

Chohan Mahto Vs. Anjani Devi

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Court : Jharkhand

Decided On : Aug-04-2004

Reported in : I(2005)DMC287; [2004(4)JCR91(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : AFOD No. 68 of 1992 (R)

Appellant : Chohan Mahto

Respondent : Anjani Devi

Advocate for Def. : B.K. Prasad, Adv.

Advocate for Pet/Ap. : M.K. Laik, Adv.

Disposition : Appeal allowed

Judgement :

Hari Shankar Prasad, J.

1. This appeal, at the instance of the appellant, is directed against the judgment and decree dated 11.3.1992 and 24.3.1992 respectively passed in Matrimonial (Title) Suit No. 34/ 1988, whereby and whereunder the Third Additional District Judge, Hazaribagh dismissed the suit.

2. Facts of this case lie in narrow compass. The appellant, who is husband of respondent Anjani Devi, filed a matrimonial suit for a decree of divorce on the ground of adultery, cruelty and desertion in accordance with the provisions of Section 13 of the Hindu Marriage Act (hereinafter referred to as the 'Act'). The appellant was married to the respondent in May, 1978 and after the solemnization of marriage the respondent-wife went to her matrimonial house and lived there peacefully for some months and after some months, it is alleged, she left her matrimonial house without permission or consent of her husband in 1979 and in spite of repeated requests she did not come back to her matrimonial house and on the other hand, she instituted a case under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') against the appellant but the case was dismissed on 11.12.1984 on the basis of a compromise between both of them. The respondent again went to her matrimonial house but soon thereafter she started creating trouble to her husband and she ultimately left her husband's house in May, 1985 and it is alleged that since then she had been living with her parents, as a result of which appellant was debarred of cohabitation with her causing him mental agony and torture. The torture of respondent on appellant went on increasing and she again filed a case bearing No. 66 of 1988 under Section 125 of the Code against the appellant. It is further alleged that in the year 1988 appellant came to know that she has given birth of a child, although there was no sexual relationship with her since 1985 and on this ground appellant asserted that the respondent was leading an adulterous life and the child was born from any of her paramour and in such a circumstance it is difficult for him to carry on social life with her.

3. The respondent appeared in the suit and filed written statement refuting all allegations and assenting that soon after solemnization of the marriage she went to her sasural where her husband as well as her sasural people pressurized her and tortured her for bringing a sum of Rs. 5000/- from her parents but she was unable to bring the amount, as condition of her father ' was bad and so the respondent was driven out from her matrimonial house and as such she was compelled to take shelter in her parents home. Being compelled by circumstances, she filed a Misc. Case No. 46/84 under Section 125 of the Code for payment of maintenance but, since there was a compromise, the case was dropped and

appellant took respondent to his house. The appellant again started torturing her for the same and being compelled by circumstances, in the year 1988 she instituted a case being Hazaribagh Sadar PS Case No. 387/1988 under Sections 498A, 494, 380 and 323, IPC but this time also the appellant gave a bluff to the respondent and promised to keep her and entered into a compromise. In the year 1990 she, was again driven out at a time when she was carrying a pregnancy but she denied that she was leading an adulterous life and claimed that the application filed by the appellant for divorce is fit to be dismissed.

4. On the basis of pleadings of the parties, the learned Court below framed four issues for determination in the suit, which are as follows :--

(i) Was the suit as framed maintainable?

(ii) Had the plaintiff valid cause of action for the suit.

(iii) Whether the petitioner was entitled to a decree of divorce?

(iv) To what relief or reliefs if any, was the plaintiff entitled?

5. While deciding issue No. 3, as main issue, the learned Court below came to a finding that the petitioner-appellant was not entitled to a decree of divorce. Issue Nos. 2 and 3 were decided against the petitioner-appellant and so far as issue No. 4 is concerned, it was found that there was no technical defect and, therefore, petition for divorce was maintainable.

6. While assailing the judgment, learned counsel for the plaintiff-appellant, submitted that the learned Court below did not appreciate the evidence adduced on behalf of the plaintiff-appellant that a case of adultery, cruelty and desertion is clearly made out from the evidence of the witnesses. It was further pointed out that opposite party-respondent gave birth to a second child in the year 1990, when the suit was filed in the year 1988 and before filing of the suit the opposite party-respondent had left the matrimonial house and, therefore, it makes it clear that she was living in adultery with someone because, when case was filed in the year 1988, it means that appellant-plaintiff and opposite party-respondent were not living together and question of living together is practically ruled out. The learned

counsel further pointed out that the learned Court below has itself come to a finding that direct evidence on the point of adultery is not possible but the circumstance that case was filed in the year 1988 and opposite party-respondent gave birth to a second child in the year 1990 is a circumstances, which proves that opposite party-respondent was living in adultery with someone and even when the name of a particular person is not attached with the opposite party-respondent, it makes no difference.

7. On the other hand, learned counsel for the respondent submitted that there is no illegality and irregularity in the impugned judgment and it does not require any interference.

8. The application, under Section 13 of the Hindu Marriage Act, was brought by the plaintiff-appellant with a prayer for a decree of divorce against the opposite party-respondent-wife and the learned Court below, after recording evidence of both the sides, dismissed the suit. The plaintiff-appellant examined four witnesses and opposite party-respondent examined three witnesses and the learned Court below, after scrutinizing the evidence, both oral and documentary, came to a finding that no case of adultery, desertion or cruelty is made out. In this connection, it will be relevant to mention here that on two occasions the opposite party-respondent filed case under Section 125 Cr PC, when she was driven out in the year 1984 from her matrimonial house and after a compromise she was taken to her matrimonial house by her husband-plaintiff-appellant. She lived there for some time and again she was driven out from her matrimonial house. Then she filed a case under Section 498A and other section together with a case under Section 125, Cr PC and again there was a compromise in the year 1988 and she was again taken to her matrimonial house. She lived there for some time and thereafter she was again driven out and, therefore, when she was driven out from her matrimonial house, she was carrying a child in her womb and so she gave birth to another child in the year 1990. The learned Court below came to this finding after appreciating evidence both oral and documentary of the parties.

9. On careful examination of the prosecution as well as defence witnesses and also the documents produced on their behalf, I too find that plaintiff-appellant has

not been able to make out a case of adultery, cruelty and desertion. On account of charge of adultery levelled by in-laws and plaintiff-appellant, the opposite party-respondent was compelled to leave the matrimonial house and on being compelled by circumstances, she always filed case against her husband but each time there was a compromise and she was taken to her matrimonial house. Opposite party-respondent having been leading a life of adultery is ruled out because if she was leading an adulterous life, there was no reason for the plaintiff-appellant to take opposite party-respondent-wife, after compromise, to his house and this makes it clear that opposite party-respondent was not leading an adulterous life and when she was not leading an adulterous life, question of desertion, cruelty, as alleged, does not arise because when she was compelled or driven out of her matrimonial house, then it cannot be a case of desertion or cruelty, and, therefore, no case as such is made out against the opposite party-respondent.

10. Learned counsel appearing for the appellant lastly made an attempt by submitting that both the parties are living separate from each other for the last 14 years and there is no chance of their living together as there is no chance of any sort of settlement between them and the plaintiff-appellant is debarred from cohabitation with his spouse-respondent similarly vice-versa, hence it will be in the fitness of things that divorce be allowed to be plaintiff-appellant. In this connection, he placed reliance upon 2002 (3) JCR 52 (Jhr) wherein it has been held that since both the parties were living separate from each other for the last 22 years and there was no chance of reconciliation between them, the Court allowed divorce on that very ground, but at the same time allowed some compensation or some amount to the respondent-opposite party. The case is exactly on the similar footing. Though parties are living separate from each other for the last 14 years and not for 22 years, but case is more or less similar.

11. In that view of the matter, I allow this appeal and set aside the judgment and decree dated 11.3.1992 and 24.3.1992 respectively passed by the learned Court below and the suit is decreed. However, the plaintiff-appellant is directed to pay a sum of Rupees one lakh to the respondent within a period of three months from the date of this order and during this period, both the sides will withdraw cases if

filed against each other.

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