

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 183 of 2016

- Ramdeen S/o Alam Sai, Aged About 59 Years Caste- Panika, R/o- Brtunga Colliery, Chirmiri, Tahsil- Khadganwa, District- Korea, (Chhattisgarh),.....(Plaintiff).

---- Petitioner

Versus

- Fulamati W/o Ramdeen, Aged About 57 Years By Caste- Panika, R/o- Village- Charcha Basti, Thana And Tahsil- Baikunthpur, District- Korea, (Chhattisgarh),.....(Defendent).

---- Respondent

For Appellant

Mr. Awadh Tripathi and Mr. Wasim Miyan,
Advocates

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board by

Prashant Kumar Mishra, J.

15/9/2016

1. Heard.
2. The appellant has assailed the legality and validity of the impugned judgment and decree, wherein, the Family Court has dismissed his application under Section 13 of the Hindu Marriage Act, 1955, for grant of divorce on the ground of desertion.
3. The parties were married according to Hindu customs and rituals in the year 1968 and have a son born out of the said wedlock. The son is presently married and residing

with the appellant. It is alleged in the application that the respondent is in the habit of living as per her own desire without being bound by the limitations attached to a married woman, which created dispute between the parties on several occasions. A Panchayat meeting was convened on 28.01.1982, where she refused to live with the appellant and thereafter, she has not come to the marital house and has, thus, left the company of the appellant by deserting him. The appellant thereafter performed marriage with another girl in the year 1982 itself and has 05 children out of the second wedlock.

4. The respondent defended the application on the plea that she has never lived by crossing the limits of the marital institution and it is the appellant who threw her out from the house and has performed second marriage, therefore, it was not possible for her to stay with the appellant.
5. Both the parties led evidence to prove their respective cases. While the appellant examined himself and another witness namely Kewla Prasad to prove that in the course of Panchayat meeting, the respondent refused to live with him, the respondent examined herself to defend the suggestions made to her to the effect that she has deserted the appellant.
6. The trial Court has recorded a finding that in the state of evidence on record, the appellant has not been able to prove the *animus deserendi* i.e. intention to desert,

therefore, a decree for divorce cannot be granted only on the basis of customary divorce. While recording the said finding, the trial Court has accorded weight to the respondent's statement that soon after the Panchayat meeting, the appellant performed marriage with another lady, therefore, it was not possible for her to return back to the appellant's house. Similarly in respect of the appellant's allegation against the respondent that she was caught red handed in an objectionable position with another man, the trial Court has duly considered the admission made by the appellant/plaintiff that averment to this effect is not made in the plaint. This is recorded in para 17 of the impugned judgment.

7. Since the Panchayat meeting convened on 28.01.1982 was called when the respondent was allegedly caught red handed with one Mohelal, it was such an important fact which should have been averred in the plaint itself. There being no such averment, the trial Court has rightly held that the plaintiff has not been able to plead and prove commission of adultery by the respondent or that the said incident was the reason for the appellant's performing second marriage. On the contrary, the trial Court has rightly found that the respondent started residing separately when the appellant performed second marriage soon after the Panchayat meeting.
8. It is also to be seen that the marriage had taken place in the year 1968 i.e. more than 45 years back. The

appellant's present age is about 59 years. A decree for divorce on the ground of irretrievable back-down of marriage cannot be granted when the wife has sufficient and reasonable cause to live separately from her husband on account of he having performed second marriage.

9. For the foregoing, this Court does not find any substance in the appeal, it deserves to be and is hereby dismissed.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Chandra Bhushan Bajpai)

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