

Before Hon'ble Dr. Sarojnei Saksena, J.

SURESH BALA,--Appellant.

versus

RAJBIR SINGH,--Respondent.

F.A.O. No. 5-M of 1993

The 9th May, 1996

Hindu Marriage Act, 1955-S. 13 & 21-Decree for divorce granted to the husband--wife filing appeal--Death of husband during the pendency of appeal Whether the appeal abates.

Held, that if the appeal is allowed to abate on this ground alone that the husband has died, it will seriously affect the status of the appellant as well as her property rights, which she may be entitled to, in case the appeal is decided on merits. If she succeeds in having the decree set aside, she will be entitled to inherit the property left by her deceased husband under the Hindu Succession Act. Admittedly, this is a judgement in rem. Her status is at stake. When an appeal abates, the decree is not automatically vacated and it continues to have legal force till it is in appropriate manner reversed or modified. Hence, in my considered view, only on the ground that the husband has died, appeal does not abate.

(Para 13 & 21)

Sh. Rameshwar Malik, Advocate, for the Appellant.

Sh. S.K. Bansal, for the Respondent.

JUDGMENT

Dr. (Mrs.) Sarojnei Saksena, J.

(1) By this order two appeals, FAO No. 5-M of 1993 filed by wife/widow Suresh Bala and FAO No. 796 of 1995 filed by Ratna Devi against

General Public, Suresh Bala, Sapna, State of Haryana, SSP Sonapat and DGP Haryana are being decided.

(2) The facts of FAO No. 5-M of 1993 are that deceased Rajbir Singh was married to Suresh Bala on 30th May, 1980, according to Hindu rites at village Matindu. In this wedlock Suresh Bala gave birth to Seema in February, 1982 and to Sonu in October 1985. Seema died in 1986. Since 1988-89 the parties are living separately. Suresh Bala's elder sister Bimla was married to Rajbir's elder brother Kashmiri. She died of cancer in February 1988. Suresh Bala filed a petition under section 125 Cr. P.C. against Rajbir Singh. Thereafter Rajbir Singh filed this petition on 17th January, 1991, in the lower Court.

(3) In the divorce petition, husband Rajbir Singh sought divorce on the grounds of cruelty, desertion and adultery. He averred that in this wedlock Seema was born in February 1982 at village Kiloī where his parents reside. After five years Seema died in village Matindu due to negligence of Suresh Bala and her father. She never allowed Rajbir Singh to bring Seema to village Kiloī for treatment. Suresh Bala and her father did not provide proper treatment to Seema, hence she died. In October 1985 Suresh Bala gave birth to a son Sandeep alias Sonu who is living with Rajbir's mother in village Kiloī. Suresh Bala gave birth to another daughter on 14th January, 1989, but Rajbir Singh does not claim her to be his legitimate daughter. According to him, Suresh Bala was leading an adulterous life and this daughter Sapna is not born from his loins. He also averred that Suresh Bala always treated him and his parents with cruelty. She always misbehaved with them, addressed them disrespectfully and contemptuously, did not do household work and always quarrelled with him and his parents. They are agriculturist by profession. Suresh Bala always declined to do agricultural work and whenever she was asked

to do any such work she became furious and used to abuse them all. She was addicted to smoking Bidis heavily and despite his asking she did not give up smoking. Rajbir Singh himself does not smoke. He is in service of Haryana Police. Suresh Bala used to leave matrimonial home in his absence. Whenever he used to come back to his village Kiloj, he found her missing. In search of Suresh Bala he used to go to village Matindu, but he would not find her there. She used to go to village Kami where one of her distant relations reside. Whenever Rajbir Singh visited Kami to bring her back, she used to misbehave with him and refused to come back with him. Thus, she caused mental cruelty to him.

(4) Rajbir Singh also averred that she filed a petition under section 125 Cr. P.C., wherein she levelled baseless allegations that he demanded Rs. 40,000 and that her life was in danger at the hands of Rajbir Singh. These false accusations also caused mental torture to him. Bimla was admitted in Medical College and Hospital, Rohtak, for her treatment as she was suffering from cancer. For 6/7 months her treatment was going on and she died on 29th February, 1988. On 8th May, 1990, Rajbir's sister's husband died but on both these occasions Suresh Bala never came to matrimonial home for condolence. She left the matrimonial home in January 1988, took all her ornaments etc. with her, left behind Sandeep at Kiloj and since then she is living in her parental home. He made many attempts to bring her back, but she and her father declined. Only in March, 1989 he came to know that she has given birth to a daughter in January, 1989. He made specific allegation that she had illicit relations with one Sumer Singh, son of Bhim Singh, who used to talk to her in privacy. On these grounds he prayed for a decree of divorce.

(5) Wife-appellant Suresh Bala filed her written statement on 25th February, 1991. She

denied all the allegations of cruelty, desertion and adultery. She asserted that all the three children are born from the loins of Rajbir Singh. She never misbehaved with him or his parents and never disobeyed them. She did all the household work. She never had any illicit intimacy with any person. According to her, this divorce petition is a counterblast to her petition filed under section 125 Cr. P.C. for claiming maintenance. She pleaded that the husband and his parents tortured her and turned her out of the matrimonial home. They demanded Rs. 40,000 to purchase some agricultural land. She was forced to get herself aborted when Seema was in her womb. As she declined, she was turned out of the matrimonial home by the husband and his parents. Her all the belongings were kept by them. Even her son Sonu was not allowed to go with her. Since then she is living in her parental home. She has not deserted her husband. Rather he compelled her to leave the matrimonial home. Hence he is responsible for her living away from his society. She also denied that her husband ever came to take her back and she or her father declined. According to her, she and her father made attempts for her rehabilitation, but the husband refused outrightly to rehabilitate her.

(6) On these pleadings, three issues were framed. The first issue was with regard to cruelty and desertion, and the second was about the ground of adultery. In the lower Court, during arguments husband's counsel made a candid statement that the husband does not press issue No. 2 in view thereof, the lower Court held that the petitioner-husband is not entitled to a decree of divorce on the ground of adultery, the ground which is now given up by him. It also held that since the husband has withdrawn this allegation of adultery against the wife-appellant, its necessary consequence is that the third child, namely, daughter Sapna, born in January, 1989 to Suresh Bala, is legitimate child of the husband from his loins.

(7) The lower Court also held that the husband has utterly failed to prove the ground of desertion. After scanning the parties' evidence, the lower Court in para 14 has written that regarding desertion also there is no reliable evidence as to when Suresh Bala left the house of Rajbir Singh, whether she left his house voluntarily or she was compelled by him to leave his house. Thus, this ground of desertion was also not proved.

(8) The lower Court, however, held that the appellant-wife treated her husband Rajbir Singh with cruelty. She caused him mental cruelty on various counts. While discussing the evidence, it held that when Bimla died and when Rajbir Singh's sister's husband died, she never came for condolence. She used to go to her parental home and whenever he used to go to Matindu to bring her back, she used to misbehave with him. The Court also held she misbehaved with Rajbir Singh as well as with his parents, never did the household work and always adopted a quarrelsome attitude. The Court specifically held that whenever the husband came back from his place of posting and found her missing from the matrimonial home, he went to bring her back, but she declined, and thereby the husband felt sex starvation. The Court also held that she made false allegations in her petition filed under section 125 Cr.P.C. that the husband demanded Rs. 40,000 for purchasing some agricultural land and compelled her to get herself aborted when Seema was in the womb. The Court further observed that while making this allegation, she has further alleged that under these circumstances she left the matrimonial home and at that time Sonu was not allowed to go with her. The Court held that Seema was elder to Sonu. It could not be believed that when Seema was in the womb, Sonu was living in her matrimonial home. Thus, on the basis of these findings the lower Court held that the appellant-wife Suresh Bala treated her husband with cruelty and on that ground alone decree of divorce is passed in his favour.

(9) The appellant-wife Suresh Bala has assailed this finding of cruelty on various grounds.

According to her, from the evidence on record it is duly proved that she was treated with cruelty by her husband and his parents. He has levelled false allegation of adultery against her. She never left the matrimonial home without his or his parents consent. Whenever her husband went to take her back, she accompanied him. She neither quarrelled with him or his parents nor treated them contemptuously. She has also asserted that false allegation is made against her that she was addicted to Bidi smoking. Thus, she claimed reversal of the said finding.

(10) This appeal was filed on 7th January, 1993. Admittedly, husband Rajbir Singh died on 14th March, 1993. Thereafter his mother and Sonu have come on record as legal representatives of deceased-husband Rajbir Singh.

(11) Respondents' learned counsel has raised a preliminary objection about the maintainability of the appeal. His contention is that since the husband has died, this appeal wherein decree of divorce is assailed, has abated. In support of his contentions, he has relied on *Sunanda v. Venkata Subha Rao*, (1) and *S.M. Pande v. Manohar* (2).

(12) Appellant's learned counsel, relying on *Iravva v. Shivappa*, (3) *Razia Begum v. Sahebzadi Anwar Begum*, (4) *Kamlabai v. Ramdas*, (5) *Smt. Balbir Kaur v. Smt. Hardarshan Kaur* (6) *Vadalsatti Samrajamma v. Vadalsatti Nagamma*, (7) and *Veena Rani v. Romesh Kumar*, (8) contended that the impugned judgement is a judgement *in rem*. It has decided the status of the appellant. Therefore, despite the death of the husband, she is entitled to maintain this appeal. It cannot be held that because of the death of the husband, this appeal has abated. This appeal has far-reaching consequences. Her proprietary rights

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- (1) A.I.R. 1957 A.P. 424
 - (2) A.I.R. 1971 Bombay 183
 - (3) A.I.R. 1971 Bombay 241
 - (4) A.I.R. 1958 S.C. 886
 - (5) A.I.R. 1981 Bombay 187
 - (6) 1993 MLJ 67
 - (7) 1994 (1) MLR 115
 - (8) 1994 (2) MLR 571

are also involved therein. If the appeal is held to have abated, she will be termed as a divorcee and shall not be entitled to get any share in the property of her husband, though as per Hindu Succession Act she is a Class-I heir. But if the appeal is heard on merits, she can be treated as a widow of the deceased husband and in that case, she will be entitled to get her share in the properties left by her husband.

(13) Agreeing with the legal proposition laid down in *Sunanda's case* (supra) (D.B.) a Division Bench of Bombay High Court has held in *S.M. Pande's case* (supra) that in *Sunanda's case* it is rightly laid down that a divorce decree passed dissolving a marriage being one relating to status is a judgement *in rem* and, therefore, when a party dies pending an appeal preferred from such decree, only the appeal abates, leaving the decree appealed against intact. It is further laid down that when an appeal abates, the decree is not automatically vacated and it continues to have legal force till it is in appropriate manner reversed or modified. This argument was, however, countenanced by them that as appeal is continuation of suit, decree also abates. It was further held that if it was a judgement *in rem* and unless and until a Court of appeal reversed it, the marriage for all purposes at an end.

(14) In *Razia Begum's case* (supra) the Apex Court has held that when the suit involves the question of the marital status of the parties, the Court should be extremely vigilant because the property rights are likely to be seriously affected and also because the legitimacy or otherwise of the parties involved would be seriously affected.

(15) In *Iravva's case* (supra) a Single Bench of Karnataka High Court has laid down that even though the husband dies, it is open to the wife to challenge the decree of dissolution of marriage by process known to law. If this right is to be denied to wife, her status would be in serious jeopardy and her property rights would be seriously affected.

(16) In *Ramlabai's case* (supra) it is held that where an appeal was filed by the wife against the decree of divorce and the respondent-husband died during the pendency of the appeal, the appeal cannot to be treated as having abated on the death of the respondent.

(17) A Division Bench of this Court in *Smt. Balbir Kaur's* (supra) has observed that decision in rem not merely declares the status of the person or thing but *ipso facto* renders it such as it is declared. Decree of annulment of marriage not only annuls the marriage but also renders a *Feme covert* to *Feme sole*.

(18) In *Thulasi Ammal v. Gowri Ammal and others*, (9) a Division Bench has held that since the decree of nullity appears to be a declaration of the status of a person, we are unable to see why the death of one of the spouses (husband died during the pendency of the suit) should put an end to the right of the other surviving spouse to seek for such a declaration. The same view was held in *Ponnuthayee Ammal v. Kamakshi Ammal*, (10).

(19) In *Veena Rani's case* (supra) decree for annulment of marriage was obtained by the husband. Wife filed an appeal. Husband remarried. The Court held that the appeal cannot be dismissed as becoming infructuous.

(20) In *Vadadasatti Samrajyamma's case* (supra) it is held that a decree dissolving a marriage involves termination of status of the wife, if the husband dies subsequent to the passing of the decree and the wife seeks to set aside the decree, the question would be whether the wife would be the widow of the deceased or a divorcee. If the wife succeeds in having the decree set aside, she will be a widow of the deceased entitled to the benefit of the Hindu Succession Act and will be entitled to inherit the properties of the husband as a Class-I heir. Such a right cannot be claimed and will be lost unless legal

(9) A.I.R. 1964 Madras 118

(10) A.I.R. 1978 Madras 226

representatives of the deceased husband are impleaded. The judgment dissolving the marriage is a judgment *in rem* and will not merely involve the personal status of the wife, but would involve her property rights. The principle of '*Actio personalis cum moritur persona*' will not be applicable and the proceedings to set aside an *ex parte* decree will not abate. It is further made clear that section 21 of the Hindu Marriage Act makes the provisions of the Code of Civil Procedure applicable to the proceedings under the Act, the provisions of Order 22 Rule 4 can be applied to bring on record the legal representatives of the deceased party to the proceedings. In this judgment the judgment in *Sunanda's* case was taken into consideration. Even in *Sunanda's* case it is held that divorce decree is not automatically vacated and it continues to have legal force till it is in appropriate manner reversed or modified.

(21) In this case, the legal representatives of the deceased-respondent are already on record. If the appeal is allowed to abate on this ground alone that the husband has died, it will seriously affect the status of the appellant as well as her property rights, which she may be entitled to, in case the appeal is decided on merits. If she succeeds in having the decree set aside, she will be entitled to inherit the property left by her deceased husband under the Hindu Succession Act. Admittedly, this is a judgment *in rem*. Her status is at stake. Hence, in my considered view, only on the ground that the husband has died, appeal does not abate.

(22) So far as the facts of the case are concerned, the husband has sought divorce on three grounds i.e. adultery, desertion and cruelty. In the lower Court itself at the time of arguments the husband gave up the ground of adultery and thus the Court held that the youngest daughter Sapna is legitimate child of Suresh Bala and deceased Rajbir Singh. The Court also negatived the ground of desertion, but so far as the ground of cruelty is

concerned, the Court held that she treated her husband with cruelty. Various acts of cruelty are alleged by the husband-Rajbir Singh.

(23) At the time of arguments, both the learned counsel relied on various authorities, which are discussed in brief.

(24) In *Raghubir Singh Gill v. Surjit Kaur*, (11) it is held that cruelty is not defined in the Hindu Marriage Act. There is no straight jacket formula of cruelty. Sometimes, even a gesture, an angry look, a sugar coated joke, an ironic over-look may be more cruel than even actual beating. Since the appellant failed to make her life comfortable in the matrimonial home, she was forced to leave his roof. It was also observed that the trial Court has rightly held that under these circumstances she left the matrimonial home. These circumstances were created by the appellant and he cannot take advantage of his own wrong.

(25) In *Smt. Uma Wanti v. Arjan Dev*, (12) it is reiterated that day to day behaviour was such as to disturb the mental peace and harmony. These small twigs of abnormal behaviour when piled one upon another become a heavy burden of cruelty.

(26) In *Mrs. Abha Gupta v. Rakesh Kumar*, (13) it is held that sex is a binding force to keep two spouses together. If sex is denied the effect is that it caused mental cruelty especially in a case where the parties are young and have recently married.

(27) In *Jatinder Singh v. Roopleen Kaur*, (14) it was observed cruelty is not defined in Hindu Marriage Act. It is to be determined on consideration of various factors such as social status background, custom and traditions and public opinion

(11) 1995 (3) PLR 480

(12) 1995 (2) PLR 53

(13) 1995 (1) PLR 453

(14) 1996 (1) PLR 30

prevailing in the locality. It should not be of such a character as to cause danger to life or health.

(28) In *Thakor Shantaben Kachraji v. Thakor Damsang Pavang*, (15) it is clarified that it would be too much to expect medical certificate or a criminal complaint from a Hindu wife for beating by her husband.

(29) In *V. Bhagat v. Mrs. D. Bhagat*, (16) the Apex Court has explained that mental cruelty is that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. It must be of such a nature that the parties could not reasonably be expected to live together. Regard must be had to the social status, educational level of the parties and the society they move.

(30) Other authorities are also cited by the parties, which lay down the same yardstick for determining the ground of cruelty.

(31) So far as the social background and status of the parties are concerned, in this case it is proved on record that when Rajbir Singh and Suresh Bala were married Rajbir Singh was not employed. After about a year or so he got employment in the Police Department in Haryana State. Immediately after being appointed, he went to Madhuban for training for six months. Thereafter, as he himself has admitted, he was posted at different places. For three years he remained at Chandigarh, then he was transferred to Hisar where he remained for one year and in 1988 he was transferred to Sonapat. He has admitted that during all these years he used to come to Kilo in a month or so to meet his wife and parents. Thus, it is obvious that Rajbir Singh never kept Suresh Bala along with him at his place of posting. She was made to live in the matrimonial home at Kilo.

(15) 1986 (1) HLR 505

(16) 1994 (1) PLR 603

(32) So far as the educational qualifications of the parties are concerned Suresh Bala has candidly admitted that she is absolutely illiterate. It is proved on record that Rajbir Singh was matriculate. Rajbir Singh's elder brother Kashmiri is a teacher in a School. Rajbir Singh has four other brothers and one sister. About their educational qualification there is no evidence on record.

(33) So far as the family background of the parties is concerned, Rajbir Singh has admitted in cross-examination that his eldest brother was married at Butana. Earlier he had been married to a girl of Naya Gaon. From first wife he has no son. First wife was left; "again said she was characterless and left our home". He further clarified that no divorce case was filed in the Court but through compromise amongst village people she was divorced". He has also examined his father Mukhtiar Singh PW-2. This witness has stated that his eldest son was married for the first time to a girl of Naya Gaon. She died and then second marriage of Randhir Singh was performed. PW-3 Rajbir also admitted in cross-examination that wife of Kashmiri died. Thus, it is obvious that this family of Rajbir Singh is accustomed to level allegations against the daughters-in-law of their family. As Rajbir Singh admitted in the cross-examination that his elder brother's wife was forsaken because she was not a chaste woman and ultimately in village panchayat she was divorced. Just to save the family from that dishonour, the father and the third witness have stated that the wife of the eldest son died, though Rajbir Singh has not said so. Rajbir Singh has also stated that he belongs to an agriculturist family. Keeping this family background and the social status of the parties, the evidence is to be scanned.

(34) The first allegation of cruel act is that Suresh Bala was addicted to smoking, though Rajbir Singh does not smoke. He asked her to leave smoking but she declined. The lower Court has believed this evidence of the husband that Suresh Bala was smoking and she declined to leave this

habit of smoking. But in my considered view, the lower Court has failed to scan the evidence minutely. In examination-in-chief Rajbir Singh has stated that Suresh bala used to smoke Bidis. In the cross-examination he has admitted that he came to know about 1/1¼ years after marriage that Suresh Bala used to smoke Bidis. She was smoking 2/3 bundles a day, but his father Mukhtiar Singh PW-2 has stated in cross-examination that soon after marriage they came to know that Suresh Bala used to smoke Bidis. This is unbelievable that husband would come to know about this habit or smoking of the wife after 1 or 1¼ years of marriage, though the father-in-law would know it soon after the marriage. This shows the hollowness of the plea raised just to get divorce against the wife. Suresh Bala and her father have denied this allegation. Hence, according to me, the husband has utterly failed to prove this alleged cruel act on the part of the wife.

(35) Rajbir Singh alleged that the eldest daughter Seema was ill. She was taken to village Matindu where Suresh Bala and her father failed to provide her proper treatment and because of their negligence, Seema died. Father-in-law Mukhtiar Singh has admitted that when Seema was ill in village Matindu, he never went to see Seema. Even after her death, he never went for..... condolence.....Even this ground cannot be believed. If Seema was ill and if Rajbir Singh or his father wanted to get her treated in a hospital in Rohtak or in village Kilo, they could have brought her back to their place. There is no evidence on record that Rajbir Singh tried to bring Seema to his village or to Rohtak to give her proper treatment but Suresh Bala declined. It is impossible to believe that a police employee a Contable, would tolerate such a denial from his illiterate wife. No doubt, Seema died because she was ill, but it cannot be said that she died because of the negligence of Suresh Bala.

(36) Rajbir Sing husband has also pleaded that Suresh Bala's real elder sister Bimla was

married to his elder brother Kashmiri. She died in February 1988. Suresh Bala left the matrimonial home in January 1988 and when Bimla died Suresh Bala never came for condolence. On oath he has admitted that parents of Suresh bala came for condolence when Bimla died. Suresh Bala and her father have categorically stated that when Bimla died, Suresh Bala was in her matrimonial home. There is no reason to disbelieve her this statement. It is natural conduct of a sister to help her sister at the time of agony when she was suffering from cancer and was hovering between life and death. There was no reason for Suresh Bala not to remain by her side. Lower Court has also commented that Suresh Bala has falsely alleged that when Bimla was admitted in the hospital, the expenditure was incurred by her father, though her father has admitted that he never spend anything on her treatment. This observation is wrong. No doubt, Suresh Bala has stated so, but even her father has admitted that he also got Bimla treated when she was at his place.

(37) Rajbir Singh has also taken an exception to Suresh Bala's this conduct that when his sister's husband died, she never came for condolence, though according to him, he sent a letter to her informing her about his death. Suresh Bala has categorically stated that no such letter was received by her. She has also assigned another reason that before his death she had filed a petition under section 125 Cr.P.C. This further supports her statement that because of the pendency of that petition, she might not have been informed by Rajbir Singh about the death of his brother-in-law.

(38) It is strongly argued by the respondents' learned counsel that Rajbir Singh has proved that Suresh Bala levelled false allegation of demand of Rs. 40,000 and has also asserted that he asked her either to bring Rs. 40,000 from her parental home or to get herself aborted. He commented that as per her allegation made in the written statement filed in the Court, at that time Seema was in her

womb and when she declined to get herself aborted, she was forced to leave the matrimonial home, leaving Sonu behind. Admittedly, Seema was the eldest daughter. She died in 1986. Sonu was born in October 1985. Hence it seems that while making averments in the petition filed under section 125 Cr.P.C. as well as raising such a plea in the written statement, by mistake Seema's name is mentioned. It should have been Sapna's name as she has stated on oath because it is impossible to believe that a mother would tell such a lie. Even Rajbir Singh has not only pleaded but has stated also that she left the matrimonial home in January 1988. This allegation is made to show that Sapna is not his legitimate daughter, though at the end he gave up this allegation of her leading an adulterous life and owned that Sapna is his legitimate daughter.

(39) Sapna was born in January 1989. Thus, it becomes obvious that Suresh Bala left the matrimonial home somewhere in the year 1988 and at that time she was not allowed to take Sonu with her. She has categorically stated that she was asked to get herself aborted. When she declined, she was beaten and was turned out of the matrimonial home. By that time Seema had already died and Sonu was not allowed to accompany her. This is the greatest act of cruelty on the part of the husband and his parents not to allow such a small child to accompany his mother and to compell the mother to leave the son in the matrimonial home and forcing her to go all alone. The respondents' learned counsel has tried to build-up the above argument to show that she has deliberately made false allegations, which is not true.

(40) So far as the demand of Rs. 40,000 is concerned, Suresh Bala has explained that when her maternal grandfather sold his land, at that time this demand was made by Rajbir Singh and his parents. It may be true; It may not be true. But this is not such an allegation on the basis of which it can be said that thereby she has caused mental cruelty to the husband.

(41) It is also alleged by the husband that whenever he used to go to his house in village Kiloi, she was not found. It was reported to him that she has gone to her parental home. He used to go to village Matindu. Even there she was not found and again it was reported that she has gone to village Kami. He used to go there and she used to refuse to accompany him. Thus, according to the lower Court, he was suffering sex starvation, as Suresh Bala declined to give him sexual pleasures. Suresh Bala has denied this allegation. Rajbir Singh 'W-I has testified that he visited Matindu 30-40 times to bring Suresh Bala. In the beginning she used to come with him 2/3 times, but then she stopped accompanying him. Even his witness Rajinder PW-4 has admitted that 2/3 times Rajbir Singh brought Suresh Bala from village Kami. These allegations can be easily made against a wife, but no specific instances are given as to in which month and in which year she went to village Kami and when Rajbir Singh approached her and asked her to accompany him, she declined. Even the lower Court, while deciding the ground of desertion, held that there is no reliable evidence as to when Suresh Bala left the house of Rajbir Singh, whether she left her matrimonial home voluntarily or she was compelled by the husband to leave his house.

(42) As I have discussed above, she was made to leave the matrimonial roof. Even her son was not allowed to accompany her. Thus, the husband was not in a position to take advantage of his own wrong to say that she made him to starve sexually. He was not living with her continuously. Wherever he was posted, he was living all alone. He used to come to village Kiloi once in a month or once in two months.

(43) Rajbir Singh has also alleged that she was not doing any household work. She used abusive language and was contemptuous in her behaviour towards him and his parents. Even this allegation is without any details. Such allegations can be made by the husband or by

his father against any woman. She has denied all these allegations. Considering the family background and the status of life of the parties, it cannot be believed that such an illiterate woman would have behaved in such a way with her husband, who was a police constable, or with his parents. Suresh Bala has categorically stated that even her sister Bimla was tortured by her in-laws and ultimately she died of cancer. Admittedly, Bimla died of cancer, but her statement cannot be disbelieved that Bimla was tortured by her in-laws as, I have observed above, Rajbir Singh could go to the length of saying that his elder brother's wife had left the matrimonial home because she was characterless. This gives a complete picture of the atmosphere prevailing in his house and the treatment which they were used to give to the daughter-in-law of their house. Suresh Bala was also accused of adultery.

(44) To bolster up that plea, allegations were made that every now and then she used to leave the matrimonial home without obtaining his (Rajbir Singh) or his parents' permission. Many a time she was found in village Kami. It is also alleged that one Sumer Singh used to talk to her in privacy, but on oath Rajbir Singh could not say a word about this allegation. This allegation by itself lends support to Suresh Bala's plea that when Sapna was in her womb, she was asked to get herself aborted. This shows that Rajbir Singh was doubting her chastity so much that he went to the extent of even denying the paternity of this child. In this background of character assassination there is hardly any reason to disbelieve her statement that when she declined to get herself aborted, she was beaten, her belongings and Sonu were snatched away and she was turned out of the matrimonial home.

(45) In this cruel scenario even if it is to be believed for argument's sake that she left the matrimonial home, she cannot be accused of treating him with cruelty or of deserting him, as

the respondent's learned counsel has tried to argue in vain. In this background if she did not go for condolence when Rajbir's sister's husband died, she cannot be blamed for that behaviour. There is no reliable and convincing evidence on record to prove that Suresh Bala is *xanthippe*. When faced with this false and baseless accusation, whereby her fidelity to her husband, her chastity is not only doubted but tarnished, if she left the matrimonial roof, being utterly umbraged, it cannot be said that she has treated him with cruelty. On the one hand the lower Court has held her guilty of cruelty but while negating the ground of desertion it has held :--

"Regarding desertion also there is no reliable evidence as to when Smt. Suresh Bala left the house of Rajbir, whether she left her house voluntarily or she was compelled by the petitioner to leave his house."

These are findings of a vacillating Judge and cannot be upheld for the reasons given above.

(46) In this male dominated society if her feeble voice cannot be heard by the Court to do justice to her, it will not only be travesty of justice, but will amount to traversity of justice. Thus, in my considered view, the lower Court fell into an error in scanning the evidence minutely and in arriving at the conclusion that she treated Rajbir Singh with cruelty. In my considered view, the boot is on the other leg. Husband Rajbir Singh treated her with utmost cruelty.

(47) Accordingly, this appeal is hereby allowed. The judgement and decree under appeal are set aside.

(48) So far as FAO No. 796 of 1995 is concerned, Ratna Devi along with minor son Sonu has assailed the findings given by Shri P.L. Goyal, Additional District Judge,

Sonepat,—vide his judgment dated 16th January, 1995.

(49) The facts of that case are that Smt. Ratna Devi and minor son of deceased Rajbir Singh filed this petition for the grant of succession certificate alleging that Rajbir Singh has died on 14th March, 1993, before notice of this appeal could be served on him. Therefore, only the petitioners are the legal heirs of Rajbir Singh to get the amount of G.P.F., Group Insurance Scheme, *Ex gratia* amount, death-cum-retirement gratuity, pension and benefits from Police Welfare Funds, which were payable to deceased Rajbir Singh. It is also alleged that by decree dated 5th December, 1992, the Additional district Judge, Sonepat, has granted a decree of divorce in favour of Rajbir Singh. No doubt, Suresh Bala Preferred an appeal against that judgment and decree, but before husband Rajbir Singh could be served with notice of filing of this appeal he died. Hence Suresh Bala is not entitled to inherit any property of deceased Rajbir Singh. It is also averred that respondent No. 3 Sapna is illegitimate child of Suresh Bala. In the divorce case Rajbir Singh alleged that Sapna is not born from his loins. Therefore, even Sapna respondent No. 3 is not entitled to get anything from the aforesaid amounts payable to deceased Rajbir Singh as his heir.

(50) Suresh Bala on her own behalf and on behalf of minor daughter Sapna filed reply and contended that she has already filed appeal against the aforesaid judgment and decree dated 5th December, 1992, which is admitted by this Court and its operation is stayed. Hence the decree is under challenge and it cannot be said that finally it is decided that she stands divorced under any judicial pronouncement. Hence she continues to be an heir of deceased Rajbir Singh as his widow. Sapna is Rajbir Singh's legitimate daughter as during the trial of the divorce petition at the time of argument, Rajbir Singh's counsel conceded that this ground of adultery is given up by Rajbir Singh and he

owns Sapna to be his legitimate daughter. She alleged that Sapna is also an heir of deceased Rajbir Singh. Therefore, she and her daughter Sapna are entitled to a share in the aforementioned properties.

(51) Considering the rival contentions, the trial Court came to the conclusion that since Suresh Bala has already filed an appeal against the said decree dated 5th December, 1992, and this Court has stayed the operation of this decree, it cannot be said that Suresh Bala is a divorced woman. About Sapna the Court held that during the trial of that matrimonial case, Rajbir Singh admitted that he could not prove the ground of adultery and he owned Sapna as his legitimate daughter. Hence the Court held that both these respondents 2 and 3 are the legal heirs of deceased Rajbir Singh. The Court also held that so far as G.P.F. amount is concerned, under rule 13.2(1)(c) of Part-II of the Punjab Civil Service Rules, Volume-II, the word "family" is defined, which means wife, children, widow or widows of a deceased son of the subscriber. But this definition does not govern the right of inheritance. The Court held that petitioners and respondents 2 and 3 are entitled to inherit the G.P.F. amount of deceased Rajbir Singh in equal shares under the Hindu Succession Act, 1956, being Class-I heir. About Group Insurance Scheme also, the Court held that all these persons are entitled to inherit this amount. About Ex-gratia amount, the Court held that only widow is entitled to recover this amount excluding all other legal heirs. The Court also held that petitioners and respondents 2 and 3 are entitled to get death-cum-retirement gratuity in equal shares. About pension the Court held that petitioner No. 1 is not entitled to recovery anything out of the pension which is payable to the heirs of deceased Rajbir Singh. Only petitioner No. 1 and respondents 2 and 3 are entitled to get it as his widow and children, but Sonu will be entitled for this pension till he attains the age of 18 years and Sapna will be

entitled to it till she attains the age of 21 years or is married, whichever is earlier. About benefits from Police Welfare fund also the Court held that the petitioners and respondents 2 and 3 are entitled to get this benefit in equal shares. Thus, the succession certificate was issued in these terms.

(52) While deciding FAO No. 5-M of 1993 I have held that the decree was wrongly granted in favour of *Rajbir Singh and the said decree is set aside. The consequence is that Suresh Bala continues to be the wife/widow of Rajbir Singh. The lower Court has held that Sapna is the legitimate child of Rajbir Singh and Suresh Bala. In view of these findings, I do not see any reason to interfere with the findings given by the Additional District Judge, Sonapat, while deciding this petition for the grant of succession certificate. Accordingly, this appeal, being meritless, is hereby dismissed.

S.C.K.

Before Hon'ble Ashok Bhan and N.K. Sodhi, J.J.

JAIBIR SINGH AND OTHERS,--Petitioners.

versus

STATE OF HARYANA AND OTHERS,--Respondents

C.W.P. 2413 of 1994

The 8th February, 1996

Constitution of India, 1950--Arts. 226, 227--Punjab village Common Lands (Regulation) Act, 1961--R1. 12--Sale of Panchayati land--Resolution of panchayat for sale of Shamlat deh land--Land surrounded by private colonizers--Government granted approval for such sale--Challenge to sale by tenants that land is being sold for purposes other than those mentioned in Rule 12--Defraud to the public exchequer--Resolution and subsequent permission of State Government set aside.

Held, that a perusal of the provisions would show that Panchayat land is permitted by