

Basant Kumar Jha Vs. Mithlesh Jha

Basant Kumar Jha Vs. Mithlesh Jha

SooperKanoon Citation : sooperkanoon.com/767436

Court : Rajasthan

Decided On : May-30-2007

Reported in : I(2008)DMC113

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Basant Kumar Jha

Respondent : Mithlesh Jha

Disposition : Appeal allowed

Judgement :

Guman Singh, J.

1. Challenge in the instant appeal is to the judgment and decree dated 29.1.2005 passed by the learned Family Court, Ajmer, whereby the petition filed under Section 13 of the Hindu Marriage Act by the appellant-husband (for short 'the husband') in Case No. 250/2001 seeking divorce from respondent-wife (for short 'the wife') on the ground of cruelty, was dismissed.

2. Brief facts giving rise to this appeal are that the husband (Basant Kumar Jha) filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage on the ground of cruelty wherein it was averred that he was married to respondent on 2.12.1988 at Ajmer as per Hindu rites. One son aged 11 years and

one daughter aged 7 years were born out of their wedlock. For some time, the wife behaved normally but on being appointed as Senior Teacher in Government service, her behaviour changed. She started quarrelling with parents of the husband and also refused to attend daily household work on the pretext of getting tired. Day-by-day her behaviour became more atrocious as she started harassing the parents of the husband. Many a time she had to be persuaded to return to the matrimonial home from her parents. Finally, on 9.5.2001, she left the house of the husband along with her clothes and ornaments after insulting the mother of the husband while the husband was out. She also retained both the children with her and thereafter she never returned. The husband tried to persuade her but it was of no consequence. Ultimately, the husband got a notice dated 14.5.2001 served on her through his Covmsel asking her come back and to restore the matrimonial ties. She made a reply making wild allegations against the husband and his parents and also refused to join the husband. So, the husband had to file this petition for a decree of dissolution of marriage on the ground of cruelty against the wife.

3. In the reply the wife controverted all the allegations and has averred that she had to join service out of the pressure from her in-laws. The husband remained posted out of Ajmer in the meanwhile for some period; and lastly he was posted in Ajmer in the year 1996. It was also averred that the husband did not have co-operative attitude and she was always insulted and harassed. According to the wife, there had been some exchange of hot words on 9.5.2001 while she was getting ready for the school. She was pushed, dragged and even beaten with shoes. So, she felt insulted, apprehensive and left for the house of her sister. It has been further averred by the wife that she was herself a victim of atrocities on account of the husband being a man of stubborn, angry and assaulting nature. She also alleged that an application was also made to the Court for mutual divorce on date 9.10.2001 on account of pressure on her which was later on got dismissed by her.

4. On the basis of the pleadings of the parties, the following issues were framed:

- (i) Whether the wife treated the husband with cruelty as narrated in the petition?
- (ii) Whether the husband is entitled to a decree of dissolution of marriage?

(iii) Relief.

Both the parties examined themselves in support of their averments and produced no other witness.

5. We have heard the learned Counsel for the appellant and have also gone through the record on the file. None was present on behalf of the respondent.

6. On the basis of the evidence led by the parties the learned Judge, Family Court, Ajmer, decided issue No. 1 regarding cruelty against the husband and dismissed the petition for dissolution of marriage filed by the husband.

7. From the deposition in support of the respective averments of the parties to the petition, it is revealed that they were married on 2.12.1988 at Ajmer and one daughter and one son were born out of their wedlock and at the time of filing the petition in the year 2001 they were of 11 and 7 years old respectively. It is also admitted that after the marriage, the wife joined Government service as Senior Teacher and the relation between the parties became strained and ultimately the wife left the house of the husband on 9.5.2001 and thereafter a notice was given by the husband to the wife through his Advocate asking her to return and restore matrimonial ties and the same was admittedly replied by the wife wherein she refused to return back and made allegations against the husband for demand of dowry, assaulting her and indulging in gambling. She also made an allegation that the father of the husband indulged in selling liquor meant for armed personnel on higher rates in the open market. This fact was admitted by the wife and she has tried to explain that these facts were made part of the reply by his Advocate without her notice while she still wanted to live with the husband. This version of the wife is far from credence in view of the fact that she was party to the application in the Family Court for dissolution of marriage on the basis of mutual consent during the pendency of the present petition which was later on got dismissed by her. In view of the aforesaid undisputed fact situation, the allegation of atrocious and insulting behaviour of the wife with the husband and his mother has been the cause of strained relations. This has been further substantiated from the fact that wife had herself made allegation that in sequence of the continuing atrocities to her, she was pushed, beaten and dragged out of the house by the

husband on the day she left the house of the husband on 9.5.2001. She had chosen not to disclose the actual reason behind this incident and meant to say that this happened on some inconsequential pretext. This shows that the wife had been responsible for her atrocious allegations, actions and behaviour amounting to cruelty to the husband.

In view of the above discussion, we find that the learned Judge, Family Court, Ajmer, has failed to decide the issue of cruelty in right perspective. Accordingly, the findings of issue Nos. 1 and 2 of the learned judge, Family Court, Ajmer are set aside and marriage of the appellant with the respondent is liable to be dissolved.

8. Consequently, we allow this appeal of the appellant husband and set aside the impugned judgment and decree dated 29.1.2005 passed by the learned Judge, Family Court, Ajmer. The marriage solemnised between the parties on 2.12.1988 is dissolved. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com