

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.638 of 2013

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MUNNI DEVI, W/o Kaushal Singh, D/o Subhash Kumar Singh, resident of village - Bari Aighu , P.S. Muffasil , District- Begusarai, presently resident at Village- Basudeopur, Muffasil, District- Begusarai.

.... Appellant

Versus

KAUSHAL SINGH, S/o Surendra Singh, resident of village - Bari Aighu, P.S. - Muffasil , District- Begusarai.

.... Respondent

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Appearance :

For the Appellant : Mr. Sunil Kumar Thakur, Advocate.

For the Respondent : M/S. Rai Mukesh Sharma and Ravindra Kumar, Advocates.

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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)

7 07-04-2016

Heard learned counsel for the appellant and learned counsel for the respondent.

The appeal has been filed against the judgment and decree dated 30.04.2013, passed in M.T.(Divorce) No. 115 of 2011, by which the case was decreed on contest to the effect that the marriage of the respondent-husband with the appellant-wife was dissolved by decree of divorce.

The husband had filed the divorce petition for decree of divorce under Section 13 of the Hindu Marriage Act. The stand of the respondent-husband was that his marriage with the opposite party Munni Devi was solemnized forcibly on 29.02.2007 after he had been abducted by her father and other relatives and the



marriage was performed under threat and without consent of the petitioner and his parents but admittedly, no legal step was taken in the matter on the ground that the father of the petitioner was suffering from acute jaundice from which he was cured after six months. It was also the stand that the father of the petitioner accepted the appellant as daughter-in-law and *Bidagri* was also made after six months and thereafter she lived in her in-law's house for 21 days but began to quarrel with the family members of the petitioner. It was alleged that the mother of the appellant came and abused the respondent-husband and his family members. Thereafter the appellant left her in-law's house without consent of guardian of the respondent because she wanted to live separately. It is also stated that she was living in her parent's house since June, 2008 and when respondent tried for *Bidagri* all the family members of the appellant abused and beaten him and asked him to live separately. Other allegations were made that the appellant had established illicit relationship with another man and when she was asked to break up relationship, she refused and the husband was assaulted by her family members and also threatened by the wife that she would commit suicide so as to implicate the husband and his father. It was also alleged that on 15.06.2011 the husband was threatened by the appellant that he would be killed, if he would

pressurize for her *Bidagri*.

The appellant appeared in the case on 21.02.2012 and filed her objection on 23.03.2012. She admitted her marriage with the petitioner and denied all allegations made in the petition as concocted and baseless. On the other hand, it was her stand that she was subjected to cruelty due to demand of motorcycle and when the same was not fulfilled by the parents of the appellant, she was kicked out from her in-law's house after torturing her and since then she was living with her parents. It was also alleged that the sister of the husband and the parents poured kerosene oil on her body for killing her several times and due to intervention of local people, her life could be saved. It was further stated that she lastly came in the month of June, 2011. It was also stated that she had filed a case against the husband under Domestic Violence Act and the divorce petition has been filed in retaliation of the same. She had further stated that she wanted to live with the husband and to make cooperation with him. Upon the personal appearance of the parties, conciliation proceeding began but could not succeed.

On the basis of pleadings of the parties, the following issues were framed by the Principal Judge, Family Court.

1. Whether the present matrimonial case is maintainable?

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2. Whether the opposite party deserted the petitioner without any reasonable cause for two years or more before filing the suit?
 3. Whether the opposite party after solemnization of marriage had voluntarily made sexual intercourse with any person other than her spouse?
 4. To what relief, if any, the parties are entitled?

The husband examined himself as P.W. 1 and Surendra Singh as P.W. 2 and also filed medical prescriptions. On behalf of the appellant no oral or documentary evidence was produced. She also did not cross-examine the P. Ws. From the evidence on the record, the court decided Issue No. 3 against the divorce petitioner but held with respect to Issue No. 2 that the appellant had deserted her husband without any reasonable cause and had been living separately from him since 02.02.2008 in her parent's house whereas the divorce petition was filed on 18.07.2011. Thus, she had deserted the divorce petitioner continuously for more than two years before filing of the case. Upon reaching the said conclusion, the Principal Judge decreed the case on contest and the marriage of the respondent with the appellant was dissolved by decree of divorce.

The only submission made by learned counsel for the

appellant before this Court is that the circumstantial evidence shows that the respondent had made the appellant desert him and thus the case of desertion has not been made out and evidence on the said count must be set aside. It is, however, accepted by learned counsel for the appellant that the evidence with regard to desertion has remained unchallenged because on the point of desertion witnesses were not cross-examined by the appellant. On a consideration of the aforesaid facts and circumstances coupled with the fact that the respondent had specially pleaded in his divorce petition regarding the factum of desertion and also supported the pleadings by evidence on the point, which evidence remained unchallenged and was accepted by the court below. Moreover no evidence has been laid to the contrary by the appellant himself.

This Court, therefore, does not find any reason to come to a different conclusion. Thus, there is no merit in the present appeal which is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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