

Uma Das Vs. Nepal Das

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Court : Guwahati

Decided On : Sep-19-2006

Judge : R.B. Misra and A.B. Pal, JJ.

Appellant : Uma Das

Respondent : Nepal Das

Advocate for Def. : Mr. D. Chakraborty

Advocate for Pet/Ap. : Mr. R.C. Debnath

Prior history : A.B. Pal, J. 1. The judgment dated 29.9.1999 passed by learned Additional District Judge, West Tripura, Agartala in T.S. 54 (Matrimonial) of 1997 dissolving the marriage of the appellant wife Smti Uma Das with the respondent husband Shri Das by a decree of nullity of the marriage has been assailed in the present appeal. On 12.1.2000 this Court by an interim order stayed execution of the said decree. 2. On 12.3.1991 the marriage between the appellant and respondent was solemnized and soon there

Judgement :

A.B. Pal, J.

1. The judgment dated 29.9.1999 passed by learned Additional District Judge, West Tripura, Agartala in T.S. 54 (Matrimonial) of 1997 dissolving the marriage of

the appellant wife Smti Uma Das with the respondent husband Shri Das by a decree of nullity of the marriage has been assailed in the present appeal. On 12.1.2000 this Court by an interim order stayed execution of the said decree.

2. On 12.3.1991 the marriage between the appellant and respondent was solemnized and soon thereafter the husband and other family members detected abnormality in the behaviour of the appellant. On enquiry they came to know that the appellant had been suffering from insanity since prior to her marriage, which fact was deliberately suppressed. Later, the father of the appellant, who was told about his daughter's abnormal behaviour had taken her to his custody and arranged her treatment by Dr. A.K. Nath, a Psychiatrist of the GB Hospital, Agartala. The treatment, however, could do little improvement. At intervals the degree of insanity soared and made her violent. On some occasions she was found silent, not talking to anybody or refusing to take food. However, from their wedlock a son was born during the period of seven years of marriage. She along with her son has been living permanently with her parents, as she was not in a position to lead a conjugal life due to her incurable insanity. By instituting the divorce proceeding the husband has prayed for a decree of nullity of their marriage under Section 12(1)(b) of the Hindu Marriage Act (for short 'Act') on the ground that at the time of marriage the appellant was suffering from recurrent attacks of insanity, which is a breach of the conditions contained in Section 5(ii)(c) of the Act.

3. The appellant wife resisted the suit denying, inter alia, all the allegations pertaining to insanity and abnormal behaviour. It is contended that after the marriage she lived with her husband happily for some time. But soon after her husband had left for his place of posting at Kailashahar, her in-laws subjected her to mental and physical torture on demand of dowry. It is alleged that at her marriage her father spent Rs. 60,000/- on ornaments and furnitures only and paid in cash Rs. 4,000/- out of a demand of Rs. 10,000/-. She also lived with her husband for some time at Kailashahar and gave birth to a male child on 15.12.1993. However, the situation did not improve as her husband and other in-laws mounted pressure upon her for dowry, which her father failed to pay. Finally, she and her son were driven out compelling her to take shelter with her parents. As she has no means of livelihood and the husband refused to provide

maintenance she had to approach the Court of Judicial Magistrate with an application under Section 125 of the Code of Criminal Procedure. The petition was allowed and an amount of Rs. 900/- was directed to be paid towards maintenance. The allegation of her suffering from insanity since before her marriage being totally false and baseless she prayed for dismissal of the suit of her husband.

4. The respondent husband herein filed an appeal by way of cross-objection against the part of the impugned judgment whereby a direction was given to him to pay Rs. 2,500/- per month as maintenance for his wife and son within first week of every month. His only prayer is that as he is a Constable drawing only Rs. 5,500/- per month as gross emolument, the amount of maintenance directed by the learned trial court is unduly high. He prayed for a direction to reduce the amount reasonably.

5. After a full dressed trial during which the respondent husband examined himself and two others while the appellant also examined herself and two other witnesses, the learned trial court upon consideration of the evidence adduced by the parties came to hold that the husband had proved his case, though no specific finding about insanity of the wife was recorded.

6. We have heard Mr. R.C. Debnath, learned Counsel for the appellant in MAT App. 8 of 1999 and respondent in MAT App. (CO.) 03 of 2000 and Mr. B. Das, learned senior counsel, assisted by Mr. D. Chakraborty, learned Counsel for the respondent in MAT App. 8 of 1999 and cross-objector in MAT App. (CO.) 03 of 2000.

7. The only ground taken by the husband to annul the marriage by a decree of nullity is that his wife was suffering from recurrent attacks of insanity or epilepsy since before their marriage, which is a clear violation of the conditions of a valid marriage. Section 12(1)(b) of the Act provides:

12(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely--

(b) That the marriage is in contravention of the condition specified in Clause (ii) of Section 5.

Section 5(ii) provides:

5(ii) At the time of the marriage, neither party--

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity or epilepsy.

8. The admitted fact remains that the petition for decree of nullity of the marriage was preferred only after a period of seven years of marriage during which a child was born. The burden, therefore, is heavy on the husband to prove that the alleged insanity was present in her at the time of the marriage. No proof of her insanity after marriage would be acceptable evidence as the same cannot be in terms of the only ground taken by him for annulment of the marriage, i.e. insanity before marriage. The legal position being thus, it is now to be seen to what extent the husband could adduce evidence, oral or documentary, to prove that his wife was suffering from insanity since before the marriage. In his deposition before the trial court, he alleged that since the month of their marriage she had shown signs of insanity and got her treated by doctors. He came to know from the neighbours of his father-in-law that she was suffering from the disease since before the marriage. One Dr. A.K. Nath of the GB Hospital, a Psychiatrist, had treated her as indoor patient for one month ten days. Though the medical officer was not examined, he submitted medical prescriptions, discharge certificate and cash memos, which were marked Exbts. 1, 2 and 3 series respectively. He admitted that a son was born from their wedlock. That the relation between the spouses suffered set backs was apparent from his admission that his wife had instituted a case against him alleging cruelty under Section 498A of the Indian Penal Code,

which was registered as CR 1071/97 in the Court of Chief Judicial Magistrate, west Tripura, Agartala. He claimed that he was acquitted from that charge. In spite of several Panchayat meetings held in his village, it was not possible for the spouses to live together.

9. We notice that though the husband stated that he came to know about her insanity from the neighbours of his father-in-law, none of the two witnesses examined by him stated about insanity of his wife at the time of marriage. Niranjana Das (P.W. 2) was the Gram Pradhan of Gajaria Gaon Sabha and a close neighbour of the respondent husband. According to him, only three months after the marriage insanity in the appellant was found, which expressed in her unusual behaviour like moving alone on the street, wearing red sari and climbing trees.

10. Similarly the other witness Pradip Das (P.W. 3), who was also a member of the said Gram Panchayat and a close neighbour of the respondent husband stated that few months after the marriage the appellant was found suffering from insanity. Thus though the respondent claimed that he came to know about insanity of his wife at the time of marriage from the neighbours of his father-in-law, neither he disclosed their names nor examined any of them. Both the witnesses examined by him are his close neighbours, who observed insanity in her only few months after their marriage. Thus the allegation that she was suffering from insanity at the time of marriage remained unsubstantiated from the oral evidence noticed above. As regards the documentary evidence the respondent, for reasons not available on record, did not examine Dr. A.K. Nath, the Medical officer under whom his wife was treated. The discharge certificate and prescriptions, which have been marked as Exhibits nowhere indicate that she was suffering from insanity. Whatever may be her disease, the medicines prescribed do not have any definite indication. All these prescriptions bear the dates-16.1.94, 15.3.94, 18.5.94, 19.7.94, 29.10.94, 7.12.94 and 27.9.95. As seen above, the marriage had taken place on 12.3.1991 and, therefore, it is evident that she was taken to Dr. A.K. Nath only in 1994, about three years after the marriage, the respondent in his deposition clearly stated that his wife has been residing with her parents since first part of 1997 indicating thereby that she was living with him for about seven years. Thus neither the oral nor the documentary evidence discussed above could prove that she was

suffering from recurrent attacks of insanity at the time of their marriage.

11. Turning to the evidence adduced by the appellant what we find is that she stoutly denied the allegation of her suffering from insanity at any time before or after the marriage. On the contrary, she depicted a grim story of her unhappy conjugal life in the form of physical and mental torture in the hands of her in-laws and the reason was her father's failure to meet the demand of dowry persistently coming from her in-laws. She was finally driven out with the baby on her lap and she could not help instituting two criminal cases against her husband, one for torture upon her and another for maintenance. In the first one, her husband was acquitted. But in the second she was granted maintenance both for herself and for her minor son. The other two witnesses examined by her supported her by saying that she was never found insane. The story of her moving alone on the street with red saree and climbing tree has been ridiculed by them. Shyamal Das (D.W. 2) was the Gram Pradhan of the village of her father. Satish Das (D.W. 3) is the father of the appellant, who narrated the story of his daughter's marriage, particularly the demand of dowry. What the witnesses for the appellant tried to establish is that the greed for money was the main reason for the split in the marital relation, which was gradually widened by instigation coming from the family member of the respondent.

12. As the decree of nullity is based on the sole allegation that the appellant was suffering from recurrent attack of insanity at the time of marriage, the only point of our investigation is whether the evidence and materials on record could safely bring home the alleged factum. What is shocking is that the learned trial court recorded no finding as to how the oral or documentary evidence adduced by the respondent husband could prove that she was suffering from that disease at the time of their marriage. Several decisions have been cited during argument by the learned Counsels, none of which are on the issue of insanity before marriage to bring home the charge within the purview of Section 12 of the Act. In our considered view, this case is absolutely a case of no evidence as only oral and documentary evidence bear nothing to show that at the time of marriage there was any sign of insanity in the appellant. Thus the findings recorded by the learned court below is without evidence, perverse and, therefore, not sustainable in law.

Consequently, this appeal has merit and the same is accordingly allowed.

13. Under the facts and circumstances aforementioned, we find no reason to accept the prayer made in the cross-objection for reducing the amount of maintenance awarded by the learned trial court in the judgment impugned. The cross-objection is, therefore, dismissed.

No cost.

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