

Sandhya Devi Vs. Santosh Singh

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Court : Patna

Decided On : May-13-2012

Appellant : Sandhya Devi

Respondent : Santosh Singh

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Miscellaneous Appeal No.510 of 2010 Sandhya Devi wife of Santosh Singh, resident of Sangita Bhawan, Mohalla: Sati Asthan, Post and Police Station: Masaurhi, District: Patna at present residing with her father namely Navlesh Singh at her fathers place at village: Bairia, PS Wazirganj, District GayaAppellant Versus Santosh Singh son of Kameshwar Prasad Singh, resident of Sangita Bhawan, Mohalla: Sati Asthan, Post and Police Station: Masaurhi, District PatnaRespondent ----- For the appellant: Mr. Kumar Dhirendra Pratap Singh, advocate For the Respondent: Mr. Mahendra Prasad Bhartee, advocate Mr. S. K. Bhartee, advocate -----

13. 01-2012 Heard the parties.

2. This appeal is directed against the judgement dated 24-5-2010 and decree dated 1-6-2010 passed by learned Principal Judge, Family Court, Patna in Matrimonial case no. 532/2007 preferred by the husband petitioner who is respondent herein.

3. The learned court below has decreed the suit for divorce on the ground mentioned in paragraph 8 which runs as follows:- No doubt on the basis of above evidence there is no specific evidence of cruelty or desertion or adultery against the respondent but the evidence clearly shows that the respondent does not want to live with the petitioner and it is the duty of the respondent 2 being wife of the petitioner to allow the petitioner to have conjugal life with him and have a fruits of the conjugal rights but by not allowing to have conjugal life certainly amounts to mental cruelty to the petitioner. Considering the above fact with the admission of the respondent in paras 6 & 7 of her written stated that her relationship with the petitioner is not good and if the petitioner wants to have second marriage, the respondent does not have any objection to that and she has no claim or grievances from the petitioner, it appears that their relationship was not cordial.

4. The relevant facts may be noted in brief. The marriage in question was solemnized as per Hindu rites and customs on 26-4-2006. The suit in question was filed on 12-10-2007 on the ground of cruelty. On 26-10-2007 a criminal case was filed by the wife in which the husband was in jail for some time. That case was compromised on 25-2-2008 and ended in acquittal on the basis of compromise. As per terms of compromise the appellant began to live with her 3 husband and gave birth to a child. She had to file another complaint case on 4-5-2010 because she was allegedly driven out from matrimonial house in September 2009 and subjected to cruelty.

5. It is the case of the appellant that when she started living with her husband, the respondent, on account of compromise, under a planned conspiracy, he obtained her signature on several papers on the plea that the same will be used for effecting compromise in the criminal case lodged earlier through a complaint petition in the year 2007 which was subsequently sent to police leading to Vajirganj PS case no. 20/2008. The appellant claims that she signed on the papers as directed by the husband on trust because she had been accepted in the matrimonial house and had given birth to a child. She relied upon her husband that the instant suit for divorce shall be suitably taken care of by him. After the decree of divorce was allowed in favour of husband and when she came to know of it, she found out that a written statement in her name was filed in this case which bears

her signature and also of a counsel whose name is illegible but he is not the 4 counsel who was authorized by the appellant to represent her in the matrimonial suit at initial stage through filing Vakalatnama dated 10-11-2008.

6. Thus, the case of the appellant is that a fraud has been played upon her as well as the court and she has been duped by taking her signature on a plain paper which has been surreptitiously used for preparing her written statement which has been filed by a counsel who was not engaged by the appellant to represent her. It has further been submitted that the fraud could have been detected if learned court below had insisted for reconciliation after personal appearance of the parties but no effective step was taken for the same and hence, the appellant could not know about the aforesaid trick played upon her and upon the court at any stage prior to the passing of judgement and order under appeal.

7. For appreciating the aforesaid case made out by the appellant, we have perused the original records of the court below. The written statement, as per order sheet, was filed on 19-5-2009. On that date the appellant was shown to be represented and a direction was issued for physical presence of the 5 parties for reconciliation. But this direction though reiterated on two dates thereafter, did not materialize in physical presence of the parties. On 30-7-2009 no Pairvi was made on behalf of the appellant and as noticed earlier the court never insisted on actual physical presence of the parties for effecting conciliation. The applicant/respondent herein examined his witnesses on subsequent dates but they were not cross examined as nobody had appeared on behalf of the appellant. Ultimately, decree of divorce has been passed by the court below not on the basis of evidence led in usual circumstances but on the basis of averments made in the written statement. We have also perused the written statement. That contains no mention of the fact that there was compromise in the criminal case and the appellant was living with the husband and had given birth to a child. Rather, the averments are loaded in favour of the applicant/respondent herein. In paragraph 4 there is a mention of acquittal in the criminal case on account of compromise but the relevant fact that on account of compromise she was accepted in the matrimonial home 6 and was living with the husband has been omitted. In paragraph 6 the averment is to the effect that relation between applicant

(husband) and the opposite party is not good, the applicant does not want to maintain any relationship with the opposite party and if the applicant wants to enter into second marriage, the opposite party has no objection. In paragraph 7 there is an averment that against the applicant the opposite party has no grievance. The whole draft creates an impression that it is on behalf of applicant/ respondent herein and not on behalf of appellant wife. The fact that appellant had initially filed Vakalatnama appointing one Praveen Kumar Sinha, advocate as her counsel on 10-11-2008 is borne out of the Vakalatnama available on record. The said Praveen Kumar Sinha had accepted the Vakalatnama but his signature is not available on written statement of the appellant filed subsequently on 19-5-2009. This fact and the tone and tenor of the written statement which is the sole basis for award of decree of divorce in favour of the respondent husband, in our considered view, fully supports the case of the appellant that she had not filed the written statement in 7 question and the same has been prepared and filed by fraud and by tricking her and obtaining her signature on some papers for other purpose.

8. In view of aforesaid facts and in view of entire circumstances appearing from the records, we do not find any merit in the stand taken on behalf of the respondent husband that the written statement in question, since it bears the signature of the appellant, was filed under her instructions with a view to concede the prayer of the husband for divorce with a conscious mind. Had the appellant consciously filed the written statement she would have got it done through her counsel and definitely demanded some protection for herself or atleast for her child.

9. We are left with no doubt that this judgement and decree under appeal have been obtained by practicing fraud upon the appellant as well as upon the court. Hence, the judgement and decree under appeal are set aside. The matter is remitted back to the court below for giving an opportunity to the appellant to file a fresh written statement and to proceed from the stage of Section 9 of the Family Courts Act which 8 requires the court at the initial stage itself to make efforts for amicable settlement of dispute. This is all the more necessary because admittedly the appellant now has a child. In case the efforts for conciliation do not succeed then on the basis of a fresh written statement the court below will give opportunity

to both the parties to prove their respective cases in accordance with law. It is also made clear that if the matter requires to be tried then parties will have to examine their witnesses afresh. The appeal is allowed with a cost of Rs. 2,000/-.

10. In order to avoid delay in further proceeding before the court below, both the parties are directed to appear there within eight weeks, preferably with a copy of this judgement and order. The lower court records should be sent down immediately. (Shiva Kirti Singh, J.) (Aditya Kumar Trivedi, J.) BKS/-

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