

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.214 of 2008

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Shashi Bhushan Sharma, Son of Sri Ramdeo Thakur, resident of Village-
Mliagar Bargama, P.S. Chakmehsi, District-Samastipur.

.... Appellant

Versus

1. Renu Kumari, wife of Shashi Bhushan Sharma, daughter of Ram Bilas Thakur, resident of village- Balha, P.S. Chak Mehshi, District-Samastipur, at present residing at her parent's house in Village-Balha...Opposite Ist Party...Respondent Ist Party.
2. Sachchida Nand Prasad Sahi.
3. Gopal Prasad Shahi. Sons of not known, both residents of Village-Prahladpur, P. S. Muzaffarpur (Musahari), District-Muzaffarpur.
.....Opposite party no. 2 is in Military Service but his present address is not known and opposite party no. 3 is residing at village home.
.....Opposite party 2nd set..Respondent 2nd set.
4. Sanju Mishra, Son of Mohan Mishra, resident of Village- Tepari, P.S. Sakra, at present residing in Mohalla- Malighat, Muzaffarpur, P.S. & District-Muzaffarpur...Opposite party 3rd set...Respondent 3rd set.

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Appearance :

For the Appellant : Mr. N.K. Agrawal, Sr. Advocate & Mr.
R.K. Priyadarshi, Advocate.

For the O.P. No. 1 : Mr. Anirudh Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

17 01-04-2016 Heard learned counsel for the appellant and learned
counsel for respondent no. 1.

The appeal has been filed by the petitioner-husband
against the judgment and decree dated 14.02.2008 passed by the
Principal Judge, Family Court, Samastipur, in Divorce Case No.
03 of 1997 by which the petition for divorce was dismissed with

cost of Rs. 2,000/.

The stand of the appellant was that he married with respondent no. 1 Renu Kumari, according to the Hindu rites on 16.04.1982. After the said marriage, she lived in Sasural for a few days and went back to her parents' house and completed her Graduation and also subsequently obtained Diploma in Nursing, upon which she was selected as Nurse in Government service. It is further alleged that the respondent no. 1 was having illicit relationship with respondent nos. 2, 3 and 4 and out of the said illicit relationship she gave birth to a girl child. It is the stand of the petitioner-appellant that during the period when the child was born, the respondent no. 1 had not resided with the appellant for a long period of time as she had remained in her Sasural only for nine months after the marriage and thereafter had come only for two days and thereafter she again went back to her parents' house. Thus, there was no cohabitation when the child was born in the year 1991. It was also the stand that several attempts were made by the appellant to bring her back to his house but she always avoided and declined to live with the appellant. Even letters were sent by the father of the appellant to the father of the respondent no. 1 but that could not make any difference and it was replied by the father of respondent no. 1 that she would not go to live with

the appellant rather the appellant might marry again.

The respondent no. 1 contested the divorce petition by filing a written statement in which she took the stand that the divorce case has been filed as a counter-blast to the Complaint Case No. 255 of 1997 filed by her. It was further stated that the petitioner had remained in jail also in the said case for a long period of time. It is also stated that she had contributed towards purchase of land in the year 1991 in her name. She also denied that she ever neglected and avoided the appellant and his parents and ill-treated them rather it was the appellant who had remarried with one Bibha Devi and divorce case has been filed with ulterior motive.

As many as 11 witnesses were examined on behalf of the petitioner-appellant including his father Ramdeo Thakur as P.W. 1 and the appellant himself as P.W. 11. The respondent no. 1 also examined 4 witnesses including her father D.W. 1, Rambilash Thakur, her brother D.W. 3 and herself as D.W. 4. After examination of the evidence of the witnesses and documents filed on behalf of the parties, the Principal Judge, Family Court, Samastipur, came to the conclusion that none of the grounds of cruelty, desertion and adultery could be proved by the appellant and accordingly dismissed the case with cost.



So far as adultery is concerned, apart from the allegations being made, no cogent evidence has been brought on the record by the appellant to prove the same. It has also been recorded by the learned court below that if the respondent no. 1 had been indulging in adultery right from the beginning, then there was no occasion to allegedly purchase the land in her name in the year 1991 i.e., nine years after the marriage by her father-in-law, which was also the time around which she gave birth to a daughter, regarding which the statement of the father of the appellant is that the daughter was born on 16.07.1990. The said statement that the land was purchased by the father of the appellant in the name of his daughter-in-law in the year 1991 is not at all in keeping with the allegations regarding the birth of the daughter on 16.07.1990 as a result of adultery. The court below has rightly come to the conclusion that the allegations regarding adultery are not at all made out and have been raised merely to take benefit in the divorce petition, as appellant himself has remarried.

On the question of desertion also it has been clearly found that after completion of studies, the respondent no. 1 obtained government job as Nurse and thereafter she was posted at different places. It is also apparent from the materials on the record that the petitioner-appellant used to visit his wife at several places where

she was posted as Nurse and in the said circumstances, the case of desertion could not be made out.

On the point of cruelty also it was found that there was no cogent evidence to prove the same.

Learned counsel for the appellant has only reiterated the stand that has been taken in the court below. However, he is unable to point out any cogent material which can justify any of the grounds with regard to adultery, desertion and cruelty. The said grounds are clearly not borne out but contradicted by the stand of the appellant and his father that the land was purchased in the year 1991 by the father of the appellant in the name of respondent no. 1 which could not have been done if she was indulging in adultery, cruelty and desertion at that point of time.

From the materials on the record, it is evident that the divorce case has been filed only after the respondent no. 1 had filed a complaint case under Section 498-A of the Indian Penal Code and Dowry Prohibition Act.

On a perusal of the judgment of the court below and on a consideration of the submissions of the learned counsels for the appellant and respondent, we are of the view that no material could be pointed out by the learned counsel for the appellant in support of any of the grounds for divorce.

There is no merit in the appeal. It is, accordingly,
dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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