

Mahendra Paswan Vs. Smt. Meena Devi

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Court : Jharkhand

Decided On : Nov-06-2017

Appellant : Mahendra Paswan

Respondent : Smt. Meena Devi

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI F.A. No. 22 of 2003 Mahendra Paswan --- Appellant Versus Smt. Meena Devi --- Respondent ---
CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH HON'BLE MR. JUSTICE B.B. MANGALMURTI For the Appellant : Mr. Atanu Banerjee, Advocate Mr. Prabir Chatterjee, Advocate For the Respondent : Mr. Arpan Mishra, Advocate
28/06.11.2017 Heard learned counsel for the parties. The appellant-husband is aggrieved by the dismissal of the Title (Matrimonial) Suit No. 226 of 2000 by the impugned judgment and decree dated 19.02.2003 / 03.03.2003 rendered by the learned Principal Judge, Family Court, Dhanbad. Suit for dissolution of marriage was instituted on the grounds of adultery, cruelty and desertion in terms of Section 13(1)(i)(i-a)(i- b) of the Hindu Marriage Act, 1955. The marriage between the parties was solemnized in 1979 at Gaya (Bihar) and second marriage (Gowna) was solemnized on 11.11.1980. As per the case of the plaintiff three children were blessed out of the wedlock. The plaintiff got employment in BCCL in the year 1987 and started living in the in-laws house at Dhanbad. The case of the plaintiff as averred in the plaint inter alia asserts that while residing at his in-laws house he was subjected to torture and maltreatment. The defendant- wife had developed

illicit relationship with her elder brother-in-law (husband of his elder sister) Suresh Paswan. On being objected, plaintiff was assaulted also by the defendant including Suresh Paswan and other in-laws. He was finally ousted from their house in the year 1989 and the defendant kept the three children with her. Plaintiff got transferred to Lodna Colliery in 1991 and despite all efforts defendant did not agree to resume conjugal life. Since 1989 the defendant has been living in desertion without any reasonable cause. In a maintenance case instituted by her (M.P.Case No.57 of 1991), the Judicial Magistrate, 1st Class, Dhanbad granted a maintenance of Rs.700/- per month by order dated 23.04.1992 towards the maintenance of the wife and children which was subsequently enhanced to Rs.1300/- per month in Cr. Misc. No.5 of 1996; order dated 11.11.1998. Plaintiff alleged sufferance due -2- to mental cruelty and desertion since last 12 years. He conveyed his intention to live with the defendant by condoning her illegal acts but it proved in vain. The plaintiff alleged that the marriage has broken down irretrievably and there is no chance of reconciliation or restitution as the defendant is living adulterous life since 12 years. The defendant had also lodged a criminal case under Section 354/452/380/323 of the IPC being C.P.Case No.224 of 1991 in which the plaintiff was acquitted by order and judgment dated 31.05.1995. Therefore the plaintiff prayed for dissolution of the marriage. The defendant appeared and filed a written statement accepting statements made at para-2 relating to stay of the plaintiff in his in-laws house. Allegation made in para-3 relating to adulterous relationship was completely denied. It was further asserted that plaintiff himself left the in- laws house and that the defendant did not keep the children forcibly as alleged. The defendant also asserted that there are four children born out of the wedlock namely Ranjit Kumar Paswan, Baby Kumari, Usha Kumari and Amit Kumar Paswan. It was also alleged that plaintiff had married one Munia Devi without the consent of the defendant in the year 1991. Plaintiff had two children with his second wife and is living with her at Lodna Colliery as husband and wife. Allegation relating to illicit relationship with the brother-in-law of the defendant was seriously controverted. She also stated categorically at para-6 of the written statement that she is ready to face DNA test and other medical test for confirmation of the parentage of the child. She has been receiving maintenance at the rate of Rs.1300/- per month as per statement made

at para-8. She also denied allegation of having committed cruelty towards plaintiff. Rather, the second marriage was in the nature of a cruelty on the defendant. The cause of action, if any, is also inordinately delayed as plea of desertion is taken since 1989 when the suit was filed in the year 2000. The assertion relating to Complaint Case No.224 of 1991 is however not denied. Upon consideration of the rival pleadings of the parties, the following issues were framed by the learned Family Court :- (I) Is the suit maintainable? (II) Is the suit barred by limitation? (III) Is there any cause of action? -3- (IV) Has the defendant any illicit relationship with Suresh Paswan and has she any child from Suresh Paswan? (V) Is dissolution applicable despite the fact of remarriage of the plaintiff with another lady? (VI) Is the plaintiff entitled for any relief in the suit? Issue Nos. I and II were jointly decided and it was held that the suit is not barred by limitation. Issue No. IV relating to adultery has been examined in detail by the learned Family Court and answered against the plaintiff. This plea of adultery has however been not pressed by the appellant in the absence of impleadment of alleged adulterer. Apart from that the learned Family Court noted the deposition of the plaintiff witnesses and came to a finding that none of them including the plaintiff has any direct evidence to establish the plea of illegal relationship with one Shri Suresh Paswan, brother-in-law of the defendant. Rather, statements made at para-3 show that plaintiff continued with the marital life although having come to the knowledge of alleged adultery in the year 1979 itself, at the time of marriage. The plaintiff also accepted that three children were born out of the wedlock. No steps were either taken by the plaintiff for determination of parentage though the defendant was ready to face DNA test. The issue was accordingly decided against the plaintiff. Issue No. V relating to desertion has been also discussed in detail by the learned Family Court. The factum relating to grant of maintenance by a competent court having criminal jurisdiction in terms of Section 125 of the Code of Criminal Procedure has been treated to be a conclusive evidence of the neglect or refusal to maintain the defendant on the part of the plaintiff. This in itself has demolished the case of the plaintiff on the plea of desertion. Learned counsel for the plaintiff-appellant has not been able to improve the plea of desertion or show any other evidence on record which shows the animus deserendi i.e. intention on the part of the defendant to live separately. Mere physical separation in the absence of intention to live

separately is not sufficient to establish the plea of desertion. The learned Family Court has also not found any clinching evidence on that issue. -4- Another issue/allegation of remarriage by the plaintiff with another lady however had not been established by any evidence on the part of the defendant either and was decided accordingly. The learned Family Court on consideration of the entire material evidence on record, therefore, rightly came to a conclusion that the plaintiff has failed to establish both the grounds of illicit relationship (adultery) and desertion on the part of the defendant, therefore, he had no cause of action for the suit. Learned counsel for the appellant has however endeavoured to impress that the expulsion of the plaintiff from his in-laws house in the year 1989, as asserted in the plaint and refusal on the part of the defendant to live with him thereafter for 12 years not only shows an act of cruelty on the part of the wife despite plaintiffs willingness to live together, but also manifests an irretrievable breakdown of the marriage. The parties admittedly have been living separately since 1989. The plaintiff has enhanced the maintenance amount during the pendency of the appeal to Rs.2500/- on an application made by the respondent wife and has also paid a sum of Rs.2,00,000/- each for the marriage expenses of two children namely Usha Kumari and Baby Kumari, as they are now of the marriageable age, in compliance of the directions contained in the judgment and the decree impugned. However, according to the appellant, the respondent-wife is neither willing to live together nor inclined to separate amicably. The continuance of the marriage would be a compulsion for both the parties, therefore, the marriage between the parties may be dissolved on the grounds of its irretrievable breakdown. Learned counsel for the respondent has supported the impugned judgment and the findings recorded therein by the learned Family Court. He further submits that the evidences adduced by the plaintiff have miserably failed to establish both the plea of adultery and desertion on the part of the defendant. The defendant is opposed to the dissolution of the marriage though she has been living separately since 1989. He prays that the appeal may be dismissed. We have considered the submissions of the learned counsel for the parties, perused the impugned judgment and gone through the relevant materials on record including the evidence relied upon by the counsel for the parties. The discussion made hereinabove in relation to the issues framed by -5- the learned Family Court revolves around the question of

establishment of plea of adultery and/or desertion which, if proved, would entitle the appellant for a decree of dissolution of marriage. We have considered the material evidence and find that on both counts the plaintiff has failed to establish grounds of adultery or desertion against the defendant-wife. Even though a serious allegation of adultery was made against the defendant but surprisingly the alleged adulterer has not been impleaded as a co-defendant in the suit itself. We also find that despite the defendant having volunteered to undergo the DNA test, the plaintiff has, for inexplicable reasons, backed out of the allegations. An allegation of adultery, if made, has to be established with all cogent proof as it has the likelihood of bastardizing a child which has serious consequences both psychological and societal for the child born out of said marriage. DNA test, being now accepted as a scientific evidence to establish the parentage of a child, has not been resorted to on the part of the plaintiff despite being offered by the defendant. This in itself shows that the allegations were more easily made than established. The findings on those counts therefore, do not suffer from any error. We also find from the record that the defendant was living in his in-laws house after marriage till 1989 and therefore, plea of leaving the matrimonial house on the part of the defendant to constitute desertion can hardly be made out against her. The learned Family Court has also found the grant of maintenance as a conclusive proof that the plaintiff had neglected to maintain or refused to keep the defendant in society. This in itself had demolished the case of the plaintiff on the plea of desertion. In the aforesaid background facts and materials on record, we are not inclined to accept the plea of the appellant that the marriage has irretrievably broken down. Holding otherwise may also amount to penalizing the defendant for no fault of hers. We, therefore, find no error of fact or law in the impugned judgment. The appeal is accordingly dismissed. (Aparesh Kumar Singh, J.) (B.B. Mangalmurti, J.) Birendra/R.S.