

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.420 of 2010

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Bijendra Puri @ Bijendra Bharati @ Vijendra Puri @ Vijendra Bharati, son of Sri Ram Ayodhya Puri @ Ram Ayodhya Bharati, resident of village Sawari Puri Tola, P.S.Jalalpur, District Saran

.... Appellant

Versus

Smt. Shail Bharati, wife of Bijendra Puri @ Bijendra Bharati, daughter of Sri Guljar Bharati, resident of Village Sawari Puri Tola, P.S.Jalalpur, District Saran at present resident of Village Asahani Mathiyan, P.O. Chainpur, P.S. Rasulpur, District Saran.

.... Respondent

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Appearance:

For the Appellant : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Praveen Prabhakar. Advocate

For the Respondent : Mr. Raju Giri, Advocate
Mr. Nikhil Kumar Agrawal, Advocate
Mr. Santosh Kumar Mishra, Advocate
Ms. Aditi Hansaria, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 30-03-2015

Heard learned counsel for the appellant. Learned counsel for the respondent is also present.

The husband is the appellant. He has filed this appeal assailing the judgment dated 23.04.2010 passed by the learned Principal Judge, Family Court, Saran at Chapra in Divorce Case No. 104 of 2002 whereunder request of the appellant to dissolve the marriage between him and the sole respondent on the ground of desertion, adultery and cruelty has been rejected.

It is submitted on behalf of the appellant that the Court below



has erred both in law and fact to hold that the ground of desertion from 21.06.2001 the date on which respondent got his bail bond cancelled and he was sent to jail cannot be treated as date of desertion as on that date he was sent to jail and the wife could not have deserted him on that date. It is submitted that the respondent wife deserted the husband on 25.06.2000, whereafter she filed a case under Section 323, 498 (A) of the Indian Penal Code and Section 4/5 of D.P. Act and the Court while considering the prayer for bail on behalf of the appellant directed the parties to cohabit, sometime in April, 2001, with further direction to the parties to appear in Court together on 21.06,2001. During the interregnum from April, 2001 till 21.06.2001 the wife did not reside with the appellant, but came along with him to the Court on 21.06.2001 and filed a petition praying, inter alia, to cancel the bail bond. Whereafter, the bail bond of the appellant was cancelled and he was taken to jail. It is submitted that if the date of desertion is taken as 25.06.2000 then the finding recorded by the Court below that the petition for divorce on the ground of desertion is premature is erroneous. The fact that the date of desertion is 25.06.2000 is not pleaded in the plaint as in the plaint it is stated that the date of desertion is 21.06.2001. As such any evidence led beyond the pleadings about the date of desertion i.e. 21.06.2001, the learned Court below in our opinion has rightly ignored. Counsel for the appellant has not even raised the point that there is error of record committed by the Court below in the memo of appeal filed on 17.05.2010. At this stage learned counsel submitted that he has filed application for amendment vide I.A. No. 8086 of 2014 on 05.11.2014 in which aforesaid facts have been stated in paragraph 2. The facts stated in paragraph 2 of

the aforesaid Interlocutory Application could not have been considered by the Family Judge as such facts were not stated in the pleadings before him. In the facts and circumstances of the case, at this belated stage, we are not inclined to consider the request made in the aforesaid Interlocutory Application.

The appellant has also taken the ground of adultery against the respondent wife for dissolution of marriage, but he has not even impleaded the adulterer as a respondent. The ground of cruelty raised in support of plea of divorce is also decided against the appellant in view of the case under Section 498(A) of the Indian Penal Code filed by the wife in which the appellant after disposal of the matrimonial case has also been convicted under Section 498(A) IPC, but acquitted of the charges under Section 323 IPC and Sections 3/4 of the Dowry Prohibition Act. The judgment is placed on record. The husband having himself been found to have committed cruelty to the wife as he has been convicted of the offence under Section 498(A) IPC cannot be allowed to assert that the wife is cruel.

We see no merit in the appeal. It is dismissed.

(V.N. Sinha, J)

(Vikash Jain, J)

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