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Court : Guwahati

Decided On : Jul-23-2007

Judge : T. Vaiphei, J.

Appellant : Muni Devi

Respondent : Kameshwar Roy and anr.

Disposition : Appeal allowed

Judgement :

T. Vaiphei, J.

1. I have heard Mr. R. Choudhury, the learned Counsel for the appellant. None appears for the respondents despite due service of notice upon them.

2. The appeal questions the legality of the judgment and decree dated 17.5.2006 and 17.5.2006 passed by the learned Additional Deputy Commissioner, Shillong in Divorce Suit No. 8(T) of 1996 decreeing the dissolution of marriage between the appellant and the respondent and the payment of maintenance allowances of Rs. 2000/- per month by the respondent No. 1 to the appellant herein with effect from 1.6.2006 till her death or the marriage of the girl child, whichever was later.

3. The facts of the case, shorn of unnecessary details, leading to the filing of this appeal are that the appellant is the wife of the respondent No. 1 and that their

marriage was solemnized on 20.2.1989 in accordance with Hindu rites and rituals at Goralane, Bihari Colony, Shillong. Two children were born to them on 30.4.1994 and on 27.2.1997. The first born child is a boy, who is presently in the custody of the appellant. According to the respondent, the relationship between him and the appellant was initially cordial, but since mid-1995, the respondent No. 2 started visiting the appellant in a suspicious manner and when the respondent made complaint against her conduct, she became rude and offensive to him. The respondent alleged that the appellant had an illicit relationship with the respondent No. 2 and pointed out the same to the appellant, which infuriated her and ultimately prompted her to leave her matrimonial home in July 1996 and took away along with her five tolas of gold and Rs. 2,500/- in cash. This led the respondent to institute the suit for divorce on the ground of adultery. The learned Additional Deputy Commissioner entertained the suit and issued notice upon the appellant and the co-respondent. The appellant and the co-respondent contested the suit. In the course of trial, three witnesses were examined on behalf of the respondent, whereas an equal number of witnesses were examined on behalf of the appellant including the co-respondent. At the conclusion of the trial, the learned Additional Deputy Commissioner decreed the suit by the impugned judgment.

4. It is contended by Mr. R. Choudhury, the learned Counsel for the appellant that the entire approach of the trial court is clearly incomprehensible and contradictory. Elaborating his contention, the learned Counsel submits that the trial court cannot hold that there was no evidence to prove adultery by the appellant and then in the same breath hold that the respondent was entitled to a decree of divorce on humanitarian grounds. He further contends that there is absolutely no material for the trial court to come to the conclusion that there is an irretrievable breakdown in the marriage between the appellant and the respondent. Assailing the conclusion of the trial court, the learned Counsel forcefully submits that the trial court has completely overlooked the law laid down by the Apex Court that on the ground of irretrievable breakdown of marriage, court should not lightly dissolve a marriage and that it is only in extreme circumstances that the court may use this ground for dissolving a marriage. To illustrate the extreme circumstances in which irretrievable breakdown was allowed as a ground for divorce, the learned Counsel draws my attention to the Durga Prasad Tripathy v. Arundhati Tripathy : AIR 2005

SC3297 and points out that no such circumstances exist in the instant case justifying the dissolution of the marriage between the appellant and the respondent No. 1. He, therefore, urges this Court to set aside the impugned judgment and decree to preserve the sanctity of marriage and to protect the dignity of the children of the parties, who are on the verge of becoming orphans in consequence thereof. According to the learned Counsel, the appellant and the respondent No. 1 have not reached a point of no return and they will eventually make reconciliation since time can act as a great healer.

5. A perusal of the impugned judgment will show that the trial court was not impressed with the evidence led on behalf of the respondent-husband. The trial court recorded the finding that there was no reliable evidence to prove that the appellant committed adultery or had extra-marital life with the co-respondent (DW-3) or with any other person and accordingly gave the benefit of doubt to the appellant-wife. On the issue of whether the appellant was tortured by the members of the husband's family for dowry, the learned Additional Deputy Commissioner held that there was no reliable evidence to prove the same. Yet, he proceeded to dissolve the marriage on the grounds that the parties had been living separately for almost ten years; that there was no prospect of re-union and that the marriage, therefore ought to be dissolved on humanitarian ground and from the practical point of view. The correctness of this view requires re-examination in the light of the various principles of law laid down by the Apex Court. The leading authority on this aspect of the matter is found from the decision of the Apex Court in V. Bhagat v. D. Bhagat (Mrs.) : AIR 1994 SC710 , which was relied on in Durga Prasad Tripathy (supra) which reads thus:

21. Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinizing the evidence on record to determine whether the ground (s) alleged is/are made out and in determining the relief to be granted, the said circumstance

can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted only to clear up an insoluble mess, when the court finds it in the interest of both the parties.

6. The circumstances taken into account by the Apex Court therein in allowing divorce on the ground of irretrievable breakdown of marriage are : (i) allegations made by the wife of lack of mental equilibrium of the husband in the written statement, which were not made in a fit of anger or under an emotional stress, (ii) her further allegations that the husband required expert psychological treatment and, above all, of her branding him and all members of his family including his grandfather as lunatics and (iii) despite all these allegations made by her, her willingness to live with her husband and (iv) the conclusion being inescapable that the wife had resolved to live in agony only to make life miserable in hell for her husband as well, which amounted to mental cruelty. However, the Apex Court in Shyam Sunder Kohli, Appellant v. Sushma Kohli @ Satya Devi, Respondent : AIR 2004 SC5111 refused to dissolve marriage on the ground of irretrievable breakdown in the circumstances described in paragraph 12 of the judgment:

On the ground of irretrievable breakdown of marriage, the court must not lightly dissolve a marriage. It is only in extreme circumstances that the court may use this ground for dissolving a marriage. In this case, the respondent, at all stages and even before us, has been ready to go back to the appellant. It is the appellant who has refused to take the respondent back. The appellant has made baseless allegations against the respondent. He even went to the extent of filing a complaint of bigamy, under Section 494 IPC against the respondent. That complaint came to be dismissed. As stated above, the evidence shows that the respondent was forced to leave the matrimonial home. It is the appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable breakdown. We, thus, see no substance in this contention.

7. In the light of the aforesaid principles, I shall now examine whether extraordinary circumstances exist in the instant case which can warrant a decree of divorce on the ground of irretrievable breakdown of marriage. The

uncontroverted testimony of the appellant-wife is that she had to leave her matrimonial home sometime in August 1996 as she was physically assaulted by her eldest brother-in-law when the respondent-husband was out of station. She also deposed, and which is not denied by the respondent-husband, that her husband wanted motorcycle from her father and when her father was unable to give him, he started misbehaving with and ill-treating her and that the respondent-husband used to visit her from time to time at her parental home when he came home on leave. A comparative reading of the statement of the respondent-husband, which did not favour with the trial court, which findings remain unchallenged, and the deposition of the appellant-wife leaves no room for doubt that the appellant-wife never did any wrongdoing which can constitute any ground for dissolution of marriage due to irretrievable breakdown of marriage. Undisputedly, the appellant-wife was forced to leave her matrimonial home due to physical assault made by the youngest brother of the respondent-husband. She was also evidently ill-treated by her husband when her father could not give him a motor cycle as demanded by him. There is also nothing in the evidence of the respondent-husband to indicate that any attempt was ever made by him to patch up his difference with his wife or to bring her back to his house. Not even a half-hearted endeavour was apparently made by him to make their marriage work.

8. From the aforesaid findings of mine, I am unable to conclude that the parties have reached a point of no return so as to dissolve their marriage on the ground of irretrievable ground. Their children cannot be simply orphanised on the basis of scanty material adduced by the respondent-husband to prove the theory of irretrievable breakdown of marriage advanced by him. In this view of the matter, it is difficult to sustain the impugned judgment and decree.

9. For what has been stated in the foregoing, the appeal is hereby allowed. The impugned judgment and decree of the learned Additional Deputy Commissioner, Shillong is accordingly set aside. However, on the facts and circumstances of this case, I direct the parties to bear their own costs.

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