A ROMESH CHANDER

v.

SMT. SAVITRI

JANUARY 13, 1995

B [R.M. SAHAI AND S.B. MAJMUDAR, JJ.]

Personal Law—Marriage dead—Emotionally and practically—Marriage dissolved, subject to the appellant transferring the house in the name of the respondent.

C *Constitution of India—Article 142—Marriage dead, emotionally and practically—Dissolved—Direction to transfer house.*

Appellant is a sanitary inspector married to respondent who is a teacher. Their child was born in 1968. By an earlier order dated April 23, 1980, this Court found the question of desertion against the appellant. The present appeal arises out of a petition based on cruelty. The respondent has D **cast serious aspersions on the character of the appellant, namely mixing with undesirable girls in the presence of respondent. However, the same could not be established by evidence.**

Disposing of the appeal, this Court

E **HELD : Marriage is dead both emotionally and practically. Continuance of marital alliance for name sake is prolonging the agony and affliction of the parties. Marriage stands dissolved subject to the appellant transferring the house in the name of the respondent within a period of 4 months. The dissolution is to come into effect from the date the house is transferred and possession handed over to the respondent. [213-D, F-G]**

F *V. Bhagat* v. *D. Bhagat (Mrs.),* **[1994] 1 SCC 337 and** *Chanderkala Trivedi (Smt.)* v. *Dr. S.P. Trivedi*, **[1993] 4 SCC 232, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 714 of 1995.

From the Judgment and Order dated the 9th March, 1994 of the High G Court of Punjab and Haryana at Chandigarh in L.P.A. No. 179/86.

Baldev Atreya and Praveen Jain for the Appellants.

D.V. Sehghal, Annant V. Palli, Atul Sharma and Mrs. Rekha Palli for the respondents.

H The Judgment of the Court was delivered by

R.M. SAHAI, J. Should a marriage which is otherwise dead emotionally and practically be continued for name-sake is the issue for consideration in this appeal. A

Twenty five years have elapsed since the appellant, a sanitary inspector, and the respondent, his wife-a teacher have enjoyed the company of each other as husband and wife. Within these 25 years this is the second round of litigation which routing through the Trial Court and the High Court has reached this Court. The earlier one founded on desertion was decided by this Court against the husband on 23rd April 1980. This appeal is based on cruelty. Both the courts below have found that even though the wife had cast serious aspersions on the character of the appellant in the written statement filed by her earlier and alleged that he was in the habit of mixing with undesirable girls in the presence of respondent yet since neither any evidence was led nor it was proved consequently it could not be made basis for claiming divorce on cruelty. B C

In *V. Bhagat* v. *D. Bhagat (Mrs.)*, [1994] 1 SCC 337 this Court has explained the concept of cruelty both mental and physical which could entitle an applicant to claim divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. In *Chanderkala Trivedi (Smt.)* v. *Dr. S.P. Trivedi*, [1993] 4 SCC 232 it was held that if a marriage was dead and there was no chance of its being retrieved it was better to bring it to an end. In this case the marriage is dead both emotionally and practically. Continuance of marital alliance for name-sake is prolonging the agony and affliction. It cannot be disputed that the husband has not been dutiful and conscious of his responsibilities either towards his wife or his son. He did not contribute anything towards upbringing of the child. Yet the marriage being dead, the continuance of it would be cruelty, specially when the child born out of the wedlock of the appellant and the respondent as far back as 1968 having now grown and being in service. The appellant has expressed remorse for his conduct and is willing to compensate for his past mistakes by transferring the only house in his name in favour of his wife. D E F

Considering the facts and circumstances of this case we, in exercise of power under Article 142 of the Constitution of India, direct that the marriage between appellant and the respondent shall stand dissolved subject to the appellant transferring the house in the name of his wife. The house shall be transferred within four months from today. The dissolution shall come into effect from the date the house is transferred and possession is handed over to the respondent. G

The appeal is disposed of accordingly. Parties shall bear their own costs.

A.G. Appeal disposed of.