

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.91 of 2013

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Vinay Kumar Singh @ Binay Kumar Singh, S/O Raj Ballabh Singh Resident of
Village - Ram Nagar, P.S. - Barh, District - Vaishali

.... Petitioner-Husband-Appellant

Versus

Smt. Sabita Devi W/O Sri Vinay Kumar Singh and D/O Sri Dineshwar Singh
Resident of Village - Balia , P.S. - Desari , District - Vaishali

.... Opposite Party-Wife-Respondent

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Appearance :

For the Appellant : Mr. Tej Narayan Singh, Advocate

Mr. Md. Waliur Rahman, Advocate

For the Respondent :

Mr. Braj Nandan Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 22-01-2015

The appellant herein, who is, admittedly, the husband of the sole respondent herein, filed an application, under Section 13 of the Hindu Marriage Act, 1955, seeking a decree of dissolution of his marriage with Smt. Sabita Devi, i.e., the respondent herein, which was solemnized in the year 1982, according to the Hindu rites and customs, the decree for dissolution of marriage having been sought on the ground, *inter alia*, that she had *deserted* him, his attempts, seeking restitution of his *conjugal rights*, had failed and, for the last 24 years, they had been living separately. This application gave rise to Divorce Case No. 124 of 2007.

2. Resisting the application, whereby divorce was



sought for, the respondent herein, i.e., the wife of the applicant-appellant, filed a written statement, wherein she denied the allegations levelled against her by her husband that she had deserted him. Her case, on the other hand, was that she had been ousted from her matrimonial home by raising demands for dowry and she had, to therefore, lodge, in this regard, a First Information Report, at Barh, which came to be registered as Barh Police Station Case No. 128 of 1988, under Sections 342/323/307/379/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. The respondent herein also alleged, in her written statement, that the applicant-appellant had already married one Sunita Devi and that a case, in this regard, had been lodged by her under Section 494 of the Indian Penal Code, which was still pending and to save himself from impending conviction, the present case, seeking dissolution of marriage, had been instituted after 24 years of marriage. It has further been contended by the respondent herein, in her written statement, that she had not even been paid maintenance despite order having been passed, on 30th June, 2011, in Maintenance Case No.63 of 2006, by the learned Principal Judge, Family Court, Vaishali, Hajipur, directing the present appellant to pay maintenance. She has also alleged that after ousting her from her matrimonial house, the appellant made no

efforts to bring her back.

4. Having taken note of the evidence, which have been adduced by the parties concerned, the learned Principal Judge, Family Court, Vaishali, has concluded that the evidence on record clearly proves that applicant, seeking divorce, and the respondent are legally wedded husband and wife and, in their wedlock, one daughter, namely, Siddhu Kumari, was born and there is also evidence that the respondent had been forcibly ousted from her matrimonial house and had been living, at her parental house, for the last 23 years. With the finding so reached, the learned Principal Judge, Family Court, concluded that the appellant had failed to prove his allegation of having been *deserted* by his wife and that there is, rather, reasonable and justifiable cause for the wife to live separately and claim maintenance, when her husband is living with another woman after marrying her and his first wife, i.e., respondent herein, had no independent source of livelihood.

5. Aggrieved by the order, dated 13.12.2012, passed, in Divorce Case No. 124 of 2007, by the learned Principal Judge, Family Court, Vaishali, this appeal has been preferred.

6. We have heard the learned counsel for the parties concerned.

7. We have perused carefully the pleadings on

record and the evidence adduced by the parties concerned. We have also perused the order under appeal.

8. We find that it has clearly emerged from the evidence on record that for the last 24 years, respondent has been living at her parental house. No cogent and credible evidence could be adduced by the appellant to prove that the respondent had been living, on her own volition, at her parental house and despite efforts made by him, she had not returned back to her matrimonial house.

9. On the other hand, the evidence eloquently speaks that the respondent was ousted from her matrimonial house by her husband. This apart, there are two witnesses, who have been examined in support of the respondent's case that the present appellant has already married Sunita Devi at Vishnu Pad Mandir, Gaya. The evidence of these two witnesses remains unshaken on material aspects. The learned trial Court has, therefore, correctly reached the conclusion that the appellant, Vinay Kumar Singh, has married Sunita Devi. This apart, Smt. Sunita Devi's photo identity card, issued by the Election Commission, has been brought on record showing that she bears the name of the appellant as her husband.

10. In the backdrop of the evidence, which we have pointed out above, the learned trial Court correctly concluded that the appellant had miserably failed to prove that the

respondent had *deserted* him.

11. In the circumstances indicated above, the learned Principal Judge, Family Court, Vaishali, acted within the ambit of law by declining to grant a decree of dissolution of marriage.

12. We find no merit in this appeal.

13. The appeal, therefore, fails and stands dismissed with cost of Rs. 5,000/- to be paid to the sole respondent herein.

(I. A. Ansari, J.)

(Chakradhari Sharan Singh, J.)

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