present suit was not entertainable by the Civil Courts in the ordinary way and that it could be instituted only in accordance with the provisions contained in the Hindu Marriage Act and before the forum provided by that Act. Consequently it must be held that the judgments and

(1) A.I.R. 1959 All. 7.  
(2) A.I.R. 1959 M.P. 410.

decrees of the Courts below were wholly without jurisdiction. The appeal is allowed and the decree of the Additional District Judge is hereby set aside. In exercise of my revisional powers under section 115 of the Code of Civil Procedure, I further set aside the decree of the trial Court as well as being without jurisdiction. There will be no order as to costs in this Court.

*B.R.T.*

CIVIL MISCELLANEOUS

*Before Mehar Singh and Shamsheer Bahadur, JJ.*

SAMADH PARSHOTAM DASS ALIAS JOWAND  
SINGH,—*Petitioner*

*versus*

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No 1082 of 1960

*Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 19 and 24—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 102(d)—Cancellation of allotments made in favour of Samadhs and other institutions on the ground that they were incapable of moving into India—Whether can be made—Writ of certiorari to quash the cancellation orders—Whether can issue.*

*Held*, that section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 do not exhaust the powers of the appropriate authorities to make order of cancellation of allotments. Section 24 of the said Act further empowers a Chief Settlement Commissioner in revision to call for the record of any proceeding and to pass such orders as he thinks fit. The breadth of the revisional powers of the Chief Settlement Commissioner would certainly cover a case of cancellation wherever it is found that the original allotment could not have been made under the directions which may at all times be given by the Central Government to the State

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