

Judiciary Digest

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Irretrievable Breakdown of Marriage

In a significant judgement, the Telangana High Court has held that an irretrievable breakdown of marriage, even if proven, is not a sufficient ground for granting a divorce under Section 13 of the Hindu Marriage Act. This decision emphasises the necessity of adhering strictly to the grounds specified within the Act for dissolution of marriage.

Background of the Case

The case, titled **X v. X**, involved an appeal by a husband whose petition for divorce on the grounds of cruelty and desertion was dismissed by the trial court. The husband contended that he and his wife had been living separately for 17 years and their marriage had irretrievably broken down. He argued that due to the prolonged separation and lack of any possibility of reconciliation, divorce should be granted.

Appellant's Contentions

The appellant detailed the nature of his troubled marriage, claiming that his wife subjected him to repeated acts of cruelty. He described her as extremely controlling, hindering his communication with family members and demanding to live separately from his family. He also alleged that she initiated domestic violence proceedings against him, leveraging her sister's influence as a constable, and concealed the fact that she had a son from a previous relationship.

Additionally, the appellant accused his wife of filing a suit for partition of his property, further aggravating their marital discord. He maintained that these actions amounted to cruelty and desertion, thereby justifying his plea for divorce.

Respondent's Defence

The respondent, on her part, denied hiding her pregnancy from her husband or his family. She countered by alleging that her mother-in-law attempted to abort her pregnancy, given that the appellant's elder brother already had a child. She substantiated her claims with pregnancy reports and scans submitted in the domestic violence case.

Court's Analysis and Ruling

The Telangana High Court, comprising Justice K. Lakshman and Justice P. Sree Sudha, meticulously examined the contentions of both parties. The court emphasised that cruelty is a subjective concept, varying from person to person based on upbringing, sensitivity, financial status, and social context. The court noted that the appellant had failed to prove acts of cruelty beyond minor disagreements.

Regarding the allegation of desertion, the court referred to the precedent set in **Lachman Utamchand Kirpalani v. Meena @ Mota**, which requires proof of both the factum of separation and the intention to end cohabitation permanently. The court observed that the couple had undergone court-appointed mediation and mutually decided to live apart, negating the claim of desertion by the respondent.

Irretrievable Breakdown of Marriage

A crucial aspect of the case was the appellant's plea based on the irretrievable breakdown of marriage. The court acknowledged the prolonged separation of 17 years but reiterated that irretrievable breakdown is not recognized as a ground for divorce under Section 13 of the Hindu Marriage Act. The court observed that neither the Family Court nor the High Court has the authority to grant divorce solely on this basis.

Legal Heirship in Adoption Cases

Madras High Court has clarified the implications of adoption on legal heirship, stating that all ties of an adopted child with their biological family are severed and replaced by those with the adoptive family. This significant decision has important ramifications for inheritance rights under the Hindu Adoption and Maintenance Act, 1956.

Background of the Case

The case, **V Sakthivel v The Revenue Divisional Officer**, stemmed from a dispute regarding the inheritance rights of Kottravel Sethupathi, who had been adopted by Ramasamy and his wife Sivakami. Following their deaths, Sethupathi inherited their property but later passed away without any first-class legal heirs as defined by the Hindu Succession Act. Consequently, the children of Ramasamy's siblings applied for and received a legal heirship certificate, which was later contested by Sethupathi's biological siblings.

Petitioner's Arguments

The petitioner, Sakthivel, argued that as per Section 12 of the Hindu Adoption and Maintenance Act, 1956, all ties of the adopted child with their biological family are deemed severed upon adoption. This legal provision establishes that the adopted child is fully integrated into the adoptive family, thus nullifying any claims by biological relatives over property inherited through the adoptive family.

Court's Observations

Justice GK Ilanthiraiyan, presiding over the case, observed that the adopted child's legal relationships are completely transformed by the adoption process. The court emphasised:

"Thus, it is made clear that on the date of adoption the ties of the adoptive child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family."

Implications

The court upheld the petitioner's argument, quashing the RDO's order that had cancelled the legal heirship certificate. By reaffirming Section 12 of the Hindu Adoption and Maintenance Act, the court ruled that the biological siblings of Sethupathi could not be considered his legal heirs since the adoption severed all legal ties with his biological family.

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Bail Under the Juvenile Justice Act

Understanding Section 12 of the JJ Act

The case, **X Juvenile vs. State of U.P. and Another**, brought into focus Section 12 of the Juvenile Justice Act, which outlines the conditions under which bail to a juvenile may be refused. According to the Act, bail can be denied only in three specific circumstances:

1. If the release is likely to bring the juvenile into association with any known criminal.
2. If the release would expose the juvenile to moral, physical, or psychological danger.
3. If the release would defeat the ends of justice.

Justice Manish Kumar Nigam emphasised that the severity of the offence does not constitute grounds for denying bail to a juvenile, as the Act does not include this as a consideration.

Case

The juvenile in this case, referred to as the applicant, had been implicated in a serious criminal matter involving charges under Sections 147, 148, 149, 364, 302, and 34 of the IPC. The Special Judge (POCSO)/8th Additional Sessions Judge, Shahjahanpur, had previously denied him bail. The applicant's counsel argued that at the time of the incident, the juvenile was 16 years and 6 months old, had no prior criminal history, and that four co-accused had already been granted bail.

Precedents and Observations

In its deliberations, the Court referred to the precedent set in **Shiv Kumar alias Sadhu vs. State of U.P. (2010)**, which also held that the gravity of the offence is not a relevant consideration for refusing bail to juveniles. This precedent supports the interpretation that the Act's focus is on the juvenile's rehabilitation rather than the nature of the crime committed.

The Court observed that none of the grounds for refusing bail under Section 12(1) of the JJ Act were applicable in this case. The juvenile did not have a criminal proclivity, no criminal history, and had been in confinement for an excessively long period without trial.

Considerations for Bail

The Court took into account several factors before granting bail:

- The juvenile's age and lack of criminal history.
- The undue length of his confinement.
- The absence of any factors that would disentitle him to bail under Section 12 of the Act.
- The undertaking by the juvenile's mother to ensure his safety and well-being upon release.

Then and Now: Ambiguous Language in Documents

The Indian Evidence Act, Section 96, and the Bhartiya Sakshaya Adhinyam, Section 99, both address the issue of ambiguous language in documents. They allow for evidence to clarify which specific person or thing was intended when the language could apply to multiple entities. The core principle remains the same in both laws.

While the text of both sections is nearly identical, the Bhartiya Sakshaya Adhinyam uses more standardised numerals and updated geographical references. For instance, the Indian Evidence Act mentions Haidarabad in the Dekkhan or Sind, while the Bhartiya Sakshaya Adhinyam updates this to Ramgarh in Rajasthan or Uttarakhand, making the examples more relevant and easier to understand.

Modernization and Clarity

The Bhartiya Sakshaya Adhinyam aims to modernise legal language and provide clearer examples. This reflects a broader effort to ensure laws are accessible and easily interpreted by contemporary users. By updating locations and standardising terms, the new law enhances clarity and practical relevance.

Past Exam Highlights

Prelims

1. The Indian Independence Act, 1947 came into force on-

- a. 18 July, 1947
- b. 14 August, 1947
- c. 3 June, 1947
- d. 26 July, 1947

Ans. (a)

18 July, 1947: The Indian Independence Act, 1947, came into force on 18 July, 1947. This act provided for the partition of India and the establishment of India and Pakistan as independent dominions.

De Facto IAS
Judiciary Exam: Current Affair

2. When was the first meeting of the Constituent Assembly held?

- a. 8th December
- b. 9th December
- c. 10th December
- d. 12th December

Ans. (b)

The first meeting of the Constituent Assembly was held on 9th December 1946. This meeting marked the beginning of the process to draft the Constitution of India, eventually leading to the establishment of the Indian Republic.

3. The first Constituent Assembly's meeting held on 9-12-46 was presided over by-

- a. Dr. RajendraPrasad
- b. Shri S.N. Sinha
- c. Shri Jawahar Lal Nehru
- d. None of the above

Ans. (b)

Shri Sachchidananda Sinha, a prominent member of the Constituent Assembly, presided over its first meeting on 9th December 1946 as the temporary Chairman. This role was pivotal in initiating the process of drafting the Indian Constitution.

4. The number of the members of the Drafting Committee of the Constitution were

- a. 5
- b. 7
- c. 8
- d. 10

Ans. (b)

The Drafting Committee of the Indian Constitution was formed with seven members. Dr. B.R. Ambedkar chaired this committee, which was responsible for drafting the text of the Constitution, making significant contributions to its final structure.

5. Who was the temporary Chairman of the Constituent Assembly of India?

- a. Dr. Rajendra Prasad
- b. Acharya J.B. Kripalani

- c. Dr. Sachchidanand Sinha
- d. Dr. B.R. Ambedkar

Ans. (c)

Dr. Sachchidanand Sinha was appointed as the temporary Chairman of the Constituent Assembly. He played an essential role in the initial meetings until Dr. Rajendra Prasad was elected as the permanent Chairman.

6. The Chairman of the Constituent Assembly was-

- a. Jawaharlal Nehra
- b. Jaiprakash Narayan
- c. C. Rajagopalachari
- d. Dr. Rajendra Prasad

Ans. (d)

Dr. Rajendra Prasad was elected as the permanent Chairman of the Constituent Assembly. He later became the first President of India, overseeing the Assembly's functions and ensuring the successful drafting of the Constitution.

7. Which day is observed as 'Law Day'?

- a. 9th November
- b. 25th November
- c. 26th November
- d. 18th December

Ans. (c)

Law Day is observed on 26th November in India to commemorate the adoption of the Indian Constitution on this day in 1949. It highlights the significance of the Constitution and the legal fraternity's role in upholding it.

8. The task of making the Constitution was over on

- a. 26th November, 1949
- b. 26th January, 1950
- c. 15th August, 1947
- d. 25th November, 1949

Ans. (a)

De Facto IAS
Judiciary Exam: Current Affair

The drafting of the Indian Constitution was completed on 26th November 1949. This historic day marks the conclusion of intense deliberations and discussions that shaped the foundational legal document of India.

The Constitution of India came into effect on 26th January 1950, a day celebrated annually as Republic Day. This date was chosen to honour the declaration of Purna Swaraj (complete independence) made in 1930.

9. On which amongst the following days the Constitution of India came into effect?

- a. 26th November, 1949
- b. 26th January, 1950
- c. 26th March, 1950
- d. 26th April, 1950

Ans. (b)

10. Who adopted the Constitution of India?

- a. Indian Parliament
- b. Governor General
- c. British Crown
- d. Constituent Assembly

Ans. (d)

The Constitution of India was adopted by the Constituent Assembly. This body comprised representatives from various regions and communities, reflecting the diverse makeup of the country and ensuring broad-based participation.

Mains

Q. "Once a mortgage always a mortgage and nothing but a mortgage." Explain.

Ans. The principle "once a mortgage always a mortgage and nothing but a mortgage" is a foundational doctrine in mortgage law. This maxim encapsulates the idea that a mortgage is merely a security for a loan and not a means to transfer ownership or any additional rights beyond what is necessary to secure the repayment of the loan. This doctrine aims to prevent any attempt to disguise a mortgage as something else or to confer additional advantages on the mortgagee.

The principle originates from English common law and was designed to protect mortgagors from forfeiting their property unfairly. In India, this principle is embedded in the Transfer of Property Act, 1882, which governs the creation, transfer, and extinguishment of mortgages. Sections 58 to 104 of the Act specifically deal with the law of mortgages.

Nature of a Mortgage

Section 58(a) of the Transfer of Property Act, 1882 defines a mortgage as "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability."

Elements of a Mortgage

1. Transfer of Interest: The mortgagor transfers an interest in the property to the mortgagee.
2. Purpose: The transfer is made to secure a loan or performance of an obligation.
3. Specific Property: The mortgage pertains to a specific immovable property.

Doctrine of "Once a Mortgage, Always a Mortgage"

The doctrine emphasises that the essence of a mortgage is to act as security for a debt. Regardless of the form or language used, if the transaction's purpose is to secure a loan, it remains a mortgage. This principle prevents the mortgagee from acquiring more rights than those necessary to secure the loan.

Santley v. Wilde (1899) is a seminal English case where the court held that a mortgage is a conveyance of land or an assignment of chattels as security for the payment of a debt or the discharge of some other obligation. The defining characteristic of a mortgage is that it is redeemable upon the payment of the debt or performance of the obligation.

In India, the Supreme Court in **Narasimhaiah v. Nara Sreeramulu (1989)** reaffirmed this principle, stating that a mortgage transaction cannot be converted into a sale. The Court held that any agreement which stipulates that the property would belong to the mortgagee if the loan is not repaid within a specified period is void. The mortgagee's right is limited to recovering the debt by enforcing the security.

Right of Redemption

A crucial aspect of this doctrine is the mortgagor's right of redemption, enshrined in Section 60 of the Transfer of Property Act. This right allows the mortgagor to reclaim the property upon repayment of the loan amount. The section provides that at any time after the principal money has become due, the mortgagor has the right, on payment or tender of the mortgage money, to require the mortgagee to re-transfer the property to him. This right cannot be fettered or curtailed by any contract to the contrary.

Ganga Dhar v. Shankar Lal (1958)

In *Ganga Dhar v. Shankar Lal*, the Supreme Court held that any provision in the mortgage deed that clogs the equity of redemption is void. The Court emphasised that the right of redemption is a statutory right and cannot be waived or taken away by any stipulation in the mortgage deed.

The doctrine of "once a mortgage always a mortgage and nothing but a mortgage" safeguards the fundamental nature of a mortgage as a security interest, ensuring that the rights of the mortgagor are protected. The principle enforces the right of redemption, preventing any attempt to convert a mortgage into an outright sale or any other form of transfer that could unfairly disadvantage the mortgagor.

Clear Concept: Contradiction in Testimonies

The credibility of witness testimonies is crucial in the adjudication process. Contradictions in testimonies can significantly affect the outcome of a case, raising doubts about the reliability of the evidence presented. The Indian Evidence Act, 1872, provides detailed provisions regarding the handling of contradictions in witness statements, primarily through sections 145 and 162 of the Code of Criminal Procedure (CrPC).

Nature of Contradictions

Contradictions in witness testimonies occur when a witness makes statements at different times that are inconsistent with each other. These discrepancies can arise during the investigation or trial, affecting the perception of the witness's reliability. Contradictions can be classified as:

1. **Material Contradictions:** These discrepancies are significant and can impact the case's outcome, affecting the witness's credibility.
2. **Normal Discrepancies:** Minor inconsistencies that do not affect the witness's overall credibility or the case's outcome.

Law

Section 145 of the Indian Evidence Act specifically deals with the contradiction of witnesses. It states that a witness can be cross-examined about previous statements made in writing or recorded. If the intention is to contradict the witness, their attention must be drawn to the parts of the statement intended for contradiction.

Section 162 of the CrPC restricts the use of statements made to police officers during an investigation, allowing them only for the purpose of contradicting the witness in the manner provided under section 145 of the Evidence Act. This ensures that the witness has an opportunity to explain or deny the discrepancies.

Judicial Interpretation

Mohanlal v State of Maharashtra: The Supreme Court held that contradictions between the statements of different witnesses do not attract the provisions of section 145. Only statements made by the same witness can be used to contradict them .

Dhanbal v State of Tamil Nadu: This case emphasised that minor contradictions should not lead to the rejection of the witness's entire testimony. The court must assess whether the contradiction is material enough to impact the case's outcome .

Rajendra Singh v State of Bihar: The Supreme Court ruled that for a previous statement to be used for contradiction, it must be proved as required by section 145. In this case, the previous statement lacked the necessary signature or seal, and the witness was not confronted with the statement, rendering the contradiction invalid .

Narayanamma v State of Karnataka: This case illustrates that the section comes into play when a witness makes contradictory statements during different stages of the legal process. It is crucial to confront the witness with their previous statement to provide them an opportunity to explain the discrepancy .

State of Rajasthan v Kartar Singh: The court ruled that minor contradictions do not necessarily discredit a witness. The overall credibility and materiality of the contradictions should be considered before disregarding the testimony .