Gopal Sondur v. Rajani Sondur : A critic

Siddarth[1]

Synopsis

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Abstract

This case is one of the defining landmark Supreme Court cases regarding Section 1 of the Hindu Marriage Act, 1955. Said section has two main contentions. One is that nothing in the statute is binding on the state of Jammu and Kashmir, and the more vital concept is that anyone with domicile in India can claim the utility of this statute. Domicile is a subjective concept undefined by any statute.

There are three broad concepts tying people down to settlements, legally speaking. Residency is quite simple to comprehend, implying tangible proof of living. Citizenship is an abstract right granted politico-legally. It is based on international laws and must be proffered expressly or impliedly.

It is objective and certain however. Based on various nations' policies a person could be citizen of one or more nations, and even of a nation and its federal units. (In India, citizenship to other countries simultaneously is allowed, but not to the federal units).

Domicile is slightly trickier. It basically means that, based on a number of factors, if it can be logically assessed that a citizen of a foreign country HAS something to return to his motherland or some other related nation, for instance, large enough property or a family, in the foreseeable decades, he is said to have a *domicile* in that country. Naturally this is assessed *adversarially*, aka by judges. (Naturally a citizen and /or a resident of a country WILL have a domicile in said country).

This particular case is about multiple domiciles, reversion of domiciles and technicalities inherent.

Facts

The appellant husband and the respondent wife were married according to Hindu sacramental rites in present day Bengaluru on the 25th of June, 1989. (Notwithstanding the validity of such a marriage under HMA section 7), said marriage was registered as per section 8 as well in the Hindu Marriage Register.

In the next five months both husband and then wife left to Sweden (Stockholm). They gave birth to a child in the land of Sweden, and four years later, (roughly), purchased a house. They applied for Swedish citizenship and obtained it in 1997.

Thus at this point citizenship and residency both were set up in Sweden, with a habitation 8 years long. Moreover the settlement of their child in Sweden plays a major role in solving the legal issue.

Then, according to the wife, the husband moved back to India for a couple of years with big business plans indicating a desire to stay in India. (Swedish property remained intact).

Then they were offered employment in Sydney, Australia, where they moved to with a four year visa and work permit. Here their other child was born, whereas the Stockholm house was *sold*.

However, in Australia the husband lost his job, and they moved back to Sweden where citizenship still remained, whereas they had to use *leased accommodation*.

Subsequently a job was offered in Sydney where the husband willingly and clear headedly shifted his life centre to. While his family went back to Mumbai he stayed back in Sweden. Once, the wife-respondent said, he came to Mumbai to urge his family and most importantly his wife to join him in Sydney. She vehemently refused. When he had no intention of returning to India, she filed a petition for judicial separation.

Procedural History

This case was first filed in the district family court by the husband, but the Bombay High Court Division Bench ruled against him, and hence he appealed to the Supreme Court, reiterating his stand at the district level. The case was dispensed on the 15th of January 2013.

C.K.Prasad has authored the judgment.

Interestingly, the division bench of two Supreme Court judges were torn apart amidst the issues, with J.Chandramauli Kr. Prasad on one side and J.GopalaGowda on the other.

The case was heard via the civil appeals jurisdiction of the Supreme Court conferred by the constitution[2] and the Civil Procedural Code[3]. Needless to say it was a judgment on record. The case's citation was: CIVIL APPEAL NO.4629 OF 2005.

Usually such disputes are resolved by the Chief Justice, in this case, J.AltamasKabir.

(This appeal was later followed by the High Court case by RajiniSondur, CIVIL APPEAL NO. 487 OF 2007.)

The Family court was in Bandra, which explains the appeal to the Bombay High Court.

Basically the husband claims that the marriage cannot be *dissolved* under HMA due to Swedish domicile and the subsequent lack of applicability based on section 1. The wife argues that domicile of India exists, though the court held the same due to a different reasoning.

According to section 19 of the HMA law suit may be filed under HMA for any relief at the place where the marriage was consummated, in this case, Bengaluru, or where the parties last resided together, or the petitioner's residence in case the respondent is beyond the territory of the act, or the respondent's place of living. The third mentioned condition satisfies the jurisdiction of Bombay.

Issues And Arguments

BY THE HUSBAND {PETITIONER→RESPONDENT→APPELANT}:-

The basic issue inherent here is jurisdiction of the Hindu Marriage Act in this case and specifically whether there is geographical jurisdiction of the Indian family and appellate courts to try and decide the status of the Hindu Marriage of a person claiming domicile outside the territory of India.

After being served with the afore mentioned notice of judicial separation, the husband filed a counter petition in the family court, Bandra, saying that such notice

[2]Article 133

[3]Section 109

was by itself void as it was not maintainable. According to him, they had had citizenship and later domicile in Sweden, and while currently residing in Australia his citizenship of Sweden along with similar conditions for his family members existed. Further, by removing his Swedish domicile whilst retaining citizenship and living in Australia, where his family had officially settled and that it was on a TOURIST visa that they had returned to Mumbai and then refused to go back, his *domicile he claimed was Australia.*

His specific contention was that with a mix of cancellation of Indian citizenship, Swedish citizenship, and an obvious intent of permanent Australian residence coupled with no proper residence in India, there existed no Indian domicile.

His unique point of view expounded in court was that the domicile of the husband would be the domicile of the wife, and that, veering away from Indian domicile in the 1990s by CHOICE, the provisions of the Hindu Marriage Act no longer applied.

He thus expressly stated that the judicial separation offered under section 10, along with custody of children, was void, and that his choice being tantamount to changing the established domicile of Australia and/or resuming the original Indian domicile, was absent.

Things got a little subjective and personal, and the husband declared in an affidavit that he had premaritally been fascinated by Stockholm, Sweden, and that he had established in his mind that *this* would be his land of choice unto death, thereby making it his domicile irrefutably, (at least at first).

He also argues that on a different and chronologically isolated note, following his wife's (initial and alleged) desire to move to an English-speaking country, he retained his Swedish citizenship but almost immediately shifted domicile to be Australian.

Till the end he both attested to this and responded similarly on cross examination.

BY THE WIFE {RESPONDENT→APPELANT→RESPONDENT}:-

- The case of the wife is exactly opposite. According to her the domicile of the family never shifted from Indian, and even though they moved to Sweden and then Australia, their domicile remained Indian.

There is however an arguendo here. In other words the wife's counsel sets up a couple of defences out of which only one could have logically prevailed as fact, and yet counsel aren't estopped from such multiple arguments.

- Specifically, the wife adds here that *even* if her husband's domicile changed to Swedish, her own personal domicile always remained Indian in her head. (And in matters of domicile the veracity of such claims ought to be enough).
- However this doesn't end here. A further alternate scenario is drawn up.

The wife argues that *EVEN* if her domicile had *ALSO* changed to Swedish, their move to Australia and subsequent residence there cancels said domicile out reverting the original place of birth as 'domicile'. Interestingly this is the main **Issue** debated by the Supreme Court. We must note that both sides mainly decide based on the ownership of property and the chronology of selling it and living in leased Swedish property and such.

- The respondents also said that the Hindu Marriage Act itself shall apply to all Hindus irrespective of domicile.

Judgement

In the family court the judges were convinced that domicile of the petitioner was irrevocably varied from his 'Domicile of Origin', ie, India. However in the High Court they ruled in favour of the wife, stating expressly that the husband failed miserably to establish his 'New Domicile', if any, while compounding this with alternate argument of their own, that even if the husband had attained Swedish domicile, shifting to Australia, (with the inherent subject matters of selling house, etc.) caused **Swedish domicile to disintegrate with citizenship still in Sweden and temporary new residence in Australia, thus reverting domicile to India.**

Y.Giri fought for the appellant in Supreme Court whereas Y.H. Muchbala and HuzefaAhmadi represented the wife. They all concurred and pointed out that there was absolutely no precedent whatsoever dealing with this case and that it was a first of its kind.

The landmark case[4] in the Rajasthan High Court was used.

[4]Varindra Singh vs. State of Rajasthan RLW 2005(3) Raj. 1791

The respondent wife cited the obiter[5] observation therein that section 2 encompassed all DEFINED Hindus with no geographic barriers.

Basically with all these complex arguendos by all counsels the court realized a treasure trove of concepts and held many contentions subject to review but only *ACADEMICALLY*, and held with finality that:

The High Court was correct and shifting residence to Australia with mere citizenship and lack of property in Sweden reverted domicile from what was in truth irrevocable Swedish, to the original Indian. Thereby the writ petition for judicial separation by the respondent wife is maintainable. While not all contentions were accepted the wife typically won the case.

Personal Analysis

I personally agree with the judgment as the respondent, while her methods and crudeness may be in questionable benevolence, truly *DID* consider India to be her domicile, as evidenced obviously by her actions. Thus Indian judiciary is totally right in giving her refuge. Moreover she couldn't be compelled to take up the Australian life, and neither did the husband attest to a lifelong major interest in Australian work. After all, the same designation was offered back in India. While fundamental duties[6] are irrelevant and not enforceable they clearly point to a preference to maintain national integrity, as well.

The Ratio, which is the part of the case outside the material facts that influences the judgment, would according to me be the concept of familial settlement and probable lineal descendants. Clearly based on both the family's interests of the majority members as well as the court's honourable and esteemed reasoning of how quashing a domicile reverts the original to its primary status, India occupies the post.

[5]Part of judgment not vital to determine the case

[6]Indian Constitution Part IV Article 51-A