

Rakesh Vs. Pholan Devi

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Court : Madhya Pradesh

Decided On : Jul-10-2014

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

Appeal No. : F.A. 47 of 2005

Appellant : Rakesh

Respondent : Pholan Devi

Judgement :

This is an appeal under Section 28 of Hindu Marriage Act, 1955 filed by the unsuccessful appellant/husband against the judgment and decree dated 30.10.2014 by Additional District Judge Lahar in HMA Case No.4/2002.

It was not disputed that the appellant married to the respondent in June, 1999 according to the Hindu rites and a girl child is born due to this wedlock.

The appellant husband filed a petition under Section 13 of the Hindu Marriage Act, 1955 against the respondent/wife alleging cruelty and desertion. It is alleged that after the marriage, the respondent/wife lived with the appellant for two months and she was pressurizing the appellant to live separately from his family. The appellant not having sufficient means except joint property of 7 bigha cultivating land, refused to live separately. The respondent then declined to do the domestic work and her behaviour changed. She often abused the appellant's parents. Thinking that things will change after the birth of the child, the appellant tolerated the

cruelty. He tried to change the temperament of the respondent but failed to do so.

Day by day, the behaviour of the respondent became more harsh and adamant. In the month of Ashadh, 2001, she left her and at about 10 P.M and returned on the next day. On being asked, she told the appellant that appellant is suffering from tuberculosis, therefore, she do not want to live with the appellant. When appellant's parents intervened, she scolded them and threatened them to falsely implicate and to send them to jail. She also refused to consummate with the appellant. She left for her parental home in the month of Karthik, 2001 and did not return.

Per contra, the respondent has denied all the averments and pleaded that after the marriage, she led the marital life in the matrimonial home. The appellant has deliberately made the averments to avoid any actions for the harassment and to evade the maintenance of the respondent.

The learned Trial Court on the above pleadings framed various issues and allowed the parties to adduce their evidence. Learned Trial Court after analyzing the evidence has dis-allowed the appellant's application for divorce under the grounds of cruelty and desertion.

Therefore, the unsuccessful appellant/husband has assailed the impugned judgment.

Learned counsel for the appellant submitted that the findings of the learned Trial Court is perverse, hypothetical and liable to be set-aside. It is strenuously argued that the respondent/wife has deserted the appellant/husband without any reasonable cause and her behaviour with the appellant and his family members was rude and she refused to consummate the marriage and threatened the appellant to implicate false case which is clearly cruelty. However, learned Trial Court did not appreciate the evidence. Therefore, prayed that the appeal be allowed and a decree of divorce be granted in favour of the appellant.

We have gone through the record of the learned Trial Court. The main and substantial evidence on the record is the statement of the respondent NAW-1 and

her father Lallu NAW-2. The respondent has clearly stated that the appellant and his family members demanded dowry of Rs.50,000/- and for this demand she was subjected to cruelty. After she was blessed with a daughter, she went to her matrimonial home but again she was subjected to cruelty. She left for her parental home when her husband, father-in-law and mother-in-law quarreled with her since then she had been residing at her parental house but the appellant or any of his family members did not come to take her to the matrimonial home. In her cross examination in paragraph 7 she has agreed that she still wants to remain with the appellant.

NAW-2 Lallu has also stated that his daughter had come to the parental home. 15 days after she came to the parental home, she gave birth to a baby girl. He has also corroborated the respondent's version that her in laws were treated her with cruelty but she did not disclose the same to her parents. When the appellant left her in her parental home she disclosed these things.

We also perused the evidence adduced by the appellant. The appellant in his cross examination has categorically stated that even if the respondent wants to live with the appellant has not ready to keep her. She is a woman of unchaste character. The appellant has agreed to the suggestion that he would like to go to the respondent's maternal home to bring her and his daughter. He has also admitted that he is suffering from tuberculosis and he is under treatment for almost 4-5 years.

Appellant Witness No.2, who is father of the appellant. He is also admitted that his son is suffering from tuberculosis. He has also admitted that his daughter-in-law when visited her matrimonial home for the third time. There had been some hot exchange of dialogues. AW-2 Ramprakash has admitted that appellant and his family members do not want to keep the respondent in their home.

Learned counsel for the appellant placed reliance of **Laxmi Sondhiya (Smt.) Vs. Shiv Saran Sondhiya, 2009 (5) M.P.H.T. 202 (DB)**, in which it has been held that,

(1) Hindu Marriage Act (25 of 1955), Section 13 (1) (ib)- Desertion- Wife living separately without any reasonable cause from her husband for the last 10-12

years Not making any efforts to go back to her husband Not also taking recourse to any legal action against the husband for restitution of conjugal rights Held, finding recorded by the Trial Court that the wife had deserted the petitioner/husband could not be said to be perverse or erroneous- The ground of desertion was duly proved.

In the case in hand, the situation is different. The appellant/husband has not made any effort to bring back the respondent/wife. More so, he has not filed any application for restitution of conjugal rights. The demand of dowry, maltreatment and harassment caused to the respondents by the appellant has taunted her to live her maternal home, the appellant/husband cannot take advantage of his own unlawful activities. In the case of **Laxmi (supra)**, the facts are different. In that case, the wife was residing separately from her husband for a period of 10-12 years yet having a child of 5-8 years and voluntarily residing separately without making any effort to go back to her husband. But, in the present case, the action of the appellant and his family members prompted the respondent to live at her parental home.

More so, the appellant's allegation against the respondent of her leading unchaste life is also sufficient cause for her to withdraw from the society of her husband. The ground of cruelty and desertion raised by the appellant has not been established.

Distinguishing the present case from the case of **Laxmi (supra)**, we are of the opinion, in the facts and circumstances of the case, the ground of divorce is envisaged under Section 13(1) (1a) and (1b) of Hindu Marriage Act, 1955 for dissolution of the marriage by the appellant has been rejected by the learned Trial Court calls for no interference.

The appeal, therefore, fails and is dismissed.

Parties to bear their own costs.

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