

Gopal Bharti Vs. Maheshwari Devi

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Court : Jharkhand

Decided On : Nov-28-2016

Appellant : Gopal Bharti

Respondent : Maheshwari Devi

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI F.A No. 19 of 2010 Gopal Bharti ... Appellant Versus Maheshwari Devi ... Respondent ----- CORAM : THE HONBLE MR. JUSTICE H. C. MISHRA THE HONBLE MR. JUSTICE DR. S.N.PATHAK ----- For the Appellant : Mr. Shekhar Prasad Sinha, Advocate. For the Respondent : M/s L.C.N.Shahdeo, Pratiush Lala, Advs. ----- 14/28.11.2016 Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. The appellant is aggrieved by the Judgment and Decree dated 07.12.2009 passed by the learned Principal Judge, Family Court, Dhanbad, in T.M.S No.297 of 2006, whereby, the suit filed by the appellant under Sections 13(1)(i-a)(i-b) of the Hindu Marriage Act, for dissolution of the marriage by the Decree of Divorce, has been dismissed by the Court below.

3. At the very outset, it may be mentioned that upon going through the record, this Court found that both the parties were living separately since the year 1997 itself and accordingly, Learned counsel for the appellant was directed to seek instructions about the payment of lump-sum amount as one time settlement of the

dispute, to the respondent wife, to which, upon seeking instructions, learned counsel informed the Court that the appellant was not agreeable. Hence, learned counsels for the parties have been heard on merits.

4. According to the appellant's case, the appellant was married to the respondent in the month of June, 1991, according to the Hindu rites and customs. They lived together as husband and wife, but there was no issue from their wedlock. The appellant filed the suit in the Court below on the ground of desertion and cruelty, alleging that the parties were living separately since 28.7.1997 and there was no cohabitation between them.

5. On the other hand, the respondent's case is that after marriage, she was being subjected to cruelty and torture for demand of dowry of Rs.20,000/- and when the demand was not fulfilled, she was tortured physically and mentally, and lastly, she was ousted her from the in-laws' house. She had also filed a criminal case against her husband under Section 498-A of the Indian Penal Code and Sections 3 / 4 of the Dowry Prohibition Act, being G.R Case No. 2027 of 1997, in which, however the appellant was acquitted. The respondent had also filed a M.P. Case No.140 of 2004, under Section 125 of the Cr.P.C., in which the maintenance of Rs.800/- per month was awarded to her, but the husband did not make payment of the monthly allowance and she had to file an Execution Case No.25 of 2005.

6. The Judgment under appeal shows that until the date of the Judgment, the said execution case was still pending in the competent Court, which clearly indicates that until the date of Judgment, the amount of maintenance was not paid to the wife. The respondent after filing the written statement did not contest the suit and even the witnesses examined by the appellant in the Court below were not even cross-examined by the respondent wife and no evidence was adduced by the respondent wife in support of her case. -2- 7. Three witnesses, examined on behalf of the appellant, supported the case of desertion by the respondent. The Court below, upon going through the evidence on record, found that the petitioner had failed to prove the fact that the respondent wife had deserted the petitioner appellant and started living separately at her sweet-will, particularly, in view of the criminal case filed against the husband, as also the maintenance case allowed in

favour of the respondent-wife. Though the Court below found that the respondent was not able to support her case by adducing evidence, but finding that the petitioner also was not able to prove that it was the respondent who had deserted her, had dismissed the suit on contest.

8. Learned counsel for the appellant submitted that the impugned Judgment passed by the Court below is absolutely illegal, inasmuch as, the evidence adduced on behalf of the appellant clearly proved that the respondent deserted her husband out of her freewill and accordingly, it is a fit case in which the suit ought to have been decreed. It is also submitted by the learned counsel for the appellant that though the amount of maintenance could not be paid during the pendency of the suit, but thereafter, the amount of maintenance was paid to the respondent wife.

9. Learned counsel for the respondent has opposed the prayer.

10. Having heard the learned counsels for both sides and upon going through the record, we find that admittedly in the maintenance case, the maintenance of Rs.800/- was allowed to the respondent wife by the competent Court. The said amount was not paid to the respondent and even an execution case was filed for that and the impugned Judgment passed by the Court below clearly shows that till the date of Judgment, the said execution case was still pending. In other words, during the pendency of the suit, no maintenance was paid to the respondent wife and in that view of the matter, we are of the considered view that the respondent wife was not in a position to contest the suit for want of money. The record shows that she could not even cross examine the witnesses examined on behalf of the appellant, nor could she adduce any evidence on her behalf.

11. In this view of the matter, we are of the considered view that it was due to the lack of money, which was to be paid by the appellant, the respondent was deprived from pursuing the suit in the Court below. On the basis of the evidence adduced in the Court below, we find that the Court below has rightly come to the conclusion that the appellant had failed to prove that it was the respondent who had deserted her, and has dismissed the matrimonial suit. We do not find any illegality in the impugned Judgment dated 07.12.2009 passed by the learned

Principal Judge, Family Court, Dhanbad, in T.M.S No.297 of 2006, worth interference in this appeal.

12. There is no merit in this appeal and the same is accordingly, dismissed. (H. C. Mishra, J.) (Dr. S.N. Pathak, J.) BS/

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