

JEEWANTI PANDEY

v.

KISHAN CHANDRA PANDEY

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October 20, 1981

[A. P. SEN AND A. VARADARAJAN, JJ.]

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Family Law—Jurisdiction of the District Court to entertain a petition for nullity of marriage under section 12 of the Hindu Marriage Act, 1955,

Words and Phrases—Meaning of the word “residence”—Section 19(ii) of the Hindu Marriage Act, 1955 clarified.

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The appellant is the wife, and the respondent is the husband. The parties originally belonged to village Bagyan, District Pithoragarh in the State of Uttar Pradesh. They fell in love and the appellant became encients, as the respondent had access to her during the period of courtship. As her father was opposed to her marriage, the appellant was brought in a advance stage of pregnancy to Delhi and through the intervention of her uncle Basant Kumar their marriage was solemnised according to Arya Samaj rites at New Delhi. A few days after the marriage, the respondent left the residence of Basant Kumar on the pretext of fetching his belongings from the residence of his uncle who also lives at Delhi and never returned. He served a notice on the appellant alleging that the marriage was a nullity as she got pregnant through someone else and that fraud was practised on him by her uncle and that he had coerced to marry against his will. The appellant after denying the allegations filed a petition for restitution of conjugal rights under section 9 of the Act in the Court of Subordinate Judge, Class-I, Delhi which was decreed in her favour and the said decree had become final. Later on, the respondent filed a petition under section 12 of the Act in the Court of the District Judge, Almora, alleging that the parties were residents of village Bagyan while in fact at all material times both resided at Delhi. A few days after, the appellant delivered a dead child at Delhi. Later on, by her written statement she challenged the jurisdiction of the District Judge, Almora to try the suit. The district Judge answered the preliminary issue as to the jurisdiction against the appellant. The High Court, in appeal, by its judgment affirmed the order. Hence this appeal by special leave.

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Allowing the appeal, the Court

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HELD : 1:1. In the context of clause (ii) of the section 19 of the Hindu Marriage Act, 1955, the word “resides” must mean actual residence and not a legal or constructive residence; it certainly does not connote the place of origin. In order to give jurisdiction on the ground of “residence”, something more than a mere temporary stay is required. It must be more or less of a permanent

A character, and of such a nature that the court in which the respondent is sued, is his natural forum. In the instant case, at the commencement of the proceedings both the parties admittedly resided at Delhi and, therefore, the District Judge, Almora did not have jurisdiction to entertain the suit. [1008 F-H, 1009A]

B 1.2 The word "residence" is a flexible one and has many shades of meaning but it must take its colour and content from the context in which it appears and cannot be read in isolation. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense "residence" is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, for example, for health or business or for a change. If a person lives with his wife and children in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides. [1008 B-C, E-F]

D [The Court allowed the appeal and directed that the petition for nullity of marriage filed by the respondent under s. 12 of the Hindu Marriage Act, 1955, be returned for presentation to the proper court, i.e., the court of the District Judge, Delhi.]

E **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2754 of 1981.**

Appeal by special leave from the judgment and order dated the 6th August, 1979 of the Allahabad High Court in Civil Revision No. 1904 of 1978.

F *M. K. Garg* for the Appellant.

K. K. Mahrotra for the Respondent.

The Judgment of the Court was delivered by

G SEN, J. The short point involved in this appeal by special leave from a judgment of the Allahabad High Court, is whether the Court of the District Judge, Almora had jurisdiction to entertain the petition for nullity of marriage filed by the respondent under s. 12 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

H To bring out the point, it is necessary to state a few facts. It appears that the parties originally belonged to village Bagyan,

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District Pithoragarh, in the State of Uttar Pradesh. The appellant's case is that they fell in love and she became *enceinte*, as the respondent had access to her during the period of courtship. Her case is that she wanted to marry the respondent, but her father was opposed to the alliance as her elder brother and sister were unmarried. She was therefore brought in an advanced stage of pregnancy to Delhi and through the intervention of her uncle Basant Kumar, the marriage was solemnised on January 24, 1976 according to Arya Samaj rites at the Arya Samaj Mandir, Hanuman Road, New Delhi. Three days after the marriage, i.e. on January 27, 1976, the respondent left the residence of Basant Kumar on the pretext that he had to fetch his belongings from the residence of his uncle Dharm Nand Pant who also lives at Delhi, and never returned. On February 6, 1976, he served a notice on the appellant alleging that the marriage was a nullity as she got pregnant through someone else, that fraud was practised on him by her uncle Basant Kumar and that he had been coerced to marry her against his will. On February 17, 1976 she sent a reply denying the allegations made therein. On March 2, 1976 she filed a petition for restitution of conjugal rights under s. 9 of the Act in the Court of Subordinate Judge, Class I, Delhi.

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It may here be stated that although the appellant is a resident of Delhi as she lives with her uncle Basant Kumar at Lajwanti Garden, and the respondent was also a resident of Delhi being employed, at all material times, as Radio-Technician in the Ministry of Home Affairs, Rail Bhavan, New Delhi, he started the present proceedings not at Delhi but at Almora.

On March 18, 1976 the respondent filed a petition for nullity of marriage under s. 12 of the Act in the Court of the District Judge, Almora alleging that the parties were residents of village Bagyan, District Pithoragarh, i.e. within the territorial jurisdiction of the Court of District Judge, Almora. On March 23, 1976 i.e. just after five days of the filing of the petition under s. 12 of the Act the appellant delivered a dead child at Delhi.

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On February 25, 1977 the Subordinate Judge, Class I, Delhi decreed the appellant's suit for restitution of conjugal rights under s. 9 of the Act. In decreeing her claim for restitution of conjugal rights, the learned Subordinate Judge observed :

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"That to sum up, the evidence adduced by petitioner proves that the petitioner and respondent were known to

- A** each other and had developed sexual intimacy. It is further proved that the respondent married the petitioner at Delhi on 24.1.1976 of his own sweet free will according to Hindu rites. The petitioner delivered a dead child on 23.3.1976 would show that on the date of marriage, the petitioner was running in 7th month of pregnancy. Such advanced stage of pregnancy could not be hidden from the vision of any person. The plea of respondent that he did not know on 24.1.1976 that the petitioner was pregnant cannot be believed. The respondent thus knew at the time of marriage that the petitioner was pregnant. The very fact that he married her of his own free will would justify the conclusion corroborated by other evidence and circumstances discussed above that the petitioner had conceived from the respondent and the respondent thus married her of his own free will."
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- D** The judgment of the learned Subordinate Judge decreeing the appellant's claim for restitution of conjugal rights under s. 9 of the Act was not appealed from and has, therefore, become final.

- E** Upon these facts, it is quite evident that the Court of the District Judge, Almora had no jurisdiction to try the petition for the nullity of marriage filed by the respondent under s. 12 of the Act. The appellant by her written statement filed on August 23, 1976 challenged the jurisdiction of the District Judge, Almora to try the suit. The learned District Judge, accordingly framed a preliminary issue as to jurisdiction. By his order dated April 8, 1978 he negatived the objection raised by the appellant holding that since the parties were originally resident of village Bagyan, District Pithoragarh, that is, a place within the territorial jurisdiction of the Court of the District Judge, Almora, he, was competent to entertain and try the suit.
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- G** The appellant being aggrieved by the order of the learned District Judge preferred an appeal before the High Court. The High Court by its judgment dated August 6, 1979 upheld the finding of the learned District Judge observing :

- H** "The allegations made in the written statement do unmistakably show that the respondent was ordinarily residing at village Bagyan which was within the limits of the terri-

torial jurisdiction of the Court of District Judge, Almora. Even if she happened to be in Delhi on the date when the petition was presented, she must have gone to Delhi only on a temporary visit as she had no place of residence at Delhi and the respondent could not be said to have been residing at Delhi when the petition was presented in the District Court."

In arriving at that conclusion, the High Court was obviously influenced by the fact that the parties never had any permanent residence. While it is true that mere casual or temporary visits do not constitute 'residence' within the meaning of cl. (ii) of s. 19 of the Act, it cannot be said that the parties came to Delhi [on a temporary sojourn for a day or two. The appellant's case is that she had left her parental home at village Bagyan as her father did not consent to the marriage. If that be so, the irresistible conclusion is that she came to reside with the respondent at Delhi. It was frankly conceded before us that the finding of the High Court that she should be so regarded as having her residence at village Bagyan in the District of Pithoragarh is based on no evidence. It is agreed on all hands that ever since the marriage, the appellant has been residing with her uncle Basant Kumar at Lajwanti Garden, New Delhi.

Section 19 of the Act, insofar as material, reads as follows :

"19. Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together..."

It is common ground that the marriage was solemnised on January 26, 1976 at New Delhi. The fact that the parties last resided together at the residence of the appellant's uncle Basant Kumar at Lajwanti Garden, New Delhi is not in dispute. It is, therefore, clear that the conditions laid down in cl. (i) and (iii) of s. 19 of the Act are not present to invest the Court of the District Judge, Almora to entertain the petition for annulment of marriage filed by the respondent under s. 12 of Act,

A The question that arises is whether the learned District Judge was invested with jurisdiction by reason of cl. (ii) of s. 19 of the Act, i.e. whether, at the time of presentation of the petition, the appellant was a resident of village Bagyan within the territorial jurisdiction of the Court of District Judge.

B In order to give jurisdiction on the ground of 'residence', something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense 'residence' is more or less of a permanent character.

C The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length of time', and words like 'dwelling place' or 'abode' are held to be synonymous.

D Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses or others, his actual and physical habitation is the place where he actually or personally resides.

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G It is plain in the context of cl. (ii) of s. 19 of the Act, that the word 'resides' must mean the actual place of residence and not a legal or constructive residence; it certainly does not connote the place of origin. The word 'resides' is a flexible one and has many shades of meaning, but it must take its colour and content from the context in which it appears and cannot be read in isolation. It follows that it was the actual residence of the appellant, at the commencement of the proceedings, that had to be considered for determining whether the District Judge, Almora, had jurisdiction or not. That being so, the High Court was clearly in error in upholding the finding of the learned District Judge that he had jurisdiction

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A to entertain and try the petition for annulment of marriage filed by the respondent under s. 12 of the Act.

B In the result, the judgment of the High Court is set aside and the District Judge, Almora, is directed to return to the respondent the petition filed by him for nullity of marriage under s. 12 of the Hindu Marriage Act, 1955 for presentation to the proper court, i.e. the Court of the District Judge, Delhi. There shall be no order as to costs.

S.R.

Appeal allowed.