

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 138 of 2010

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Leelawati Devi, daughter of Bhagwat Sah, wife of Jogendra Prasad, at present residing at Village-Sareya, Post Office-Sareya, Police Station-Paharpur, District-West Champaran.

.... Opposite Party /Appellant

Versus

Jogendra Prasad, Son of Shiv Bachan Sah, resident of Village-Jaukatia, Post Office-Jaukatia, Police Station-Manjhaulia, District-West Champaran.

.... Petitioner/ Respondent

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Appearance :

For the Appellant : Mr. Nachiketa Jha, Advocate.

Mr. Ram Kishun Prasad, Advocate.

For the Respondent : Mr. Binay Kant Mini Tripathi, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

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

Date: 09-02-2015

Heard learned counsel for the appellant- wife and learned counsel for the respondent- husband.

2. Appellant-wife is aggrieved by the judgment and decree dated 15.02.2007 passed by Principal Judge, Family Court, Bettiah in Divorce Case No. 37 of 1999/98 of 2005 whereunder the marriage solemnized between the parties on 26.04.1974 has been dissolved under Section 11 of the Hindu Marriage Act with direction to the respondent to pay maintenance of Rs. 500/- per month on 15th day of every calendar month to the appellant.

3. Perusal of the impugned judgment would indicate that there has been no offspring born out of the wedlock

which became the cause for the matrimonial disharmony between the parties and primarily is the ground for dissolution of their marriage. From the judgment, it appears that as there was matrimonial disharmony between the parties, the wife is said to have deserted the husband from the matrimonial home on 25.08.1990 perhaps for the reason that she could not conceive and deliver a child.

4. In the circumstances, we are satisfied that the ground of cruelty as set out in the judgment and decree is not made out with reference to the evidence on record. If the wife could not deliver a child because of medical reasons, such situation cannot be taken to establish cruelty on her part. It was her physical incapacity which restrained her to conceive and to deliver a child over which she hardly has any control. In such background the finding recorded by the Court below that she is cruel to the husband is wholly unjustified. Besides the amount of maintenance of Rs. 500/- payable per month in the impugned judgment is also wholly inadequate considering the fact that husband is serving in a Project School and earning more than 30,000/- per month.

5. Learned counsel for the respondent-husband submits that pursuant to the order dated 09.11.2006 passed in Cr. Revision No.101 of 2006 he is paying Rs. 1,000/- as maintenance. Such submission is noted only for being rejected. If the husband was paying Rs. 1,000/- pursuant to the order

dated 09.11.2006 then such fact was required to have been incorporated in the impugned judgment and decree which was passed on 15.02.2007 but thereunder she is only entitled to receive maintenance of Rs. 5,00/- per month.

6. In the circumstances, we are satisfied that it is the husband who has hoodwinked the wife by raising the plea of cruelty for her incapacity to conceive and deliver a child. Accordingly, the judgment and decree dated 15.02.2007 passed by Principal Judge, Family Court, Bettiah in Divorce Case No. 37 of 1999/ 98 of 2005 is set aside.

7. Having set aside the impugned judgment, we direct the husband to pay interim maintenance of Rs. 5,000/- per month after deducting the amount of interim maintenance, if any, paid from his salary as project teacher.

8. The appeal stands disposed off.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr.

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