

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.479 of 2013

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Sanju Devi W/O Sanjeev Kumar And D/O Sri Bigon Sah Resident Of Village
Harpur Belara, P.S- Maniyari, District- Muzaffarpur, Presently Residing At
Village Sehhan Chowk, P.O- Sehhan, P.S- Chheharakala, District- Vaishali.

... .. Appellant/s

Versus

1. Sanjeev Kumar S/O Sri Krishna Mohan Sah Resident Of Village Sarmaspur,
P.S- Kanti, District- Muzaffarpur.
2. Pappu Kumar S/O Not Known, Resident Of Village- Harpur Balara, P.S-
Maniyari, District- Muzaffarpur,

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arun Kumar, Adv & Mr. Nirmal Kumar Sinha No. 3, Adv
For the Respondent No. 1:		Ms. Punam Srivastava, Adv & Mr. Pradeep Kumar Sinha, Adv.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 20-09-2017

This appeal has been preferred by the appellant
-wife-opposite party no.1 assailing the judgment and decree
of divorce granted by the Principal Judge, Muzaffarpur in
Matrimonial Case No.266 of 2008 filed by the husband -
respondent no.1 - appellant.

We have heard learned counsels for the parties



and have perused the records of this case.

Opposite Party No. 2 i.e. Pappu Kumar despite service of notice did not appear in this matter.

The husband-respondent no.1, instituted the Matrimonial Case No. 266 of 2008 for grant of decree of divorce under Section 13 of the Hindu Marriage Act, 1954, and had impleaded Pappu Kumar as -Opposite Party No. 2 alleged his paramour of Wife, i.e., the opposite party no.2 - appellant.

As per the application filed on behalf of the respondent no. 1, the marriage was performed with the appellant on 06.07.2000, and thereafter the appellant Wife-Opposite Party No. 1 came to her matrimonial home. However, the wife did not allow the husband to co-habit right from the beginning and as such it is claimed that the marriage was never consummated. It has been alleged in the plaint that when she was asked about some love letters written by the Opposite Party No. 2/Respondent no. 2-Pappu Kumar, she disclosed that she was not only having love affair but also physical relation with him. In the application, instances have been given showing intimacy



between the appellant-wife and aforesaid Pappu Kumar. It is also stated that since May-2005, when she left the matrimonial home, the wife never came back to her matrimonial home and never allowed any co-habitation to the husband-respondent no. 1 even at her paternal house, whenever the husband visited. The applicant has stated in paragraph no. 15 of the plaint that he is not the biological father of the son born to the wife in July-2006 and he proposed that D.N.A test should be performed to establish paternity.

Appellant-wife has already stated in paragraph no. 16 of the written statement that the allegation made by the applicant that the son was not born from the said wedlock is totally incorrect and she is ready for the D.N.A test.

After notice the Opposite Party No. 1 i.e. the appellant-wife did not turn up and the case proceeded for ex parte hearing. Subsequently, after examination of four witnesses the wife-Opposite Party No. 1 appeared and filed written statement stating that she is handicapped and also made statement that Rs. 5 Lakhs were given as gift to the



applicant with the help of which he is running a jewellery shop. She denied the allegation that the child born in the year 2006 is not from the wedlock with the applicant and has also alleged that applicant himself has performed second marriage and, as such, he did not want to keep the appellant-Opposite Party No. 1. Allegedly, she was ousted from the house. It is also claimed that the petitioner-husband is not maintaining her. Even though the Principal Judge, Family Court, Vaishali has ordered for payment of maintenance of Rs. 8000/- per month but the same is not being paid.

Altogether four witnesses were examined by the husband-applicant, whereas wife appellant-Opposite Party No. 1 had examined altogether three witnesses.

After appreciating the legal evidence, the court below has granted decree of divorce holding that for the last seven years the parties are living separately and there is no chance of their re-union. Since the Principal Judge, Family Court, Vaishali has already allowed maintenance @ Rs. 8000/- per month, no further order was passed with respect to grant of maintenance.



The appellant has questioned the judgment on several grounds. First ground is that no finding has been recorded by the Family Court upon the allegation made by the husband that the wife is leading unchaste life. Simply, it appears that the decree of divorce has been granted on the basis of the fact that for last 6 to 7 years, both the husband and wife are living separately and there is no question of re-union. It is contended that there is no provision under the Hindu Marriage Act, 1955 to grant decree of divorce on the ground of irretrievable break down of the marriage. Prima facie, the aforesaid submission made on behalf of the appellant appears to be attractive. However, during the course of hearing of appeal further development has taken place. Vide order dated 18.11.2016, a co-ordinate bench of this Court, while hearing this appeal, has recorded that the moot issue to be established in this dispute is as to whether the child was born from the wedlock of the applicant-husband and wife-Opposite Party No. 1, i.e., if the respondent no.1 is the biological father of the child or not. For that purpose, a co-ordinate Bench of this court directed for conducting D.N.A test and accordingly samples were



collected and sent to the Director, Forensic Science Laboratory, Bihar, Patna. Report has been submitted by the Director, Forensic Science Laboratory, Bihar, Patna. It appears from the report that three samples were collected. One sample was collected from the applicant-Respondent No. 1, Sanjeev Kumar and marked as 'Exhibit A'. The second sample was collected from the appellant-wife Sanju Devi and marked as 'Exhibit B', and the third sample was collected from Prakash Kumar i.e. the son and was marked as 'Exhibit C'. In the report following observations have been made:-

“Observations:-

(a) Human DNA could be recovered from each of the exhibits marked A, B and C respectively.

(b) The male and female origin of the DNA recovered from the exhibits marked A, B and C were established by Amelogenin marker.

(c) From the comprehensive analysis of the test results of the above individuals as shown in table above. It is found that under each of the Four STR Locus viz. D7S820, VWA, D5S818 and FGA Sanjeev Kumar (Blood source-Exhibit marked 'A') is lacking and allele which he ought to have contributed to the child Prakash Kumar (Blood source-exhibit marked 'C') had he been the biological father.



Conclusion:-

On the basis of observation Sanjeev Kumar (Blood source-Exhibit marked 'A') could be excluded as biological father of Child Prakash Kumar (Blood source-Exhibit marked 'C')."

One would have, thus, to come to the conclusion that at least respondent no. 1-Sanjeev Kumar is not the biological father of the son which the wife claims to have born from the said wedlock. The appellant had agreed for the D.N.A. test and has not challenged the finding of the Forensic Science Laboratory. Thus, it is accepted as additional evidence for the purpose of taking decision in the matter.

In such circumstances, the finding of the Forensic Science Laboratory has to be accepted and it has to be held that the child having not been born from the said wedlock, the fact that the wife was not leading a chaste life stands established. Thus the claim of the applicant made in paragraph no. 15 of the plaint filed in the matrimonial case has to be accepted.

In such situation, this Court is not in a position to interfere in the decision taken by the court below, as a result



this appeal fails and is, accordingly, dismissed.

The report sent by the Forensic Science Laboratory, Bihar Patna, would form part of the records of this case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
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