

A

JEET SINGH ETC.

v.

STATE OF U.P. AND ORS.

NOVEMBER 25, 1992

B

[KULDIP SINGH, V. RAMASWAMI AND
N.M. KASLIWAL, JJ.]

C

U.P. Imposition of Ceiling on Land Holdings Act, 1960: Section 3(7)—'Judicially Separated' wife—Settlement or compromise of separation entered into between husband and wife before Nyaya Panchayat constituted under U.P. Panchayat Raj Act, 1947—Whether amounts to judicial separation—Whether Nyaya Panchayat has jurisdiction under the Panchayat Raj Act to decide matrimonial matters—Land transferred to wife pursuant to the compromise—Whether to be treated as belonging to the family of tenure holder.

D

U.P. Panchayat Raj Act, 1947: Sections 64 and 82—Whether confer jurisdiction on Nyaya Panchayat to decide matrimonial matters.

Hindu Marriage Act, 1955: Section 10—Judicial Separation—Effect of.

E

The appellant in the first of the two appeals had two wives, the appellant in the second of the appeals being the first wife. The first wife filed a criminal complaint against her husband, under Sections 494 and 109 of the Indian Penal Code. During the pendency of the criminal proceedings they entered into compromise before a Nyaya Panchayat constituted under the U.P. Panchayat Raj Act, 1947 and the same was recorded by the Adalat Nyaya Panchayat. According to the settlement, some lands were to be transferred in favour of the first wife and the relationship of husband and wife between the two appellants would be deemed to have ceased to exist, and the first wife would get the criminal case dismissed.

F

G

In pursuance of the consent order, the father of appellant-husband executed a sale deed in favour of his daughter-in-law, the appellant-first wife, conveying two Bhumidhari plots.

H

In the proceedings taken under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the Ceiling Authorities included the aforesaid

plots in the holding of the husband as the land belonging to his wife A
includible in the holding of her husband. Both the appellants objected to
the inclusion of the land in the holding of the husband on the ground that
the first-wife was a judicially separated wife and therefore, it could not be
included in the holding of the husband. The Prescribed Authority under
the Ceiling Act rejected these contentions. Both the appellants filed B
separate appeals before the District Judge, who dismissed the same taking
the view that the consent order made by the Nyaya Panchayat would not
make the first wife a judicially separated wife.

The High Court dismissed the writ petitions filed by the two appel-
lants on the ground that since the Nyaya Panchayat had no jurisdiction to C
deal with matrimonial or divorce cases, and by consent of parties no
jurisdiction also could be vested in it, the first wife could not be held to be
a judicially separated wife, on the basis of the consent order made by the
Nyaya Panchayat.

Dismissing the appeals preferred by the husband and the first wife, D
this Court

HELD: 1.1. The intention of the provision in Section 2(7) of the U.P.
Imposition of Land Holdings Act, 1960 is that a wife who is judicially
separated shall have a right to keep the properties given to her as and in E
lieu of maintenance or otherwise during her separate living and cor-
respondingly it shall not be included in the holding of her husband. But
in order to have the benefit of this provision, the parties shall prove that
the wife is 'judicially' separated. The word 'separated' in the Section is
qualified by the word 'judicially'. Unless the separate living was a judicially F
ordered or recognised one, it would not qualify for exclusion under the
provision. In the context, therefore, it means an act done in pursuance of
an order or direction of a court of competent jurisdiction. It is used in
contrast to separate living by agreement of parties or at the intervention
of mediators without the intervention of a judicial proceeding in a com- G
petent court of law. [252-F; 253-A-C]

*Webster's New Twentieth Century Dictionary and Shorter Oxford Dic-
tionary* referred to.

1.2. The consent order recorded by the Nyaya Panchayat would not H

A be one within the meaning of expression 'Judicially Separated' in Section 3(7) of the Ceiling Act. The U.P. Panchayat Raj Act, 1947 does not confer any jurisdiction on the Nyaya Panchayat to decide any matrimonial matter. The civil jurisdiction conferred under Section 64 does not pertain to such matters. Section 82 also does not confer any extraordinary or special jurisdiction. It does not deal with jurisdiction at all. It only enables the Nyaya Panchayat to pass an order by consent in any dispute which was cognizable and which was within their jurisdiction. If the Nyaya Panchayat had no jurisdiction to decide a dispute under any of the other provisions of the Act this provision does not enable it to extend or assume any such jurisdiction to decide disputes which are not covered by the other provisions in the Act. Therefore, the first-wife, the appellant in the second of the two appeals, cannot be said to be a judicially separated wife within the meaning of Section 3(7) of the Act.

[253-D, E, H & 254-A]

D 2. Under Section 10 of Hindu Marriages Act, 1955, which provides for 'judicial separation' read with Section 19, only a District Court (Civil Court) has jurisdiction to grant a decree for judicial separation. Parties governed by the Indian Divorce Act, 1869 may file a Petition under Section 23 thereof for judicial separation before a District Court or the High Court. Mohammadan Law also recognises a right to live separately without an obligation to have co-habitation with her husband though such claim can be made only in rare circumstances like cruelty or that her life is unsafe or other strong ground. This order could be obtained by the wife in a suit instituted by her or in a suit instituted by the husband for restitution of conjugal rights. It is, therefore, not correct to say there are no provisions for Muslims or the Christians for obtaining orders of judicial separation in a court of law. Apart from that, if under any personal law the person is not entitled to get any order of a court for a judicial separation, it would only mean that they would not be entitled to the benefit of exclusion provided under the definition. Separation other than the one which was in pursuance of an order of court, could not be recognised for the purpose of Section 3(7) of the Ceiling Act.

[251-H; 252-A, B; 255-H; 256-A]

Sarju Prasad v. 4th Addl. Distt. Judge, (1980) All. L.J. 515, approved.

H *Gangotri Devi v. State and Ors.*, (1982) All. L.J. 103, overruled.

3. The judicial sanction of separation creates many rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree, however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after certain period may become a ground for divorce, it is not necessary, and the parties are not bound to have recourse for that remedy and the parties can live keeping their status as wife and husband till their life time. [252-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3732-3733 of 1982.

From the Judgment and Order dated 20.8.1980 of the Allahabad High Court in Civil Misc. Writ Petition Nos.2806 and 3644 of 1979.

J.P. Goyal, M.R. Bidsar, K.K. Gupta and S.K. Jain for the Appellants.

A.K. Goel and Ajay K. Agrawal for the Respondents.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. The facts as found by the courts below are as follows. Jeet Singh-the appellant in the Civil Appeal No.3732 of 82 had two wives. The first wife is the appellant in the Civil Appeal no.3733 of 82. She filed some time in 1966 a criminal complaint against her husband under sections 494 and 109 of the Indian Penal Code. During the pendency of the criminal proceedings they entered into a compromise before a Nyaya Panchayat constituted under the U.P. Panchayat Raj Act, 1947 and the same was recorded by the Adalat Nyaya Panchayat Angadpur Mukam, Meerut District and that consent order dated 14.11.1966 recorded by the Nyaya Panchayat reads as follows:

"Today dated 14th November, 1966, A.D. Nyaya Panchayat held meeting under the Chairmanship of Sri Bhanwar Singh Sarpanch. Sri Hem Raj son of Ram Sharma Brahman, resident of Village Barawad, Jeet Singh, S/o Hem Raj and Smt. Ramo Devi wife of Jeet Singh Brahman, resident of Village Barawad party one and Smt. Maya

A Wati daughter of Nam Chand, resident of Village
Chhaprauli second party with some of their relations are
also present. Before the panch both parties stated that
Smt. Maya Wati Devi had filed a case u/s 494/109, Indian
B Penal Code, against Hem Raj and others and continuance
of criminal case shall ruin the family. Relatives of both
parties have come and wish to resolve the dispute by
mutual settlement. They want to enter into settlement and
get it verified. Both the parties by agreement have entered
into the following settlement which both the parties and
C their relatives have admitted before the Sarpanch and
panchs and verified the same".

The settlement is like this.

"Smt. Mayawati, who has filed a criminal case before a
Magistrate at Meerut, shall get it dismissed. Hem Raj out
D of his property shall execute a sale deed in favour of Smt.
Maya Wati Devi of two Bhumidhari plots Khasra numbers
157, 17 biswa and 159, 6 biswa 14 biswansis for her
maintenance. Smt. Ramo Devi alone shall reside with Jeet
Singh at his house as his wife and the children born from
E Smt. Ramo Devi and Ramo Devi only shall be heirs and
claimants of the property of Jeet Singh. Smt. Maya Devi
shall not be recognised as wife of Jeet Singh and she will
not acquire any right in Jeet Singh's property. Relation-
ship of husband and wife between Jeet Singh and Maya
F Devi shall be deemed to be finished. Both the parties are
agreed to this settlement which has been brought about
by the intervention of their relatives and both the parties
and their relatives after hearing and understanding are
putting their signatures and thumb impressions before the
Nayaya Panchayat."

G In Pursuance of this consent order Hem Raj, the father of Jeet Singh
executed a sale deed on 22.11.1966 in favour of Maya Wati conveying two
bhumidhari plots bearing khasra numbers 157 measuring 17 biswa and 159
measuring 6 biswa 14 biswansis.

H In the proceedings taken under the U.P. Imposition of Ceiling on

Land Holdings Act, 1960 (hereinafter referred to as the 'Ceiling Act') the Ceiling Authorities included the plots bearing Khasra Nos. 157 and 159 in the holding of Jeet Singh as the land belonging to his wife includible in the holding of her husband. Both Jeet Singh and Mayawati objected to the inclusion of the land in the holding of Jeet Singh on the ground Mayawati is a judicially separated wife and that, therefore, it could not be included in the holding of Jeet Singh. The Prescribed Authority under the Ceiling Act rejected these contentions. Both Jeet Singh and Mayawati filed separate appeals before the Distt. Judge, Meerut who by his order dated 22nd March, 1979 dismissed the same in the view that the consent order made by the Nyaya Panchayat will not make Mayawati a judicially separated wife. Two separate writ petitions were filed by the two appellants in these appeals and the High Court by order dated 20th August, 1980 dismissed the writ petitions in the view that since the Nyaya Panchayat had not jurisdiction to deal with matrimonial or divorce cases and by consent of parties no jurisdiction also could be vested in it, and held that on the basis of the consent order made by the Nyaya Panchayat, Mayawati could not be held to be a judicially separated wife.

The question, therefore, for consideration is whether on the facts and in the circumstances of this case Mayawati could be said to be a "judicially separated wife" within the meaning of Section 3(7) of the Ceiling Act. That provision defines "family" as follows:

"3(7). 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters)."

Husband and wife may be living separately by consent due to various reasons. Such separate living may have been preceded by a family settlement or a Panchayat or sanctioned by custom in the community. It may be due to desertion by the husband or due to certain valid reasons like cruelty the wife may be forced to live separately. Can these separate living be called "judicially" separated.

By the time the Ceiling Act was enacted the words "judicial separation" had acquired a definite meaning. Section 10 of Hindu Marriage Act,

A 1955, provides for "judicial separation" among Hindus. Under this provision read with Section 19 only a District Court (Civil Court) has jurisdiction to grant a decree for judicial separation. Parties governed by the Indian Divorce Act, 1869 may file a petition under section 23 thereof for judicial separation before a Distt. Court or the High Court. Mohammedan Law also recognises a right to live separately without an obligation to have co-habitation with her husband though such claim can be made only in rare circumstances like cruelty or that her life is unsafe or other strong grounds. This order could be obtained by the wife in a suit instituted by her or in a suit instituted by the husband for restitution of conjugal rights.

C The judicial sanction of separation creates many rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. D It affords an opportunity for reconciliation and adjustment. Though judicial separation after certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse for that remedy and the parties can live keeping their status as wife and husband till their life time.

E The obvious intention of the provision in S.2(7) of the Ceiling Act therefore is that a wife who is judicially separated shall have a right to keep the properties given to her as and in lieu of maintenance or otherwise during her separate living and correspondingly it shall not be included in the holding of her husband. But in order to have the benefit of this provision the parties shall prove that the wife is "judicially" separated. It may be stated that the instant case the consent order obtained from Nyaya Panchayat was not intended to get over any of the provisions of the Ceiling Act. There was a *bona fide* dispute between the parties. The wife had gone to the criminal court with a petition under S.494 IPC and the settlement was effected during the pendency of these criminal proceedings before the Nyaya Panchayat. It may be stated that the Ceiling Act came into force with effect from 8th June, 1973. It is, therefore, necessary to consider as to what is the scope and meaning of the words "judicially separated wife" in F G H S.2 (7) of the Ceiling Act.

The word 'separated' is qualified by the word 'judicially'. Unless the separate living was a judicially ordered or recognised one it would not qualify for exclusion under the provision. The word "judicial" according to Webster's *New Twentieth Century Dictionary*, means "allowed, enforced or set by order of a Judge or law court". According to *Shorter Oxford Dictionary*, the word judicial means "of (used as an adjective of) or belonging to judgment in a court of law, or to Judge in relation to his function; pertaining to the administration of justice; proper to a legal tribunal; resulting from or fixed by a judgment in Court." In the context, therefore, it means an act done in pursuance of an order or direction of a court of competent jurisdiction. It is used in contrast to separate living by agreement of parties or at the intervention of mediators without the intervention of a judicial proceeding in a competent court of law.

That leaves us to the question whether the consent recorded by the Nyaya Panchayat would be one within the meaning of the words 'judicially separated'. There could be no doubt that the U.P. Panchayat Raj Act, 1947 does not confer any jurisdiction on the Nyaya Panchayat to decide any matrimonial matter. The civil jurisdiction conferred under section 64 relates to claim of money or claim for recovery of movable property or for compensation for wrongfully taking or injuring a movable property and damages caused by cattle trespass. Even for this there is a restriction in respect of monetary jurisdiction and that is the value of the claim shall not exceed hundred rupees subject however to the power of the Government to extend such jurisdiction up to the value not exceeding five hundred rupees. The learned counsel however, relied on Section 82 of the said Act which reads as follows:

"Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be lawful for the Nyaya Panchayat to decide any dispute arising in its local area and not pending in any court in accordance with any settlement, compromise or oath agreed upon in writing by the parties.

We are unable to agree that this section confers any extraordinary or special jurisdiction. The section does not deal with jurisdiction at all. It only enables the Nyaya Panchayat to pass an order by consent in any

A dispute which was cognizable and which was within their jurisdiction. It the Nyaya Panchayat had no jurisdiction to decide a dispute under any of the other provisions of Act this provision does not enable it to extend or assume any such jurisdiction to decide disputes which are not covered by the other provisions in the Act.

B A similar question came up for consideration in *Sharju Prasad v. 4th Addl. Distt. Judge*, (1980) All. L.J. 515. A Division Bench of the High Court took the view that the expression judicial separation must of necessity be brought about through the intervention of a judicial act as a consequence of legal proceedings in a competent court of law and that the employment of the word 'judicial' rules out the idea of a legal separation through the intervention of a Panchayat etc. according to the custom if any prevalent in the community. The Bench also observed:

D "It may be mentioned here that the expression "judicially separated wife" in section 3(7) of the Act has been used not only to cover cases of Hindu tenure-holders but is equally applicable to parties professing other religious beliefs. There are provisions under the Divorce Act, Special Marriage Act and the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, which also deal with decree for "judicial separation" through law courts."

F The learned counsel relied on a decision of a Single Judge of the Allahabad High Court in *Gangotri Devi v. State and others*, (1982) All. L.J. 103, where the learned judge has expressed the view that the expression judicially separated cannot be understood in the technical sense of grant of decree for judicial separation. That was a case where in a suit for injunction from interfering with the peaceful enjoyment of certain properties by the wife against her husband the Court held that she was entitled to the land in dispute on the basis of her claim that she had separated from her husband. It was argued that her status as a legally separated wife had been recognised by the Court in the suit and that should be sufficient to take her out from the definition of family in section 3(7). If the facts were that there was already an order of court, and that was the basis for the decree the matter would be different but the learned Judge has not

restricted the decision to the facts of that case but observed:

"The question of judicial separation, therefore, arises in relation to a Bhumidhar, Sirdar or Asami. Such a person may be Hindu or a Muslim or Christian or of any other caste. Can the expression 'judicially separated' therefore, be understood in the technical sense as used in S.10 of the H.M. Act as has been held by the 'appellate authority' or in wider sense descriptive of a state of affair between husband and wife. A judicial separation means suspension of the relationship between husband and wife. It is not an annulment of the marriage. In other words they continue as husband and wife although they do not discharge their marital obligations. There is no provision like S.10, H.M. Act, in Muslim Laws or Indian Christianity Act. If the words 'judicially separated' are understood as in S.10 of H.M. Act, then obviously it would apply only to Hindus and not Muslims or person of other religions. Such a construction cannot be accepted particularly when the legislature deliberately did not use the words 'judicially separated' as in H.M. Act.

The expression judicially separated comprises of two words 'judicially' and 'separated'. Separation between husband and wife may take place in numerous ways, for instance desertion by husband of the wife or being cruel to her which may force her to live separately from him. But it is not every separation which is recognised by the Ceiling Act. It should be judicial. It has been seen above that the words 'judicial separation' cannot be understood in technical sense of grant of decree u/s 10 of H.M. Act. The word 'judicial' according to Chambers dictionary means, 'arising from process of law.' It has at times been contrasted with administrative, ministerial or executive."

We are unable to agree with the ratio of this judgment. As already stated it is not correct to say that there are no provisions for Muslims or the Christians for obtaining orders of judicial separation in a court of law. Apart from that if under any personal law the person is not entitled to get

A any order of a court for a judicial separation it would only mean that they would not be entitled to the benefit of exclusion provided under the definition. We are unable to agree with the learned Judge that separation other than the one which was in pursuance of an order of court could be recognised for the purpose of section 3(7). In the result the appeals fail and they are dismissed.

N.P.V.

Appeals dismissed.