

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.585 of 1998

(Against the judgment and decree dated 24.08.1998 passed by 1st Additional District Judge, Gaya in Title Suit No.01 of 1996/03 of 1995/16 of 1990)

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Shri Arun Kumar Sinha

.... .. Plaintiff-Appellant

Versus

Manjula Sinha

.... .. Defendant-Respondent

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Appearance :

For the Appellant :	Mr. Ray Shivaji Nath, Sr. Advocate.
	Mr. Ray Saurabh Nath, Advocate with him.
For the Respondent :	Mr. Ganpati Trivedi, Sr. Advocate.
	Mr. R.K. Sinha No.2, Advocate.
	Mr. Sanjay Kumar Sinha, Advocate.
	Mr. Manoj Yadav, Advocate with him.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 25-03-2015

The plaintiff-husband has filed this first appeal against the judgment and decree dated 24.08.1998 passed by learned 1st Additional District Judge, Gaya in Title Suit No.01 of 1996/03 of 1995/16 of 1990 dismissing the suit filed by the plaintiff for divorce.

2. The plaintiff filed the aforesaid suit for a decree of divorce dissolving the marriage of the plaintiff with the defendant alleging that he was married with the defendant on 08.06.1969. On 10.12.1977 the plaintiff saw that the defendant took all her belongings, ornaments, cash and some personal original documents



of the plaintiff including the sale deed dated 28.02.1977 and left the house of the plaintiff. She abandoned the plaintiff's house forever. The plaintiff made all possible steps to bring her to his house but she did not come back. The plaintiff sent several letters of request for returning but she did not respond. She started sending *gundas* for assaulting the plaintiff. The plaintiff once fell ill and then sent information but she never came and informed the plaintiff that she will not come to his house rather she will reside in her father's house. Since 10.12.1977 the plaintiff has no connection with her and the plaintiff apprehends that she is living in adultery with some local *gundas* as now she is proclaiming that she has got two children; one boy and a girl. The said children are not of the plaintiff. Many times the plaintiff met the defendant on road and requested her to come but she flatly refused. The plaintiff came to know that the defendant has filed applications before the Chakbandi Officer and Deputy Director, Mahila Cell making false statements. The defendant also filed an application under Section 144 Cr.P.C. before S.D.O. bearing Case No.668 of 1989.

3. The defendant appeared and filed contesting written statement. She admitted the marriage between them held on 08.06.1969. She denied to have left the house with her belongings and also denied that the plaintiff ever wrote any letter to her.

According to the defendant, she was always living with her husband as wife and three children were born out of the wedlock. The first daughter was born on 02.02.1972. The son was born on 06.12.1976 and third son was born in the year 1978, who later on died. The plaintiff had allergy with the complexion of the defendant and in fact he was demanding huge amount. The ground of adultery was also denied. The further case of the defendant is that the plaintiff has re-married with another girl Asha Devi, daughter of Shyam Kishore Prasad and out of this marriage two children were born. The plaintiff is not willing to keep the defendant.

4. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues:

- (i) Is the suit as framed maintainable?
- (ii) Whether the plaintiff has got any cause of action for the suit?
- (iii) Is the plaintiff entitled to a decree of divorce?
- (iv) To what relief or reliefs the plaintiff is entitled?

5. The learned court below after trial recorded the finding that the plaintiff has failed to prove the case of desertion and cruelty. Accordingly, the plaintiff's suit was dismissed.

6. The learned senior counsel Mr. Ray Shivaji Nath appearing on behalf of the plaintiff-appellant submitted that the learned trial court has not appreciated the evidences oral and documentary in their right perspective. Since 10.12.1977 the



defendant left the house of the plaintiff and in spite of repeated request and letter, she never returned. Therefore, the defendant deserted the plaintiff but the learned court below did not rely on the letters sent by the plaintiff to the defendant on flimsy grounds. The learned counsel further submitted that false criminal cases were lodged against the plaintiff by his wife-defendant. 144 Cr.P.C. proceeding was also initiated by her. She also filed application before the authorities making false allegation against the plaintiff and all these acts of the defendant are nothing but the mental cruelty but the learned court below disbelieved the case wrongly.

7. The learned counsel further submitted that since the defendant had left the house of the plaintiff on 10.12.1977 and since thereafter the plaintiff had no connection with her, no child could have been born to her but the defendant herself admitted the fact that third son was born in the year 1978, which clearly proves the case of the plaintiff that the defendant is leading adulterous life but the court below has not considered this aspect of the matter. According to the learned counsel, both the parties are separate since 1977, therefore, the marriage between them has irretrievably broken down and now it cannot be repaired. Therefore, the decree of divorce be granted in favour of the plaintiff. In support of his contention the learned counsel relied upon the decision of the Hon'ble Supreme Court in

the case of **Sneh Prabha Vs. Ravinder Kumar, 1995 Supp (3) Supreme Court Cases 440; K. Srinivas Rao Vs. D.A. Deepa, (2013) 5 Supreme Court Cases 226; and K. Srinivas Vs. K. Sunita, 2015 (1) P.L.J.R. 126 SC.**

8. The learned senior counsel further submitted that the case of the defendant that the plaintiff has married second wife is to be proved by the defendant but no cogent and reliable evidence has been adduced in respect of the case of marriage. In the pleading she alleged that the plaintiff married with Asha Devi whereas in the evidence she stated that the name of Asha Devi is Munni Devi and produced the voter list wherein wife of another Arun Kumar has been shown as Munni Devi. This voter list produced by the defendant is not of the plaintiff. Now, therefore, when the defendant failed to prove second marriage, there is no justifiable reason for her to live separate from the plaintiff, as such it is admitted fact now that she deserted the plaintiff. In fact she got a job of teacher, therefore, she deserted and went away and did not return to the plaintiff in spite of repeated requests as such this is a clear case of desertion.

9. On the other hand, the learned senior counsel Mr. Ganpati Trivedi appearing on behalf of the defendant-respondent submitted that so far adultery is concerned, it is only apprehension raised by the plaintiff. There is no specific allegation



as to when and with whom the defendant was leading adulterous life. So far desertion is concerned, the learned counsel submitted that the defendant never left the house of the plaintiff and the defendant is still residing in the same house where the plaintiff was residing. It is the plaintiff who left the house and went to reside with his second wife Munni Devi. Therefore, in fact the plaintiff has left the defendant and deserted her. The learned counsel further submitted that Ext.2 series have been produced by the plaintiff, which are letters written by him since 1978 till 1986 which are nothing but creation of evidence by the plaintiff. Letters are original letters. Moreover, there is nothing in support of the fact that the letters were posted in the post office. The court below after examining the letters found that all the letters are original. In such circumstances it cannot be relied upon.

10. The learned senior counsel further submitted that it is the plaintiff, who left the house and is residing in rented house according to him, therefore, there is no question of desertion arises. Moreover, in support of the fact that the plaintiff is residing with one Munni Devi, overwhelming evidence has been produced by the defendant. In view of the above facts there is no question of desertion arises. So far cruelty is concerned, there is no material available on record that the defendant is guilty of any cruelty. The

plaintiff did not allow the defendant to enter the house, therefore, the application was filed by the defendant under Section 144 Cr.P.C. Then she was allowed to enter the house but the plaintiff left the house and went away. In view of the above facts it cannot be said that 144 Cr.P.C. proceeding was a false criminal prosecution so as to constitute mental cruelty. Thereafter when the defendant learnt that plaintiff married with Munni Devi @ Asha Devi a complaint case was lodged but subsequently when the defendant got employment in the school as school teacher she left the pairvi of that complaint case, therefore, it was dismissed but it cannot be said that it is a false case as in the present case the evidence has been produced by the defendant in support of marriage. The learned counsel further submitted that 125 Cr.P.C. application was also filed by the defendant but when she got the job as teacher she left the pairvi of that case also, therefore, it was also dismissed in the year 1994. So far writing letters to S.D.O., S.P. and D.M. are concerned, according to the learned counsel the plaintiff was not allowing the defendant to enter the matrimonial house, therefore, she was compelled to file the applications before the said authorities for getting justice and ultimately 144 Cr.P.C. proceeding was initiated in the year 1989 and then she was allowed to enter the house where she is still residing. It was the right of the defendant to protect her interest and for getting

justice if she knocked the door of the executive authorities then it cannot be said that it is in fact false allegation and that the defendant tortured mentally to the plaintiff-appellant.

11. So far irretrievable break down of marriage is concerned, the learned counsel submitted that it is not the ground for divorce and moreover none of the decisions relied upon by the appellant is applicable in the present facts and circumstances of the case. The marriage was held in the year 1969 and the plaintiff as well as the defendant both have retired since long from the service. Even if on the ground of irretrievable marriage has broken down divorce is granted then also they will not re-marry but it will affect the defendant very seriously because the son of the defendant has filed a partition suit wherein the defendant is also party. She has a share in the property. To deprive the defendant from her alleged share in fact the present divorce suit has been filed. The plaintiff will not suffer any loss because he is residing with another lady and he has got sons and daughters from that another lady. On these grounds the learned counsel submitted that the appeal be dismissed with costs.

12. In view of the above submissions of the parties the points arise for consideration in this first appeal are as follows:

- (i) Whether the plaintiff is entitled for a decree of divorce on the ground of desertion or cruelty or

adultery?

- (ii) Whether on the ground of irretrievable break down of marriage the plaintiff is entitled for divorce?

Point Nos.(i) & (ii)

13. The specific case of the plaintiff is that the marriage was held on 08.06.1969, which is admitted by the defendant. According to the plaintiff, on 10.12.1977 the defendant left the house of the plaintiff and did not return as such she has deserted. On the contrary, the defendant's case is that she never deserted. The plaintiff himself married with Asha Devi where from he got two sons and is residing with her. Both the parties in support of their respective cases have adduced evidences. From the evidence of P.W.1 it appears that he claimed that he had purchased some land in the name of the defendant, which he sold and retained the money and this was the reason of dispute. However, the plaintiff made a different story in the plaint that the defendant went away with all her belongings and sale deed. The plaintiff has been examined as P.W.1. In the evidence he admitted that he is residing in a rented house which he had sold to Munni Devi. It is admitted fact that the defendant is still residing in the house where the plaintiff and defendant were residing earlier. In view of these positions now let's consider the case of the plaintiff that he wrote many letters



requesting the defendant to come and reside with him. If she is residing in the same house then instead of calling her to the rented house, the plaintiff should have resided with the defendant but no reason has been assigned nor any explanation has been given as to why the plaintiff is residing in a rented house, which was sold by him to Munni Devi. The defendant in her evidence has stated that the alias name of Asha Devi is Munni Devi. Ext.L is the certified copy of the voter list. From perusal of this voter list it appears that Munni Devi has been shown as the wife of plaintiff.

14. The learned senior counsel Mr. Nath appearing for the plaintiff submitted that according to the defendant the name of the girl is Asha Devi whereas in the voter list the name as mentioned as Munni Devi. So far this submission is concerned, even it is accepted that the defendant is not giving the correct name but it is now clear that the plaintiff has a wife named 'Munni Devi', that is the case of the defendant that plaintiff has married with another girl from whom he has got two sons. Here, the dispute between the parties is not with regard to what is the name of second wife of plaintiff. The dispute is whether the plaintiff has married with another girl. As stated above, the plaintiff sold the land to Munni Devi. He admitted in his evidence that he is residing in that house on rent. Ext.L shows that Munni Devi is the wife of plaintiff. The defendant clarifies in her

evidence that alias name of Asha Devi is Munni Devi which clearly indicates that the plaintiff is residing with Munni Devi as husband and wife.

15. It may be mentioned here that the plaintiff has produced the complaint application being Case No.121 of 1989. In this complaint application the defendant alleged that the plaintiff had married with another lady. This again supports the case of the defendant. It further appears that 125 Cr.P.C. application was filed by the defendant being Miscellaneous Case No.39 of 1989 (Ext.12) wherein again she alleged that plaintiff married with another lady and, therefore, she claimed maintenance. Now the question arises that since much prior to filing of this divorce case the defendant is alleging that the plaintiff has married with another lady and filed applications, which were not prosecuted subsequently by her. Can it will be presumed that all the allegations made in those applications are false? In my opinion, there cannot be such presumptions. Ext.L is the public document. The plaintiff admitted that he is residing in the house of Munni Devi on rent. For proving this fact the defendant is not required to prove it beyond all reasonable doubts. She has been able to show that the plaintiff is residing with another lady.

16. Ext.2 series have been produced by the plaintiff in support of the case that he repeatedly wrote letters to the defendant



requesting her to come to him. It appears that all these letters are original letters. It is mentioned here that a copy of the letter is retained by the plaintiff. In my opinion, this is nothing but the outcome of brain of the plaintiff and for the purpose of this case the plaintiff was creating evidence. On the basis of these letters it cannot be conclusively held that the plaintiff was eager to keep the defendant with him particularly when it is admitted fact now that in the house of plaintiff, the defendant is residing whereas the plaintiff has left the house and residing with another lady in a rented house.

17. In view of my above discussions, I find that the plaintiff is not approaching the Court with clean hand and is trying to take advantage of his own plan. Therefore, I find that the plaintiff has failed to prove desertion.

18. So far adultery is concerned, the plaintiff alleged that he apprehends that the defendant is leading adulterous life. No specification is there regarding as to with whom and since when the defendant is leading adulterous life. Under Sections 14 and 21 of the Hindu Marriage Act rules have been framed in the year 1955 which is called as the Hindu Marriage (Patna) Rules, 1955. According to rule 16 of the said Rule the plaintiff is required to make the adulterer co-respondent in the petition for divorce but in the present case no such person has been made respondent. Moreover the allegation

itself is vague allegation. I, therefore, find that the plaintiff failed to prove adultery. Moreover, this ground was not pressed before the trial court.

19. So far mental cruelty is concerned, the learned senior counsel appearing on behalf of the appellant submitted that criminal cases were filed and applications were filed by the defendant making false allegations. In the decision relied upon by the learned counsel for the appellant, i.e. **K. Srinivas Vs. K. Sunita** (supra) the Hon'ble Supreme Court has held that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce. From perusal of paragraph 5 of the said decision of the Supreme Court it appears that in that case the High Court as well as the Supreme Court on the basis of evidence of the wife recorded clear finding that the criminal complaint case was 'ill advised' and the wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family. Therefore, it was a cruelty. The fact of present case at our hand is entirely different. In the present case, the complaint was filed by the defendant under Section 494 and 298 of the Indian Penal Code being Complaint Case No.121 of 1989. This complaint case was dismissed for non-prosecution on 24.05.1993



(Ext.13). Therefore, there cannot be any presumption that whatever allegations were made in the complaint case were false. It can only be said that the defendant did not prosecute the complaint as such it has been dismissed. Section 494 of I.P.C. is with regard to bigamy. So far this question of bigamy is concerned, we have found above that the plaintiff himself admitted in his evidence that he is residing with another lady in rented house. Because the complaint case has been dismissed for non-prosecution, it cannot be said that the evidence adduced by the defendant in this divorce case cannot be relied upon.

20. So far 125 Cr.P.C. application is concerned, it has been marked as Ext.12, which was also dismissed on 25.01.1994, Ext.10/A. According to the plaintiff himself, the defendant was separately residing. It is also admitted fact that at that time she had no source of income for her livelihood, therefore, a right which has been given by statute was exercised by her claiming maintenance. In my opinion, therefore, it is also not a false criminal case against the plaintiff. The defendant was only seeking to enforce her right under the said provision.

21. So far the proceeding under Section 144 Cr.P.C. is concerned, it was started in the year 1989 (Ext.D). From perusal of the notice, it appears that the dispute between the plaintiff and



defendant arose regarding dwelling house. The defendant was not allowed to enter the house, therefore, the proceeding was initiated. The life of 144 Cr.P.C. is only sixty days. In my opinion, therefore, on the basis of this 144 Cr.P.C. proceeding cannot be said that it is a false proceeding so as to constitute cruelty entitling the plaintiff to claim divorce. Likewise the applications filed before the S.D.O., S.P. and D.M. also mentioned the same thing. The defendant was seeking justice from them because the plaintiff was not residing with her rather according to the defendant, plaintiff was residing with another lady and she was not being allowed to stay in the house. In my opinion, therefore on these grounds, no case of cruelty is made out. No presumption can be made that whatever allegations made are false.

22. So far the question of irretrievable breakdown of marriage is concerned, the Supreme Court in the case of **K. Srinivas Rao Vs. D.A. Deepa** (supra) considering the case of **Samar Ghosh Vs. Jaya Ghosh, (2007) 4 Supreme Court Cases 511** has held that irretrievable breakdown of the marriage is not a ground by itself. But, while scrutinizing the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. In the case of **Naveen Kohli Vs. Neelu**

Kohli, (2006) 4 Supreme Court Cases 558 the Supreme Court made a recommendation to the Union of India for amending Hindu Marriage Act, 1955 incorporating irretrievable breakdown of marriage as a ground for grant of divorce. However, ultimately the Supreme Court at paragraph 34 found that the wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Therefore, the divorce was granted. It appears that in that case the marriage between two parties was held on 25.04.1999 and since 27.04.1999 the newly married couple got separated without consumption of marriage. On 04.10.1999 criminal contempt was lodged by the wife. By that judgment the Supreme Court granted divorce. Therefore, from the fact of that case it appears that within a short period, the divorce was granted as there was chance of remarriage by either spouse because there was no consumption of marriage. In the present case, the marriage was held in the year 1969. Admittedly the children have now grown up and married. Even if divorce is granted on the ground of irretrievable breakdown of marriage, there will be no chance of remarriage by either spouse then what for a divorce will be granted. Admittedly the plaintiff is residing separately and the defendant is residing separately. In these facts and circumstances of the case if divorce is granted then in each and every case if appeal will be



pending for long period, this ground will be available to the husband and divorce will be granted and then the old lady at the end of her life will be left for loitering in the street. No doubt in the present case, the defendant retired from a job of teacher but in all cases the wife will not be expected to be in the job in the male dominated society of India. Therefore, there cannot be any discrimination that if the wife retires from the service, divorce will be granted on the ground of irretrievable breakdown of marriage and if the wife was not in service the divorce will not be granted.

23. The Hon'ble Supreme Court in the case of **K. Srinivas Vs. K. Sunita** (supra) has held that under Article 142 of the Constitution, the Supreme Court has plenary powers to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it. This power has not been bestowed by Constitution on any other Court. Now, therefore, this Court has no jurisdiction to grant divorce on the ground that the marriage has now irretrievably broken down and there is no chance of repair or that the Court cannot compel the parties to reside together. As stated above, here, there is no chance of remarriage by any spouse. Now the dispute remains with the property only. Then the question is whether for divesting the wife from claiming any share, the divorce will be granted? The answer is no. As stated

above the Hon'ble Supreme Court in this case found that false complaint case was filed and, therefore, on the ground of cruelty the decree of divorce was granted. The Hon'ble Supreme Court in the case of **Narmada Bachao Andolan Vs. State of Madhya Pradesh & Anr., A.I.R. 2011 Supreme Court 1989** at paragraph 59 has held as follows:

“The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.”

24. In view of the above settled proposition of law, in my opinion, the decisions relied upon by the learned counsel for the appellant are not applicable in the present case. None of the grounds either desertion, adultery and cruelty has been proved by the plaintiff. On the ground of irretrievable breakdown of marriage no decree of divorce can be granted by this Court as it is not a ground for divorce and this Court is not bestowed which is exercised by the

Supreme Court under Article 142 of the Constitution of India and further here the effect of divorce will be that the wife will be deprived of the property only.

25. In view of the above discussions, I find no reason to interfere with the finding of the trial court and thus it is hereby confirmed. Accordingly, I find no merit in this first appeal and thus, this first appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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