

Ayodhya Singh Vs. Smt. Meera Devi

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Court : Jharkhand

Decided On : Aug-23-2003

Reported in : AIR2004Jhar88; 2003(3)BLJR1995; I(2004)DMC274; [2003(4)JCR39(Jhr)]

Judge : P.K. Subramanyan, C.J. and; R.K. Merathia, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : A.F.O.D. No. 144 of 1998 (R)

Appellant : Ayodhya Singh

Respondent : Smt. Meera Devi

Advocate for Def. : S.P. Sinha, Adv.

Advocate for Pet/Ap. : Rajendra Prasad and; Kripal Singh, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

1. This is an appeal by the husband, who was the petitioner in an application under Section 13 (1-a) and (1-b) of the Hindu Marriage Act. The husband sought divorce from his wife, the respondent, on the ground of cruelty and on the ground of desertion. The Court below dismissed the application finding that the husband

had failed to prove the ground of cruelty or the ground of desertion. The dismissal of the application by the trial Court is challenged by the husband.

2. The husband alleged that the wife had treated him with cruelty and he was entitled to a decree of divorce on the ground of cruelty in terms of Section 13(1-a) of the Act. But the husband did not even give formal evidence of cruelty when he was examined. There was also no other evidence made available in support of the plea of cruelty. Except possibly suggesting that long desertion amounts to cruelty, there was no material on the basis of which the trial Court could have granted a decree for divorce on the ground of cruelty. In this situation, the Court below found that the cruelty as a ground for divorce had not been made out. The Court below was fully justified in its findings.

3. It was the case of the husband that the wife had deserted him by going away to her parents' house. He pleaded that for about seven years, she had not lived with him. The wife denied this case and pleaded that it was the husband, who drove her out of the matrimonial home and even then she was willing to go and live with the husband. It may be noted that the parties got married some time in the year 1980. Four children were born, a daughter and three sons. It was, thereafter, that the wife started living in the house of her parents. According to the wife, the reason was that one day the husband beat her up and drove her out of the matrimonial home. This evidence on the side of the wife was not even tested in cross-examination. This evidence of the wife was also corroborated by O.W. 1, who is the younger brother of the husband. It is no doubt true that he had also married the sister of the wife, the respondent. He clearly stated in his evidence that the husband had driven out his sister-in-law from the matrimonial home. There was not even an attempt to seriously challenge that evidence in cross-examination. Similarly, O.W. 3, the sister of the defendant, who was also her sister-in-law, having married the younger brother of her husband, also deposed that it was the husband who drove the wife out one day after physically beating her up in a drunken state. This evidence given by the sister-in-law could not also be seriously challenged in cross-examination. There was thus clear evidence that it was not a case of the wife deserting the husband. In that situation, the Court below came to the conclusion that the husband-petitioner had failed to prove desertion

as a ground for divorce under Section 13(1-b) of the Hindu Marriage Act. We were taken elaborately through the evidence by learned counsel for the appellant. We have also gone through the pleadings and the judgment of the trial Court. After hearing counsel on both sides in detail, we are not satisfied that we will be justified in interfering with the finding of fact rendered by the trial Court. The appreciation of evidence, in our view, is proper and the conclusion arrived at by the trial Court is amply supported by the materials available.

4. In that situation, we find no reason to interfere with the findings of the trial Court. In consequence, it is only necessary to affirm the findings of the trial Court and dismiss this appeal. We, therefore, confirm the decision of the trial Court and dismiss this appeal. We make no order as to costs.

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