

Basudev Jatav Vs. Rekha Jatav

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Court : Madhya Pradesh

Decided On : Sep-04-2014

Judge : S.K. Gangele & S.K. Palo

Appeal No. : First Appeal No. 297 of 2010

Appellant : Basudev Jatav

Respondent : Rekha Jatav

Judgement :

S.K. Palo, J.

1. Appellant/husband has filed this appeal under Section 28 of Hindu Marriage Act, 1955 aggrieved by the judgment dated 21-9-2010 passed by the District Judge, Shivpuri, in Case No. 73/09 (HMA) by which the District Judge, Shivpuri, has refused to allow the application under Section 13(1)(1-A) and (1-B) of Hindu Marriage Act, 1955, for decree of divorce against the respondent/wife. It is not disputed that the appellant and respondent are husband and wife. Their marriage was solemnised on 2-6-2002 at Village Padora, District Shivpuri.

2. The appellant/husband has filed an application for divorce against respondent/wife on the ground of 'cruelty' and 'desertion'. Applicant has alleged before the Trial Court that after their marriage they lived peacefully for some time but after two years the respondent/wife changed her behaviour. She was not

cooperating in the domestic work, she used to leave the matrimonial home and used to visit her maternal home without informing the applicant. On her request, the applicant got her admission in the Shivpuri College. She refused to cohabit with the applicant. She has been leaving the house of Shivpuri to go to her parental home. On 22-2-2006, she left her matrimonial home and took away the ornaments etc. The appellant/husband lodged a report at Police Chowki Physical, Shivpuri. The non-applicant has joined as Shiksha Karmi at Village Chak Kitondha where her maternal home is situated.

3. Per contra, the non-applicant has denied all the allegations and submitted that she has been living with the applicant, performing the marital obligations. She never refused to cohabit. She herself wanted to be a mother of child. The non-applicant also submitted that she has been good in studies, therefore, she got the job of Shiksha Karmi Grade III. Despite all these she wants to live with the applicant. She has never deserted him. The report lodged by the applicant is false and she did not take away the ornaments etc. with her, as has been alleged. She alleges that because of 'acne' in her face and due to her colour the applicant dislikes her and is not prepared to keep her with him. He has always been cursing his parents for getting him married to the non-applicant.

4. The learned Trial Court on the basis of the averments framed issues and adduced evidence. The learned Trial Court held that the appellant/husband could not prove his case of cruelty, desertion and by the impugned judgment, disallowed the application under Section 13(1)(1-A) and (1-B) of Hindu Marriage Act, 1955.

5. The appellant/husband assailed the judgment on several grounds and suggested that the respondent is serving in a school as Shiksha Karmi, Grade III and do not want to live with the appellant. She has been playing double standards living separately intentionally and not wanted to perform her duties. It is contended that the learned Trial Court did not consider the grounds of torturing the appellant, therefore, the impugned judgment passed by the learned District Judge, Shivpuri, is liable to be set aside.

6. We have heard the Counsel for the appellant at length and perused the record.

7. No doubt, the non-applicant/wife has expressed her willingness to live with the applicant, in the manner he wants her to live; but this submission seems to have been made to make the applicant's case weak. The conduct of the non-applicant/wife does not match with this statement. She left the matrimonial home on 22-2-2006. A report (Exh. D-1) was lodged by the applicant/husband on 24-2-2006. Since 2006, she has not returned to the applicant/husband clearly indicates her intentions. It is not the case of the non-applicant that the applicant/husband thrown her out from the matrimonial home. At the other hand, the applicant/husband himself got her admitted into the College at Shivpuri. A relative Shrilal Jatav (A.W. 3) has made it clear that despite several efforts, the non-applicant wife did not come to her matrimonial home. He further has stated that the non-applicant's father on being asked said that, they do not want to send the non-applicant as her husband is not doing any job. The non-applicant has said that they have no children. The non-applicant wife has been alleging that the applicant himself never wanted to live with her whereas, she used to visit her parents house, herself.

8. Smt. Ramrati Chaudhary (P.W. 2) supported the applicant's version. As per her statement, the non-applicant/wife used to quarrel with the applicant/husband. She often over heard them for fighting with each other. She also indicates that the non-applicant/wife often used to leave the house of the applicant.

9. The applicant/husband claimed that after their marriage, he came to live at Shivpuri and got the non-applicant admitted into College. The non-applicant/wife admits the same. That means had there been any dis-likeliness for the non-applicant, the applicant could not have taken so much of pain for the non-applicant/wife. The non-applicant/wife is now serving as a Shiksha Karmi, Grade III. She has also admitted that it is the appellant/husband, who got her admission in the College. The father of the non-applicant, Dayaram Jatav (N.A. 2), also admits that after their marriage, the applicant/husband treated the non-applicant/wife very well and it is the applicant who got her admission in the College. The feelings of the applicant indicated thereby. The non-applicant's version that because she is not good looking, the applicant/husband is, therefore, not liking her and wanted to desert her does not hold good.

10. "Cruelty" is a ground that matrimonial relief has been provided in the statute. The concept of "cruelty" has varied from time to time, from place to place, from individual to individual in its obligation of social status of the person involved and the economic conditions and other matters. It is the antithesis to the natural love and affection between husband and wife. It is destructive of the soft feeling of concern for each other and sense of togetherness, which is the bedrock of the normal matrimonial relationship.

11. Willful refusal to fulfill matrimonial obligations in certain circumstances can also amount to "cruelty".

12. In the present case, as has been complained by the applicant and can be inferred from the evidence adduced, the non-applicant wife has deprived of the company of the applicant/husband. In *Joshna Mukherji v. Utpal Mukherji*, (2000) 1 DMC 477, the Division Bench of Calcutta High Court has observed that "Deprivation of the company and denial of enjoyment of the married is cruelty on the physique and mind of the forsaken person. The Apex Court reiterated that the relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment. It has been held in *V. Bhagat v. D. Bhagat*, reported in, AIR 1994 SC 710, in which it is held that:--

"If bitter waters are flowing, it is not necessary to enquire from which source they spring.....It is sufficient that if the cruelty is of the type, which indicates that the relations between the spouses had deteriorated to such an extent due to the conduct of one or the other that it has become impossible for them to live together without mental agony."

13. In this regard, the other ground raised by the applicant/respondent can also be considered. "Desertion" is the negation of living together, which is the essence of matrimony. If it is unjustifiable, it constitutes a ground for matrimonial relief. When a spouse unjustifiably withdrawn from the company of the other, it is a case of abandonment. The question whether a spouse is guilty of desertion or not is especially a question of fact. In order to establish a finding of desertion, there has to be clear-cut finding of both factum as well as the animus of desertion.

14. In the present case, the non-applicant/wife left her matrimonial home on 22-2-2006. A report has been lodged by the applicant/husband in this regard, which is marked as Exh. D-1. At the other hand, the non-applicant/wife, if has ever been treated with cruelty as has been alleged by her, has not reported anything against her husband/applicant. But she stayed with her parents and has joined as a Shiksha Karmi; she never bothered to go to her husband, though she says that she wants to live with her husband these actions of the non-applicant/wife is just opposite to her pleadings.

15. In this context, the wife's employment at a place other than her husband, per se may not, and should not be construed as "desertion" for the reason that in the changing times equal opportunities and respect for wife's ambition and desertion for intellectual satisfaction cannot be ruled out either. But, the husband is still considered, and in fact, is to a large extent the prime earning member, however, woman is fast moving ahead. The similar fact of her job cannot become a ground for immediately discord for her husband's relief. At the same time, in the present case, it is evident that the non-applicant deserted the applicant/husband to live at her parents house prior to her joining as a Shiksha Karmi. The non-applicant/wife took away her jewellery and articles, refused to come back and she is living separately for almost four years (on the date of filing of the suit), it may be safely held that animus deserandi on her part is proved.

16. As that it may be, marriage today is no longer a celestial bond, it used to be a few decades back. Realising the futility of retaining a bond legally, which has in fact become a bondage and source of agony, the law makers have provided the way out by enabling parties to seek dissolution of marriage of certain specified ground. Therefore, in the present context, we hold that the applicant/husband is proved his case and we are inclined to observe that on the ground of "cruelty" under Section 13(1)(1-A) and on the ground of "desertion" under Section 13(1)(1-B) have been proved are inclined to grant relief. Consequently, we set-aside the impugned judgment dated 21-9-2010 passed by the learned District Judge, Shivpuri and allowing this appeal under Section 28 of the Hindu Marriage Act, 1955 granting dissolution of marriage between the appellant and respondent, which was solemnised on 2-6-2002.

No order as to costs.

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