

Ajay Choubey Vs. Rekha Devi

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Court : Jharkhand

Decided On : Dec-15-2016

Appellant : Ajay Choubey

Respondent : Rekha Devi

Judgement :

First Appeal No. 26 of 2010 ----- (Against the judgment and decree dated 11.01.2010 (decree sealed and signed on 28.01.2010) passed by learned Principal Judge, Family Court, Palamau at Daltonganj in Matrimonial Case No. 14 of 2007) ----- Ajay Choubey Son of Sri Chintamani Choubey, resident of Ranchi Road, Redma, PO & PS Daltonganj Town, District- Palamau ... Appellant. -Versus- Rekha Devi Wife of Ajay Choubey, resident of Ranchi Road, Redma, PO & PS Daltonganj Town, District- Palamau . . Respondent. ----- For the Appellant : Mr. Pankaj Kumar Dubey, Advocate For the Respondent : Mr. Ajay Kumar Pathak, Advocate PRESENT The Honble Mr. Justice Shree Chandrashekhar The Honble Mr. Justice Rajesh Shankar ----- By Court: (Rajesh Shankar, J.) The present appeal is directed against the judgment and decree dated 11th January, 2010 (decree sealed and signed on 28.01.2010) passed by the Principal Judge, Family Court, Palamau at Daltonganj in Matrimonial Case no. 14 of 2007 whereby and whereunder the petition filed by the appellant under Section 13(1)(ib) of the Hindu Marriage Act, 1955, was decreed but with permanent alimony of Rs.1,50,000/-(one lakh and fifty thousand) payable in favour of the respondent.

2. The appellant is the husband, who filed a petition under Section 13(1)(ib) of Hindu Marriage Act, 1955 against the present respondent, (the opposite party therein) seeking a decree of divorce.

3. The present appeal is confined to the part of impugned judgment and decree dated 11.01.2010, whereby the learned Principal Judge, Family Court, Palamau, while granting decree of divorce to the appellant under Section 13(1)(ib) of Hindu Marriage Act, 1955, has also directed the appellant to pay permanent alimony of Rs.1,50,000/-(rupees one lakh fifty thousand) to the present respondent.

4. The factual matrix of the case is that the present appellant was married to the respondent on 18.06.1999 at Bishnu Mandir, Daltonganj, District- Palamau according to Hindu rites and customs and thereafter both of them stayed together till 2004. Subsequently, the relationship between them got strained and according to the petitioner, the respondent did not return back from her parental house once she left the matrimonial house sometime in August, 2004. The appellant also filed a criminal case, being Complaint Case no. 462 of 2000, against the respondent and her family members and the said case was subsequently compromised between the parties and, accordingly, disposed of.

5. There had been allegations and counter allegations by the parties against each other, however, the admitted fact emerging from both the sides is that from their wedlock, one son namely, Shambhu Choubey and one daughter namely, Anjali Kumari were born, who were living with the respondent at village Jhura in the district of Garhwa at the time of the filing the matrimonial case by the petitioner.

6. In the matrimonial case, the respondent though filed written statement, denying the contentions raised by the appellant initially but subsequently she stopped making pairvi in the said case, and thus the case proceeded and was decided ex-parte by the learned court below. The impugned judgment was passed by learned court below relying on the unrebutted evidences of P.W. 1 (the appellant himself) and P.W.2 (father of the appellant).

7. Accordingly, the matrimonial case was decided in favour of the appellant and the learned court below granted a decree of divorce under Section 13(1) (ib) of

Hindu Marriage Act, 1955 in favour of the appellant. However, the learned court below also directed the appellant to pay permanent alimony of Rs.1,50,000/- to the respondent. 3 8. The learned counsel for the appellant submits that the learned court below has committed serious error in granting permanent alimony in favour of the respondent ignoring the fact that a decree of divorce was granted in favour of the appellant on the ground of desertion on the part of the respondent. The learned counsel also submits that the grant of permanent alimony to the respondent was also unwarranted as she did not file any application under Section 25 of Hindu Marriage Act, 1955, seeking permanent alimony.

9. For considering the aforesaid submission, it would be appropriate to refer to the observation made by Honble Supreme Court in the case of Chand Dhawan (SMT) Versus Jawaharlal Dhawan, reported in (1993) 3 Supreme Court Cases 406, the relevant part of which reads thus:

23. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation of the kind envisaged under Section 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. The Honble Supreme Court while interpreting the provision of Section 25 of Hindu Marriage Act, 1955, in the case of Rameshchandra Rampratapji Daga Versus Rameshwari Rameshchandra Daga reported in (2005) 2 Supreme Court Cases 33, has held as under:

18. In the present case, on the husbands petition, a decree declaring the second marriage as null and void has been granted. The learned counsel has argued that where the marriage is found to be null and void- meaning non-existent in the eye of the law or non est, the present respondent cannot lay a claim as wife for grant

of permanent alimony or maintenance. We have critically examined the provisions of Section 25 in the light of conflicting decisions of the High Court cited before us. In our considered opinion, as has been held by this Court in Chand Dhawan case, the expression used in the opening part of Section 25 enabling the court 4 exercising jurisdiction under the Act at the time of passing any decree or at any time subsequent thereto to grant alimony or maintenance cannot be restricted only to, as contended, decree of judicial separation under Section 10 or divorce under Section 13. When the legislature has used such wide expression as at the time of passing of any decree, it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and divorce under Section 13.

21. Section 25 is an enabling provision. It empowers the court in a matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance. A Division Bench of this Court in the case of Rabindra Kumar Versus Usha Devi, reported in AIR2014(Jhar.) 78, has also held that Section 25 of the Hindu Marriage Act, 1955 is an enabling provision, which empowers the Court to award maintenance to the spouse at the time of passing of any type of decree, resulting in breach in a marriage relationship.

10. On the strength of the law laid down by the Honble Supreme Court in the cases of Chand Dhawan (supra) and Rameshchandra Rampratapji Daga (supra) and also the ratio in the case of Rabindra Kumar (supra), it would emerge that the family court has the jurisdiction and power to grant permanent alimony at the time of passing of any decree to either of the parties while disposing of any matrimonial case filed under Section 9 for restitution of conjugal rights, under Section 10 for judicial separation, under Section 11 for declaring marriage null and void, under Section 12 for annulment of marriage as voidable and under Section 13 of Hindu Marriage Act, 1955 for divorce. There is nothing in law to prevent the court from making an order of permanent alimony in favour of the wife even if she is unsuccessful in defending the suit for divorce. The alleged cruelty or desertion on the part of the wife leading to a decree of divorce alone would not be a relevant

criterion for refusing alimony to her. After all, wife is entitled to maintain herself and there is no statutory prohibition on getting maintenance from her husband or ex-husband. Section 25 of Hindu Marriage Act, 1955 is an enabling provision, which empowers the court to award maintenance at the time of passing any decree resulting in breach of marriage.

11. In the present case, the admitted fact is that both the children have been staying with the respondent-wife. There is no such fact brought on record by the appellant-husband that the respondent has remarried. Further, the respondent-wife has not only to take care and maintain herself but also to bring up her two children. In such a situation, an amount of Rs.1,50,000/-(one lakh and fifty thousand) awarded by the learned court below as permanent alimony to the respondent-wife to be paid by the appellant-husband is the minimum possible amount, which could have been granted to maintain herself and her children.

12. In the facts and circumstances of this case and in view of the judicial pronouncements, discussed hereinabove, we see no reason to interfere with the impugned judgment and decree dated 11th January, 2010 passed by the Principal Judge, Family Court, Palamau.

13. This appeal, being devoid of any merit, is, accordingly, dismissed. (Shree Chandrashekhar, J.) (Rajesh Shankar, J.) Jharkhand High Court, Ranchi Dated, the 15th December, 2016 Ritesh/ AFR

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