Supreme Court Decision 2005Meu1689 Delivered on December 23, 2005[Divorce and Division of Property, etc.]

[Main Issues]

[1] The meaning of "where there is a serious reason that makes it difficult to continue the marriage," as stipulated as a ground of divorce in Article 840 Item 6 of the Civil Code

[2] The case reversing the judgment of the court below holding that it is difficult to find that the conjugal relationship between the plaintiff and the defendant reached a failure to the degree that it is impossible to restore itself and that it is an unbearable pain for a wife to be forced to continue such a marital life, in the case where the wife left the marital home upon the husband's exercise of domestic violence, filed an action for divorce, and made it clear that she had no intention of returning to marital life with the husband

[Summary of Decision]

[1] The case where "there is a serious reason that makes it difficult to continue the marriage" stipulated as a ground of divorce in Article 840 Item 6 of the Civil Code refers to a case where the conjugal relationship between husband and wife, which should correspond to the essence of marriage that should be based upon love and trust between the spouses, has reached a failure to the degree that it is impossible to restore itself and it is an unbearable pain for the wife to be forced to continue such marital life.

[2] The case reversing the judgment of the court below holding that it is difficult to find that the conjugal relationship between the plaintiff and the defendant reached a failure to the degree that it is impossible to restore itself and that it is an unbearable pain for a wife to be forced to continue such marital life, in the case where the wife left the marital home upon the husband's exercise of domestic violence, filed an action for divorce, and made it clear that she had no intention of returning to marital life with the husband

[Reference Provisions]

[1] Article 840 Item 6 of the Civil Code/[2] Article 840 Item 6 of the Civil Code

Article 840 of the Civil Code (Grounds of Judicial Divorce) Either husband or wife may apply to the Family Court for a divorce in each case of the following Items:

6. Where there exists any other serious reason that makes difficult to continue the marriage.

[Reference Cases]

[1] Supreme Court decision 99Meu1886 delivered on September 5, 2000 (Gong2000Ha, 2101), Supreme Court decision 2002Meu74 delivered on March 29, 2002 (Gong2002Sang, 1012), Supreme Court decision 2002Meu159 delivered on June 13, 2003

[Plaintiff-Appellant] Plaintiff (Attorneys Lee Myung-sook and 2 others, Counsel for plaintiff-appellant)

[Defendant-Appellee] Defendant (Attorney Park Hee-soo, Counsel for defendant-appellee)

[Party in the Case] Party in the Case

[Judgment of the court below] Seoul High Court Decision 2004Reu964 delivered on August 24, 2005

[Disposition]

The judgment of court below is reversed and the case is remanded to Seoul High Court.

[Reasoning]

1. The court below comprehensively reviewed the evidences it adopted and found the facts as it decided, and sustained the decision of the court of first instance that dismissed the plaintiff's claim

for the following reasons: the intervention of the defendant's mother is an excessive expression of her care and love for the defendant and is not to be deemed to have been done out of a malicious intent against the plaintiff or to be a determinant factor that makes it impossible to continue the marital life; it is not to be deemed that the defendant's mother has committed an unjustifiable act against the plaintiff to the degree that the act would constitute a reason to obtain a divorce; although it is the defendant's fault to have used violence against the plaintiff twice, the defendant's acts fail to sufficiently support the finding that the plaintiff was treated unfairly so as to be unable to continue the marital relationship, in light of the background of each incident, that is the violence in around March 2002 of slapping the plaintiff in the cheek resulted from a state of hurt emotion after he was requested to agree to a divorce and after a mockery from the plaintiff that the defendant was investigating behind her back while not properly answering the defendant's question about deposit withdrawals, and that the physical confrontation on June 1, 2002 resulted from an emotional provocation after it was reveled that the plaintiff had been secretly recording conversations in preparation to the divorce while requesting the defendant to sign the divorce paper; considering the various circumstances displayed on the record, including whether there is an intention to continue the marital life, the period of the marital life, and the overall situation of the marital life, it is difficult to find that the conjugal relationship between the plaintiff and the defendant reached a failure to the degree that it is impossible to restore itself and it is an unbearable pain for the plaintiff to be forced to continue the marital life.

2. In review of the record, we find persuasive the fact finding and determination of the court below that the defendant's mother cannot be regarded as having committed such an unjustifiable act against the plaintiff that would constitute a ground of divorce, that the defendant cannot be regarded as having treated the plaintiff's mother in an unjustifiable manner, and that the defendant cannot be regarded as having maliciously deserted the plaintiff.

However, we cannot accept the determination of the court below that comprehensively rejected the allegation that the defendant treated the plaintiff in an unjustifiable manner and resulted in the failure of the marriage, for the following reasons.

The case where "there is a serious reason not to continue the marriage" stipulated as a ground of divorce in Article 840 Item 6 of the Civil Code refers to a case where the conjugal relationship between the husband and wife, which should correspond to the essence of marriage that should be based upon love and trust between the spouses, has reached a failure to the degree that it is impossible to restore itself and it is an unbearable pain for the wife to be forced to continue such marital life (see Supreme Court Decisions 2002Meu74 delivered on March 29, 2002, 2002Meu159 delivered on June 13, 2003, etc.).

According to the record, the plaintiff and the defendant have frequently argued over various problems since they got married and their married relationship was not smooth enough due to conflicts between them and between the daughter-in-law and the mother-in-law. Both the plaintiff and the defendant have graduated from graduate schools, so they should have put effort into smoothly resolve such issues between them through mutual understanding, tolerance, rational conversations, etc., but such mutual effort was not sufficiently put forth. In particular, when the plaintiff requested a divorce out of accumulated dissatisfaction with the defendant and the mother-in-law, the defendant should have done his utmost to smoothly recover the marital relationship on the brink of failure by showing warm affection toward the plaintiff so she would understand and be persuaded, but instead of wisely resolving the issues, he eventually resorted to violence in around March 2002 and on June 1 of the same year against the plaintiff. Ultimately, the plaintiff went to her parents' house with the party in the case at dawn of the next day of June 1, 2002, when she was injured from the violence of the defendant, and filed the lawsuit in this case on June 18 of the same year, and since then has not changed her mind about getting a divorce and has repeatedly expressed her intention not to get back with the defendant regardless of the result of the trial in this case.

Concerning the use of violence by the defendant against the plaintiff dated June 1, 2002 that is in question in this case, the court below seems to have found that the plaintiff is accountable for a significant part of the above use of violence, considering its fact finding that the plaintiff had already made preparations for a divorce, attempted to record conversations with an already prepared recorder, induced the defendant to answer in a certain way and provoked the defendant by either using vulgar terms or repeatedly mentioning the issue of investigating that the defendant did not want to hear, and during this process the plaintiff was injured as a result of a physical confrontation, which led to multiple fractural injuries on the face.

However, even if there exist such circumstances that the court below found, the use of violence in a conjugal relationship, the basis of which is to be mutual love and trust, may not be justified for any reason. According to the record, due to the use of violence by the defendant on June 1, 2002, the defendant suffered "multiple fractural injuries on the face, fractural injuries on the anterior cervical neck, whiplash injury, sprains on the center joint and the proximal interphalangeal of the third finger on the left hand as well as multiple fractural injuries" that required three weeks for a complete recovery, which shows that the degree of the violence was not light. Furthermore, the influence of violence on the marital life differs according to how the couple got married, how they have lived as a married couple, the personalities of the parties concerned, and their educational and carrier background. Therefore, the court below should have examined in detail the influence of the defendant's use of violence on June 1, 2002 on the married relationship between the plaintiff and the defendant, reviewed whether the marital relationship between the plaintiff and the defendant reached a failure to the degree that it is impossible to restored, due to the loss of love and trust that should form the foundation of the marital relationship since the defendant's use of violence on June 1, 2002, and whether there is a room to say that it is an unbearable pain for the plaintiff to be forced to continue the marital life, and unless such circumstances are proven affirmative and the plaintiff who demanded a divorce was found to be completely or mainly accountable after balancing the existence or degree of responsibility of the plaintiff and the defendant, the court below should have granted the plaintiff's claim for divorce.

In addition, although the defendant has consistently expressed his intention to continue a smooth family life through dialogues, and the defendant made several phone calls to the plaintiff while the plaintiff and the defendant were separated since June 1, 2002, and the defendant appears to have attempted to talk to the plaintiff in the process of the lawsuit in this case, the plaintiff has refused the above and is not changing her mind about getting a divorce. Based upon those circumstances alone, it may not be firmly asserted that the above situations were not the cause of the failure of the marriage between the plaintiff and the defendant.

Having examined the above circumstances, we find that the court below committed an error of law which affected the conclusion of the judgment, by misunderstanding legal principles as to the "serious reason that makes it difficult to continue the marriage," as stipulated as a ground of divorce in Article 840 Item 6 of the Civil Code or failing to complete the hearing in this regard, when the court below failed to review the above examined factors or examine whether and in what degree the plaintiff and the defendant were responsible, and simply rejected all of the plaintiff's claim on the ground that it is difficult to find that the conjugal relationship between the plaintiff and the defendant reached an irreversible failure or that it is an unbearable pain for the plaintiff to be forced to continue the marital relationship. Therefore, the ground of appeal that points it out has merits.

3. Therefore, the judgment of the court below is reversed, and the case is remanded to the court below for a new trial and determination, and it is decided as per Disposition with the assent of all participating Justices.

Justices Lee Kang-kook (Presiding Justice)
Son Ji-yol

Kim Yong-dam (Justice in Charge)
Park Si-hwan