Dolly Roy Vs. Raja Roy

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Court : Orissa

Decided On : Apr-22-2009

Reported in : AIR2010Ori1

Judge : P.K. Tripathy and; L.K. Mishra, JJ.

Appellant : Dolly Roy

Respondent : Raja Roy

Disposition : Appeal dismissed

Judgement :

1. Heard learned Counsel for the parties. Perused the evidence on record and the impugned judgment of the Court below and our judgment is as follows:

2. Judgment and decree passed on 7-10-2005 in Civil Proceeding No. 201 of 2003 by the Judge, Family Court, Rourkela is under challenge. Though the provision, under which the application for decree of divorce was filed, is under Section 13(l-A)(i) of the Hindu Marriage Act, 1955 (in short 'the Act'), but in the application filed by the husband and also while noting the provision in the impugned judgment the trial Court has committed several errors. However, we ignore the said error with a direction to the Judge, Family Court, Rourkela to correct it accordingly.

3. Respondent-Raja Roy is the husband and the appellant-Dolly Roy is the wife. On 26-11-1995 they married and became husband and wife. Out of their wedlock

they were blessed with a daughter namely Rashmita. About a year after their marriage misunderstanding surfaced between the parties and ultimately both the parties entered into litigating terms and in that process several proceedings were initiated. Inter alia, ICC Case No. 90 of 1998 was a complaint case filed by the wife under Section 498-A of the IPC, Civil Proceeding No. 88 of 1997 was filed by the husband under Section 9 of the Act, Criminal Proceeding No. 64 of 1997 was filed by the wife and daughter claiming for maintenance under Section 125 of the Cr. P.C. and Civil Proceeding No. 7 of 2000 was filed by the husband claiming for a decree of divorce under Section 13(1-A) of the Act.

4. Challenging to the decree in Civil Proceeding No. 88 of 1997 and refusal of maintenance to the wife in Criminal Proceeding No. 64 of 1997, the matter came up before this Court in Civil Appeal No. 5 of 1999 and Criminal Revision No. 257 of 1999. On 16-9-2002 both the aforesaid appeal and the revision were disposed of as per the common judgment. According to the decision of the Division Bench, decree of restitution of conjugal right was modified to a decree of judicial separation and a consolidated sum of Rs. 1,500/r (fifteen hundred) was granted towards monthly maintenance to both wife and the daughter w.e.f. September, 2002. After expiry of a period of one year from the date of decree of judicial separation, the husband filed Civil Proceeding No. 7 of 2000 seeking for decree of divorce under Section 13(1-A) of the Act. Inter alia, objection raised by the wife was on the ground that during the operation of that decree of judicial separation though the wife wanted restitution of conjugal rights, but the husband stood against it and therefore the husband is not entitled to a decree of divorce. The wife-appellant also stated that since the High Court granted a decree of judicial separation, therefore, the application for decree of divorce is not maintainable. On both the grounds learned Judge, Family Court, Rourkela rejected the contention of the wife and granted a decree of divorce in favour of the husband respondent.

5. Before us the selfsame points are being canvassed by learned Counsel for the appellant, we find that in our view the statutory provision and the approach of the Family Court, Rourkela does not seem to be illegal, unjust and improper. For such a finding' we refer to Section 10 of the Act as well as Sub-section (1-A) of Section 13 of the Act.

10. Judicial Separation.-(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in Sub-section (1) of Section 13, and in the case of a wife also on any of the grounds specified in Sub-section (2) thereof; as grounds on which a petition for divorce might have been presented.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree, if it considers it just and reasonable to do so.

13(1-A) - Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground:

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties, or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

6. The statutory provision in Sub-section (2) of Section 10 of the Act does not cast any obligation on either of the spouses to take steps for restitution of conjugal rights. In case one of the spouses is interested and accordingly seeks appropriate direction, then such party is to approach the Court to rescind the decree or judicial separation. Having not done so, the wife, by making mere oral assertions or expressing desire to join the husband is not sufficient to stand on the way of operation of above quoted Section 10 and Sub-section (1-A) of Section 13 of the Act. Apart from that, the aforesaid provision also does not cast any obligation on either of the parties to the decree for judicial separation to take steps for restitution of conjugal rights. Therefore, the ground advanced by the appellant is not supported by law itself. Hence, on that ground, the appellant is not entitled to any

relief as against the decree granted by the trial Court.

7. Learned Counsel for the appellant argues that when this Court converted the decree o restitution of conjugal rights to decree for judicial separation in C.P. No. 5 of 1999, without leave of this Court the husband could not have filed the application for divorce. When Section 13 (1-A)(1) does not stipulate for seeking leave of the Court to file application for divorce under Section 13(1-A) (i) or (ii), we find the argument of the applicant in the above manner does not bear any merit and accordingly rejected.

8. No other ground is advanced while challenging the impugned judgment and decree. Under such circumstance, we dismiss the appeal.