

Sadhana Chatterjee Vs. Smt. Krishna Chatterjee

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Court : Orissa

Decided On : Jan-08-1997

Reported in : 1997(I)OLR317

Judge : P.C. Naik and ;P.K. Mohanty, JJ.

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

Appeal No. : Civil Appeal No. 42 of 1994

Appellant : Sadhana Chatterjee

Respondent : Smt. Krishna Chatterjee

Advocate for Def. : S.K. Mohanty, Siva Mohanty and S.K. Das

Advocate for Pet/Ap. : M. Kanungo, L. Kanungo, S. Das, S. Kanungo and D. Pradhan

Disposition : Appeal dismissed

Judgement :

P.C. Naik, J.

1. His petition under Section 13 of the [Hindu Marriage Act, 1955](#) for dissolution of his marriage with the respondent-wife having been rejected by the Judge, Family Court, Cuttack, the husband appellant has preferred this appeal under Section 19

of the Family Courts Act, 1984.

2. It is not disputed by the parties that their marriage was performed on 19-6-1988 and they were blessed with a daughter on 11-7-1989. It is also not disputed that at the time of presentation of the petition for divorce, the respondent-wife was residing with her parents.

3. The husband-appellant claims dissolution of marriage by a decree of divorce on the ground of 'ill-treatment' by his wife. It is his case that sometime after birth of the daughter, the respondent-wife started ill-treating him and finally left the matrimonial home to reside with her parents. According to appellant, when he refused to set up a separate residence, the respondent started abusing him in filthy language in presence of neighbours and other family members. It is also alleged that sometime in the second week of December, 1990, the respondent, in presence of family members and neighbours, beat the appellant as he refused to set up separate residence. It is also alleged that on many occasions the respondent used filthy and abusive language and on a protest being made rebuked the appellant by obscene language and at times also assaulted him. This, according to the appellant, was witnessed by the neighbours and family members. It is . the case of the appellant that because of cruel action of the wife, he was spending sleepless night and was suffering from mental torture and agony. According to the appellant, as it became impossible for him to live with the respondent and she left the matrimonial home, he is entitled to a decree of divorce under Section 13(1)(ia) of the [Hindu Marriage Act, 1955](#).

4. The relief claimed was denied by the respondent-wife. It is her case that it is not she but her husband who was ill-treating her and for that reason, she was compelled to leave the matrimonial home and return to her parental home. It is her further case that the attitude and behaviour of the appellant towards her and the daughter was not good and that he was ill-treating her and was refusing to provide maintenance for the daughter. It is also her case that on one occasion, the appellant had locked her in a room and that she was not permitted to go out of it and to meet other persons for which a proceeding (Criminal Misc. Case No. 227 of 1990) was initiated by her father before the SDM, Cuttack. Ultimately, on the basis

of the search warrant issued by the SDM under Section 97, Cr PC, she was rescued by the S. I. Chauliaganj Police Station and was produced before the SDM on 31-3-1990 who after recording her statement restored her to the custody of her father. The averments made by the appellant that she was using filthy, abusive and obscene languages and that she was assaulting her husband, have been specifically denied. It is also stated that in May, 1990, the appellant had admitted in writing to have ill-treated and tortured his wife and had agreed to maintain her. Accordingly, she went back to her matrimonial home, but the appellant did not mend his ways, and left her at her parental home and thereafter had never cared to take her back.

5. In support of his case, the husband examined himself as a witness. No other evidence was adduced by him. The husband has made a bald statement that 'O.P. used to ill-treat me.' Nothing else is stated about the conduct of his wife. No details of the ill-treatment have been mentioned nor has any neighbour or family member in whose presence the wife was alleged to have assaulted the appellant and used abusive and filthy language against him and his mother, been examined by the appellant. What has been stated by him in his Examination-in-chief is that 'I married O. P. on 19-6-1988 in her house in Manik Ghosh Bazar, Cuttak-2. Mandira Chatterjee (Rintu) was born to us on 11-7-1989 in the City Hospital, Cuttack. We both lived together for about 2 years. O. P. used to ill-treat me. Her father called me as bastard. In August, 1991. O. P. left for her house along with daughter Rinku and never tried to come back to our house. The O. P. passed matric. Thereafter, there was desertion by O. P. I seek divorce as my life became unbearable.'

In rebuttal, the wife examined herself and stoutly denied the averments made against her by her husband. She has stated that she was being ill-treated by her husband and that he refused to provide any money even for buying milk for their newly born daughter. She denied to have assaulted her husband.

On a consideration of the material on record, the Judge, Family Court came to the conclusion that the husband has failed to make out a case for divorce and accordingly, rejected his petition. Hence the husband has come up in appeal.

6. Having heard Mr. D. Pradhan with Mr. L. Kanungo for the appellant and Miss. S. Mohanty with Mr. S.K. Mohanty for the respondent and having gone through the material on record, we see no reason to differ from the view taken by the Court below. It is no doubt true that many allegations about the ill-treatment have been leveled by the husband against his wife, but he has not been able to substantiate the same. A bald statement in his evidence that he was ill-treated is not sufficient and cannot be the basis for passing an order dissolving the marriage. No doubt, cruelty is one of the grounds on which the marriage can be dissolved by a decree of divorce, but it is only when a case of cruelty is pleaded and made out by the person pleading the same. Such evidence is strangely lacking in this case. Neither any family member nor any neighbour in whose presence the respondent-wife is alleged to have assaulted or used filthy language against the appellant, has been examined. It is also pleaded that on more than one occasion, the wife had assaulted him in presence of family members and neighbours, but nothing about this is mentioned in his testimony nor has any one been examined to prove this averment. Thus, the Court below was right in holding that the husband-appellant has failed to make out a case for dissolution of his marriage by a decree of divorce. Accordingly, the finding is affirmed.

In the result, the appeal fails and is dismissed. However, there shall be no order as to costs.

P.K. Mohanty, J.

7. I agree.