

Citations on Divorce under Hindu Law

Divorce.-Custom applicable on Shudras.-Divorce by abandonment.-A Shudra woman turned out of matrimonial house by her husband or she herself wilfully abandons her husband and is not pursued by the husband to come back.-In these circumstances the divorce takes place as a matter of fact. Hindu law is clear on the subject that if a *Shudra* woman is turned out of the house by her husband, or she wilfully abandons him and is not pursued to be brought back as wife a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to re-arrange his/her life in marriage with other marrying partners. Walking out of Pappammal from the house of her first husband Koola Gounder was irretrievable and irreversible, for it is in evidence that neither of them took interest in each other thereafter. The divorce was thus complete. *M. Govindaraju v. K. Munisami Gounder (D) and others*, AIR 1997 SC 10: 1996(5) SCC 467: 1996(6) Scale 15: 1997(1) Hindu LR 445: 1997(1) Mat. LR 19

Divorce.-Local custom.-Dissolution of marriage by divorce by the husband to his wife.-Evidence of local custom.-Effect of such divorce. All witnesses examined on behalf of the appellant himself thus proved the existence of a custom under which a Hindu Jat in the district of Jullundur could divorce his wife, though all of them added a qualification that, in case a wife is divorced by a Hindu husband, she is not entitled to a second marriage during the life-time of her first husband. They all admit that a custom permitting a Hindu Jat to divorce his wife does actually exist in the district of Jullundur. While admitting the existence of custom permitting a Hindu husband to divorce his wife, have added a qualification that, if such a divorce is brought into effect by a husband, the wife cannot legally contract a second marriage during his life-time. This limited custom sought to be proved by these witnesses does not find support from the *Riwaj-i-am*, nor is it in line with the principles laid down by Rattigan in his book on 'Customary Law'. All that he stated in paragraph 74 of his book was that "until the former marriage is validly set aside, a woman cannot marry a second husband in the life-time of her first husband." We have already held that, even according to the witnesses examined by the appellant, a custom exists which permits a valid divorce by a husband of his wife and that would dissolve the marriage. On the dissolution of such a marriage, there seems to be no reason why the divorced wife cannot marry a second husband in the life-time of her first husband. It also appears to us incongruous to accept the proposition put forward on behalf of the appellant that, though a wife can be divorced by her husband, she is not at liberty to enter into a second marriage and thus secure for herself means for proper living. *Gurdit Singh v. Mst. Angrez Kaur and others*, AIR 1968 SC 142: 1967 (3) SCR 789

Divorce.-No relief for own wrong.-Irretrievably broken marriage not a straight jacket formula for relief of divorce.-Husband himself guilty of committing adultery cannot seek divorce on ground of desertion by wife, while wife was prepared to live with him provided husband snapped his relationship with other woman.

In this case, the averments made in the petition for obtaining a decree for divorce, namely, desertion on the part of the wife without any reasonable cause have not been found to be correct. The petition was liable to be dismissed on that ground alone. The defence of the respondent for having a justified reason to live away from the husband has been found to be correct. Behaviour of the appellant certainly falls in the category of misconduct on his part. In such circumstances, it is too much on his part to claim that he be given the advantage of his own wrong and be granted a decree of divorce on the ground of desertion on the part of his wife who is still prepared to live with him provided he snaps his relationship with the other woman. Similar offer had also been made on behalf of the appellant, which, we have already dealt within earlier part of the judgment. He perhaps prefers to snap relationship with the respondent, rather than with Sosamma Thomas. A decree of divorce on the

ground of marriage having been irretrievably broken cannot be granted in the facts and circumstances of the case as indicated above. *Chetan Dass vs. Kamla Devi*, AIR 2001 SC 1709 : 2001(4) SCC 250 : 2001(5) JT 21 : 2001(2) Civ CR 315

Divorce.-Non cohabitation after judicial separation.-Non-resumption of co-habitation after passing decree for judicial separation or restitution of conjugal rights.-No obligation of either party to cohabit with other.-Section 10 does not vest a right to seek divorce on ground of non-resumption of co-habitation.-Court not bound to grant divorce on mere proof of non-cohabitation for one year.-Relief of divorce can only be granted if conditions laid down in Section 23 are satisfied. *Hirachand Srinivas Managaonkar vs. Sunanda*, AIR 2001 SC 1285 : 2001(4) SCC 125 : 2001 (3) JT 620 : 2001(2) Civ CR 282

Divorce.-Non cohabitation after judicial separation.-Wife's petition for judicial separation granted on ground of adultery by husband.-Husband deliberately continued to lead adulterous life with no remorse and thwarting any attempt to reunite.-Offence of adultery does not get frozen or wiped out on passing decree for judicial separation.-Relief of divorce cannot be granted. *Hirachand Srinivas Managaonkar vs. Sunanda*, AIR 2001 SC 1285 : 2001(4) SCC 125 : 2001 (3) JT 620 : 2001(2) Civ CR 282
