(supra), should not hold the field. It is consequently held that for the purpose of declaration of surplus area afresh, after setting aside of the previous order, any person, who was resettled on such surplus area before the setting aside of the same, is not a necessary party and it is not necessary to provide any opportunity of hearing to him under the provisions of the Act.

(12) No other point has been convassed.

(13) For the reasons mentioned above, there is no merit in either of the two writ petitions which are dismissed with no order as to costs.

Prem Chand Jain, J.—I agree.

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*H. S. B.*

*Before J. M. Tandon, J.*

DULI CHAND,—*Appellant.*

*versus*

BHAGWANTI and another,—*Respondents.*

*F.A.O. No. 168-M of 1978.*

November 9, 1979.

*Hindu Marriage Act (25 of 1955) as amended by Marriage Laws (Amendment) Act (68 of 1976)—Sections 23(4) and 28—Memorandum of appeal filed under the Act—Whether should be accompanied by copy of the decree sheet—Amendment of section 28—Effect of.*

*Held*, that no copy of the decree was required to accompany a memorandum of appeal under the Hindu Marriage Act 1955. Section 28 of the unamended Act provided that all decrees shall be appealable and the position remained the same under the corresponding section of the amended Act. The decrees have now been made appealable as decrees of the Court made in the exercise of original and civil jurisdiction. No doubt under section 23(4) of the amended Act, it has been made obligatory for the court to supply a copy of the decree to the parties free of cost where the marriage is dissolved by a decree of divorce but this obligation will not change the position regarding the necessity or otherwise to supply a copy of the

decree with the memorandum of appeal. It is, thus, evident that it is not necessary to supply a copy of the decree apart from the copy of judgment with the memorandum of appeal under the Hindu Marriage Act even after its amendment by the amending Act.

(Paras 12, 14, 15 and 17).

*First Appeal from the decree of the Court of Shri Tarlochan Singh, H.C.S., Sub-Judge 1st Class, Rewari, dated the 29th day of September, 1978, dismissing the petition of the husband/petitioner Duli Chand for restitution of conjugal rights against his wife Smt. Bhawanti, and leaving the parties to bear their own costs.*

*Claim : Petition for restitution of conjugal rights.*

*Claim in Appeal : For the reversal of the order and decree of the lower Court.*

Chandra Singh, Advocate, *for the appellant.*

H. L. Sarin, Advocate with R. L. Sarin, Advocate, *for the Respondent.*

JUDGMENT

*J. M. Tandon, J.*

(1) Duli Chand appellant and Bhagwanti respondent were married on December 14, 1967, at New Delhi. They lived at Rewari after their marriage. The respondent gave birth to a daughter and a son. On December 13, 1975, the appellant filed a petition for restitution of conjugal rights against the respondent alleging that two years earlier she had gone to Delhi for delivery at her parents' house. She did not return to Rewari thereafter in spite of all efforts made by him to that effect.

(2) The respondent admitted her marriage with the appellant and the birth of two children from him. She admitted that they lived together till May 15, 1972. She alleged that she was given beating by the appellant who treated her with cruelty.

(3) On the pleadings of the parties, the following issues were framed :—

1. Whether the respondent has withdrawn from the society of the petitioner (now appellant) without any reasonable cause or excuse.

2. Whether the petition is bad for misjoinder of parties?

3. Whether the petition has not been filed according to Rules ?

(4) The learned trial Court found issues Nos. 1 and 2 in favour of the respondent and issue No. 3 in favour of the appellant and consequently dismissed the petition. It is against this order that the present appeal is directed.

(5) The appellant had impleaded Smt. Liloo, mother of Bhagwanti as a respondent as well on the ground that she did not send Bhagwanti to him. So far as Liloo is concerned a decree for restitution of conjugal rights in favour of the appellant cannot be passed against her. She is, therefore, neither a necessary nor a proper party. The petition of the appellant against her has been rightly dismissed. The petition against Bhagwanti respondent could not be dismissed merely because her mother Smt. Liloo had been impleaded as a party.

(6) The respondent in support of her allegation that the appellant treated her with cruelty produced R. W. Nathu Ram of Rewari who stated that the respondent came to him at his house twice and complained that the appellant did not maintain her properly and beat her. It was in 1967 and 1971. Suraj Bhan, father of the respondent, and one Nathu Ram of Delhi contacted him and requested him to use his good offices to bring about conciliation between the parties. He went to the factory where the appellant was working. As he talked to the appellant, the latter got enraged and picked up a *danda* to beat them. Chankanda Ram intervened and saved them. Another R.W. Nathu Ram is a resident of Delhi. He stated that he went to Rewari along with Suraj Bhan, father of the respondent. They contacted Nathu Ram of Rewari and requested him to take them to the factory where the appellant worked, so that the dispute between the parties could be settled. They all went to the factory. The owner of the factory made them sit. The appellant was called. The appellant, on seeing them picked up a *lathi* and was about to assault him when his employer pacified him and they returned to Delhi. Bhagwanti respondent herself supported her case.

(7) The appellant led evidence to the contrary and also appeared himself as a witness.

(8) The learned trial Court has held neglect of the respondent by the appellant because the latter gave the date of his marriage as November 15, 1970, whereas the marriage had taken place on December 14, 1957. The trial Court has also taken notice of the statement of the appellant that he did not know the dates of birth of his children as also the fact that he did not maintain the respondent when she lived with her parents at Delhi. These facts are hardly material for recording a finding that the appellant treated the respondent with cruelty or he gave beating to her. The statements of two Nathu Ram's that the appellant tried to assault them when they approalhed him for conciliation are untrustworthy. The evidence produced by the respondent is neither true nor does it inspire confidence. The respondent has failed to prove her neglect by the appellant on her withdrawing from the society of the appellant with a reasonable cause. On the contrary the appellant has proved that the respondent has withdrawn from his society without a reasonable cause. The finding of the trial Court under issue No. 1 being not sustainable is reversed and it is decided in favour of the appellant.

(9) The appellant filed a certified copy of the judgment along with the appeal. The Registry objected that the decree-sheet should be filed. The appeal was resubmitted with the reply that the judgment is a part of the decree in such cases and non-filing of the decree-sheet does not render the institution of appeal invalid.

(10) The learned counsel for the respondent has argued that it was incumbent for the appellant to file a copy of the decree-sheet, apart from a copy of the judgment with the appeal and as it has not been done, the appeal is liable to be dismissed on this ground. He has placed reliance on *Smt. Surjit Kaur* v. *Shri Tarsem Singh,* (1). The learned counsel for the appellant has argued that no copy of the decree-sheet need be filed in such cases and the judgment itself is a decree with the result that non-filing of the decree-sheet will not adversely affect the appeal because the copy of the judgment has been filed. He has cited *Daljit Singh-Piara Singh* v. *Smt. Shamsher Kaur w/o Daljit Singh,* (2) in support of his contention.

(1) 1977 P.L.R. 667.

(2) A.I.R. 1969 Pb. & Haryana 69.

(11) In *Daljit Singh's case* (supra), the consequence of the non-filing of a copy of the decree-sheet in appeals under the Hindu Marriage Act, 1955, was examined. It was held:—

> "The Code requires in an ordinary suit that a Judge shall make a judgment and that will be followed by formal expression in the shape of a decree. But no such pattern is to be found in any provision of the Act. Apparently, a petition under the Act is not something in the nature of a suit. No doubt, if the Act was not there, any of the reliefs to which reference has already been made would be sought in an ordinary Civil Court, but now that the Act is there, those reliefs can only be sought under the provisions of the Act, and under those provisions the reliefs are not sought by way of a suit. Whatever right of appeal there is under the Act that has been conferred in the Act itself by section 28 and any such right obviously thus cannot be made subject to any limitations in regard to an appeal in the Code of Civil Procedure ..... The word 'decree' has been given defined meanings in section 2(2) of Code and that does not necessarily apply to a decree under the Act, because the scope and the nature of a decree under the Act has been sufficiently and specifically defined in the relevant provisions of the Act. The adjudications under sections 9, 10, 11 and 12 of the Act are stated to be decrees under those provisions when the relief claimed is granted. And as neither section 2(2) and (9) and 33, nor order 41, rule 1 of the Code apply to such an adjudication, it is not a correct approach that a judgment in such adjudication must be followed by a formal decree as is expressly required by those provisions of the Code..... Not only section 10 but also sections 9, 11, 12 and 13 of the Act speak of the Court making a decree under those provisions when granting relief claimed under any of the same. It follows that when a petition under any of those sections is dismissed and the relief is denied, in the terms of any one of those sections, there is no occasion for making a decree. The very same conclusion is available from the provisions of sub-section (1) of Section 23."

(12) It is clear and not disputed by the learned counsel for the respondent that in view of the rule laid in *Daljit Singh's case*

(supra), no copy of the decree was required to accompany a memorandum of appeal under the Hindu Marriage Act, 1955. The learned counsel has, however, argued that the amendment of the Hindu Marriage Act made in 1976 has changed the position and the rule laid in *Daljit Singh's case* (supra) eases to hold good with the result that the appeal must thereunder now be accompanied by a copy of the decree.

(13) Section 28 of the Hindu Marriage Act, 1955 before amendment of 1976 read:—

> "All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force".

Section 28 of the Amended Hindu Marriage Act, 1974 reads:—

"28. Appeals from decree and orders:—

(1) All decrees made by the Court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in the exercise of its original civil jurisdiction."

(2) Orders made by the Court in any proceedings under this Act, under section 25 or section 26 shall subject to the provisions of sub-section (2), be appealable if they are not interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order."

(14) The learned counsel for the respondent has argued that under sub-section (1) of section 28 of the Amended Act it has now been specifically provided that all decrees made by the Court shall be appealable as decrees and it was not so before the amendment and as such it is now necessary that a copy of the decree be supplied with the memorandum of appeal. I see no force in this contention. Section 28 of the unamended Act provided that all decrees shall be appealable and the position remains the same under the corresponding section of the amended Act. The decrees have now been made appealable as decrees of the Court made in the exercise of original and civil jurisdiction. The amended section 28, thus makes no change in the conception that the relief under sections 9, 10, 11, 12 and 13 shall be given in the form of decrees with the result that the rule laid in *Daljit Singh's cases* (supra) shall continue to hold good.

(15) Another point canvassed by the learned counsel for the respondent is that under section 23(4) of the Amended Act it has been made obligatory for the Court to supply a copy of the decree to the parties free of cost where the marriage is dissolved by a decree of divorce. The learned counsel infers therefrom that it has become obligatory for the appellant to file a copy of the decree with the memorandum of appeal. I do not agree with this contention also. The obligation on the part of the Court to supply a copy of the decree dissolving the marriage of the parties will not change the position regarding the necessity or otherwise to supply a copy of the decree with the memorandum of appeal.

(16) The learned counsel for the respondent has relied upon *Surjit Kaur's case* (supra) to support his contention that it is necessary for the appellant to file a copy of the decree with the memorandum of appeal. The facts of that case are completely different from the one now under consideration and further whether a copy of the decree was necessarily to be supplied with the memorandum of appeal or not was neither directly under issue nor was adjudicated upon therein. The learned counsel for the respondent, therefore, cannot take any advantage of this authority.

(17) It is thus evident that it is not necessary to supply a copy of a decree apart from the copy of the judgment with the memo of appeal under the Hindu Marriage Act even after its amendment in 1976.

(18) In view of discussion above the appeal must succeed and consequently the impugned order of the learned trial Court dismissing the petition against Bhagwanti respondent is set aside and the appellant is granted a decree of restitution of conjugal rights against her. The order of dismissal of the petition against Smt. Leelo respondent is maintained. No order as to costs.

*N. K. S.*

*Before Sukhdev Singh Kang, J.*

WARYAM SINGH and others,—*Petitioners.*

*versus*

FINANCIAL COMMISSIONER ETC.,—*Respondents.*

*Civil Writ Petition No.* 3027 *of* 1978.

November 9, 1979.

*Punjab Security of Land Tenures Act* (X *of* 1953)—*Sections* 9(1)(f) *and* 14-*A*—*Punjab Security of Land Tenures Rules* 1953—*Rule* 11—*Punjab Tenancy Act* (XVI *of* 1887)—*Section* 86—*Application for ejectment of a tenant*—*Prescribed form signed by one of the heirs of the deceased land-owner for self and as general attorney of others*—*Such application*—*Whether maintainable*—*Signatures of all the land-owners*—*Whether necessary.*

*Held*, that the grounds of ejectment of tenants under the Punjab Security of Land Tenures Act, 1953 are prescribed in section 9 and section 14-A lays down the procedure for the trial of ejectment applications. These sections do not in terms provide that the ejectment application shall be signed by all the land-owners. The terms and language of form K-1 also do not require that the application should be signed by all the land-owners. A combined reading of rule 11 of the Punjab Security of Land Tenures Rules 1953 and subsections (1) and (2) of section 86 of the Punjab Tenancy Act 1887 makes it abundantly clear that the persons holding general power of attorney were declared to be recognised agents for the purpose of section 86(4). Such persons were competent to file applications and do acts before the Revenue Officers like the parties themselves. These recognised agents were authorised to file the ejectment petitions and to do all acts in relation to such applications which their principals