

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.471 of 2000

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Suresh Dev Sharma, son of Late Chanro Das, resident of village- Karanpur, P.O. Phatepur, P.S. Barsoi, District- Katihar.

.... Appellant

Versus

Sawan Devi, wife of Suresh Dev Sharma, D/o Sri Anto Das, resident of village- Karanpur, P.S. Barsoi, District- Katihar.

.... Respondent

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Appearance :

For the Appellant : Mr. Praween Kumar Jaipuriar, Advocate
Mr. Anshuman Jaipuriyar, Advocate

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 30-08-2017

The instant First Appeal is directed against the judgment and decree dated 11.08.2000 and 21.08.2000 respectively, passed by Sri Shreenarayan Choudhary, the then District Judge, Katihar in Matrimonial Case No. 31 of 1999, whereby and whereunder the matrimonial case was dismissed without cost.

The appellant-petitioner brought the aforesaid matrimonial case under Section 13 of Hindu Marriage Act for dissolution of marriage between the applicant Suresh Dev Sharma and opposite party Sawan Devi on the ground of desertion and adultery.

The learned Court below after considering all the materials available on the record came to the conclusion that applicant



has not been able to prove the case of desertion and adultery and accordingly, dismissed the matrimonial case. The applicant and opposite party both produced oral and documentary evidences in support of their claim. On behalf of applicant Exhibit-1 is the certified copy of complaint petition of Complaint Case No. 1536 of 1999 as well as the statement of the complainant on solemn affirmation whereas Exhibit-2 is the certified copy of order dated 08.05.2000 passed in Complaint Case No. 1536 of 1999.

From Exhibit-1, it reveals that the complainant Sawan Devi who is respondent herein has stated on the Court question, in her statement at solemn affirmation, that her husband has got one more wife and she is the second wife and his first wife is living with her husband and from first wife there is a son and three daughters. She has also stated that at the time of marriage she was knowing that her husband has got wife from earlier and from Exhibit -1 it is manifest that at the time of marriage the applicant Suresh Dev Sharma was having his first wife and during the lifetime of his first wife, he performed second marriage with the respondent and on that ground the complainant case filed by the Sawan Devi was dismissed under Section 203 Cr.P.C. vide Exhibit-2, by order dated 08.05.2000 by the Judicial Magistrate, 1st Class. From these Exhibits, it is manifest that Sawan Devi, the respondent, is not the legally married wife of the



appellant and, as such, the case brought under Section 13 of the Hindu Marriage Act is not maintainable and is fit to be dismissed on this ground alone.

The appellant ought to have filed application under Section 11 of the Hindu Marriage Act for declaring the said marriage as void marriage. Section 11 of the Hindu Marriage Act, 1955 reads as follows:-

11. Void marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Sub clause (i) of Section 5 of Hindu Marriage Act runs as follows.

(i) neither party has a spouse living at the time of the marriage;

Thus, here, the marriage, as per the respondent, is a void marriage, further though there is a ground of adultery but the man with whom it is alleged that the opposite party-respondent was having illicit relationship has not been made party and, as such, on



that ground also the suit as framed is not maintainable.

Accordingly, it is held that the suit as framed is not maintainable and in the result, finding no merit in this appeal the same is hereby dismissed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

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