

Dinesh Kumar Mandal Vs. Mina Devi and ors.

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Court : Jharkhand

Decided On : Dec-21-2004

Reported in : AIR2005Jhar77; 2005(1)BLJR405; II(2005)DMC470; [2005(1)JCR378(Jhr)]

Judge : Hari Shankar Prasad, J.

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

Appeal No. : A.F.O.D. No. 436 of 1998

Appellant : Dinesh Kumar Mandal

Respondent : Mina Devi and ors.

Advocate for Def. : Manoj Kumar Sah, Adv.

Advocate for Pet/Ap. : Jai Prakash Jha, Adv.

Disposition : Appeal allowed

Judgement :

Hari Shankar Prasad, J.

1. This appeal, at the instance of the appellant has been filed against the judgment dated 16.5.1998 passed by the District Judge, Godda in Matrimonial Case No. 4 of 1997 filed under Section 13 of the Hindu Marriage Act whereby and where under

the learned district Judge dismissed the suit.

2. The case of the appellant/plaintiff is that he was married with the respondent No. 1/defendant (Meena Devi) in the year, 1994 according to Hindu rites and customs and after solemnization of marriage, defendant No. 1/respondent went to her Sasural and lived peacefully there for 2-3 months and thereafter she returned back to her Naihar and she, thereafter whenever went to her Sasural, left her Sasural without permission of her husband or in-laws and thereafter she used to return back to her Sasural. Once she fled away from her Sasural and she was brought back to her Sasural by Bhagalpur police. Still plaintiff kept her and wanted that she should reside in his house as his wife but she did not change her habit and moved freely and resided in the house of several persons without permission of her husband or her Sasural people. The appellant/plaintiff has also alleged in his complaint that he was living adultery with one Nirmal Kumar who was made respondent No. 2 in this case. When it became difficult for the appellant/plaintiff to reside with her, then he has filed this Title (Matrimonial) Suit for divorce.

3. The respondent/wife appeared and filed written statement in which she has denied all the allegations levelled against her. On the other hand, the respondent/wife has stated that she had caught one day having illicit relationship of her husband with the wife of his elder brother and she and the respondent No. 1 appellant/husband for which the respondent's wife was assaulted. Respondent's wife had even disclosed the matter among the ladies of the village and also to her father-in-law and mother-in-law and that is why the appellant/plaintiff assaulted her and drove her out but there is complete denial of the allegation levelled against her in her written statement.

4. The respondent No. 2 also appeared and filed written statement and in the written statement, the respondent No. 2 partly accepted the case of the appellant/plaintiff. It is alleged in the written statement of respondent, No. 2 that for 2-3 months respondent's wife remained peacefully in the house of the appellant/plaintiff and thereafter she went to her Naihar and when she came back to her Sasural, then Sasural people caught hold of her in the red light area of the Mohalla Jogsar at Bhagalpur to her Sasural and she was in the habit of fleeing

away time to time from her Sasural but the respondent No. 2 had denied any illicit relationship of the respondent wife with him.

5. On the pleadings of the parties, the following issues were framed for determination in the suit :

(i) Is the suit maintainable

(ii) Has the plaintiff got any valid cause of action for the suit

(iii) Is the defendant No. 1 Meena Devi leading a life of adultery

(iv) Is the plaintiff entitled to a decree of divorce

(v) To what relief or relief the plaintiff is entitled

6. Learned Court below, after considering the evidence of the parties brought on record oral and documentary came to a finding that the respondent's wife living adultery with the respondent No. 2 is made out and, therefore, dismissed the suit. The case of the petitioner/appellant is that he was married with the respondent No. 1/wife according to Hindu rites and customs in 1994 and for 2-3 months, wife will lived peacefully in his house and thereafter she/respondent's wife without permission from her husband/appellant and without permisc.on from in-laws used to left the house and some times she remained in the house of another and once she was caught at red light area at Bhagalpur and was brought by Bhagalpur police to her Sasural. On the other hand, respondent No. 1/wife categorically denied all the allegations levelled against her but respondent No. 2 partly accepted the case of the appellant/petitioner but denied having any illicit relationship with the respondent's wife/appellantpetitioner. The learned Court below has given a numbers of reasonings for coming to a finding that no case of adultery is made out. The learnedpourt at length deal with the oral evidence of the witnesses adduced on behalf of the petitioner as well as adduced on behalf of respondent No. 1 and respondent No. 2 and for scrutinizing their evidences held that no case of adultery is made out. I have also examined the witnesses of both sides and find that adultery in actual sense has not been made out but it is also a fact that the respondent No. 1/wife has lived at several places whatever the circumstances and

she has categorically admitted that fact in her evidence. She has also admitted to have filed a case under Section 498A, IPC against her husband/ plaintiff/appellant. It is also admitted fact that they are not living together from 1997 and for the last seven years, they have been living separately from each other.

7. Although, no case of adultery was found substantiated but it is a fact that defendant/respondent had admitted to lived in the houses of several persons one way or the other way and she has admitted in her evidence and there is also a case like that she has also admitted that no such plea was taken in the written statement that she was taken by her husband for taking bath in river Ganga at Bhagalpur where she was left her husband and when she searched for her husband and when she did not find then she commit suicide by drowning herself in Ganga and brought back by the police at Bhagalpur to her Sasural but the allegation levelled against the plaintiff appellant is that she had gone actually to red light area Bhagalpur from where she was picked up by the police and brought her back to Sasural. Although no case in this connection has been filed by the police. However, she is living separately with her husband for seven years and in this connection, my attention was drawn to a decision reported in AIR 1988 Delhi 222 (Narinder Kumar v. Smt. Suresh Kumari) where in paragraph 2, it has been held as follows :

'It is clear that the marriage is completely broken beyond retrieve. The factual requirement of desertion is very plain, since the wife is not living with the husband since 1979. During the reconciliation attempts made in the Chamber the wife made the usual plea that she was ready to stay with the husband, but her conduct of filing criminal cases right from 1979 and even during the pendency of these proceedings goes counter to her pleas. I may not agree with the husband's accusation that the wife is leading an immoral life. Indeed there cannot be any direct evidence for such an accusation and none has been produced. But two facts are quite glaring in this case. The wife who is almost illiterate is staying all by her own in the village far away from her own. Considering the reality of the modern life it will be impossible for a single lady to stay without a strong support of some male. This support is also evidenced from the criminal complaints and the police action regarding the breach of peace involving the group of the husband's family and

opponents supporting the wife. In the face of these facts, can it be said with any seriousness that wife has any intention to return to husband's house? It is not more consistent with animus deserendi. There is another aspect of the matter. The estrangement between husband and wife has not taken place on the spur of the moment or due to temporary misunderstanding. There is a cultural and educational gap between the husband and wife. It is unfortunate that such a marriage took place; probably it is explained by the fact that both were so young and the marriage on the normal pattern is an arranged marriage. The other history of matrimonial litigation and the failure of attempts of reconciliation cannot also be ignored. In 1978 the wife filed a petition for restitution of conjugal rights in Gurgaon Courts in which the husband filed the counter petition for divorce. The wife withdrew her petition and it is claimed by husband that it was done so in his absence. Thus ended the counter petition of the husband. In December, 1979 the husband filed a separate petition for divorce but that was withdrawn as through the intermediary of some common friends some understanding was reached between the families. But things did not go on well and the husband filed the petition for divorce again on 22.9.1980 because she filed an FIR against the husband on 16.8.1980 alleging personal threat and harassment. It appears that some attempts for reconciliation were again made. This time the father of the husband made a generous gesture of giving one of the houses to the wife for her stay in the village so as to buy peace and on the condition that she would not make any other claim against the husband. The history of this litigation shows that the attempts for reconciliation were made at several stages but they failed. The wife, although she was provided for the accommodation and stay by the husband's father persisted on filing criminal complaints against the family and even implicating the father and mother of the husband. On the basis of the admitted fact by both the parties that since 1979 the parties were not living together i.e. much before the present divorce petition was filed and continue to live separate for the last eight years is sufficient for the purposes of decision on the question of desertion in law. It is, therefore, not necessary to go into the mutual allegations for the period between 1966 and 1975 as to how long the wife stayed with the husband and why she left the house. I, therefore, hold that the husband has established desertion by his wife, as required by Section 13(1)(b) of the Hindu Marriage Act.'

8. Reliance has also been placed on a decision reported in 2002 JCR 50 (Jhr); wherein it has been held that when both husband and wife lived separately for the last 22 years, then considering the circumstances of the case, divorce was allowed. In the instant case also, husband and wife lived separately for seven years but from the very beginning of their marriage difference has developed and although defendant (PW 7) appeared and expressed her desire to live with her husband but since husband, petitioner/appellant not at all willing to keep her, in the circumstances, even if this divorce is not allowed, still they will live separate from each other. Since this case has been filed under Section 13(1) of the Hindu Marriage Act on the ground of adultery, but since ground of adultery has not been proved, it is definite that they are living separate and a case of desertion is made out and on the ground of desertion, the divorce is allowed.

9. In the result, this appeal is allowed and the impugned judgment and decree of the learned Court below is hereby set aside. But it is made clear that the appellant /petitioner shall have to pay a sum of Rs. 1,25,000 (One lac twenty five thousand) to respondent No. 1 within two months from the date of this order and that will be the condition precedent for allowing the appeal. If the amount is paid within the time framed, then the marriage shall stand dissolved.

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