

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.231 of 2016

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Ankit Kumar, S/o- Shri Ramjee Singh, resident of Village- Bach, P.S.- N.H.
Bangra, District- Samastipur.

Plaintiff Appellant/s

Versus

1. Deepa Kumari, D/o- Upendra Singh, resident of Village- Singhiya Khurd,
P.S.- Samastipur Muffasil, District- Samastipur.
2. Pappu Kumar, S/o- Deo Narayan Singh, resident of Village- Majhauilya, P.S.-
Sakra, District- Muzaffarpur.

Defendant No. 1 & 2... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Rama Shankar Pradhan, Sr. Adv & Mr. Jainandra Kumar, Adv
For the Respondent/s	:	None.

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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 : 07-05-2018

Heard learned counsel for the appellant.

No one appears on behalf of the respondents though
Vakalatnama has already been filed on behalf of respondent no.2.

The appellant filed a petition under Section 13 of the
Hindu Marriage Act, 1955 for dissolution of marriage by grant of
decree of divorce.

In the application filed under Section 13 of the Hindu
Marriage Act, 1955, several allegations have been made including
that Opposite Party No. 1 i.e. respondent no. 1 never allowed the
petitioner to co-habit and they never lead life of husband and wife.
She is of cruel nature and has illicit relationship with Opposite



Party No. 2/respondent no. 2. Further allegation is that on 25.04.2013, when the Opposite Party No. 2/respondent no. 2 refused to come from her Naihar at the matrimonial house the present suit was filed. According to the plaint, the marriage was solemnized after practicing the hindu rites and customs on 23.05.2012.

So far as desertion by the respondent-wife is concerned, in our view such ground for dissolution of marriage was not available to the appellant, as the application under Section 13 of the Hindu Marriage Act, 1955 for that purpose was filed much before the required period of two years preceding filing of the case.

So far the issue of cruelty is concerned, it appears that the application is very cryptic as no instances have at all been given in the plaint as to when and in what manner the petitioner and his family members were subjected to cruelty. So far as illicit relation with Opposite Party No. 2/respondent no. 2 with Opposite Party No. 1/respondent no. 1 is concerned, merely a sentence has been written that she is leading adulterous life with Opposite Party No. 2/respondent no. 2 but no instance or anything has been disclosed or brought on record to show as to how the appellant came to such conclusion.



Similarly, while leading evidence also the mother of the appellant who had been examined as PW-1 as well as father of the appellant who has been examined as PW-2 and even the appellant himself who has been examined as PW-3 have not disclosed anything save and except what is stated in the plaint. Meaning thereby that the examination-in-chief is mere reiteration of the plaint and none of them would disclose any instance of cruelty or any reason for coming to the conclusion that the opposite party no. 1/respondent no. 1 is leading an adulterous life. The lack of disclosure of sufficient materials in the plaint gives a fatal blow to the case. That apart in the evidence led by the plaintiff/appellant, mere reiteration of the paragraphs of the plaint in examination-in-chief, which is on affidavit, would not amount to evidence. Reference in this regard is made to a decision of the Division Bench of this Court in the case of **Seema vs. Suman Kumar Sinha and Ors.** reported in **AIR 2016 Patna 128**. The Division Bench has held that merely stating in the examination-in-chief that the allegations made in the plaint are correct, cannot be considered to be a testimony by him in support of his allegation as he did not state anything in his examination-in-chief on affidavit in terms of Order XVIII Rule 4 of the Code of Civil Procedure, because allegations, however, may be grave cannot take place of evidence.



Thus, in such circumstance when there was nothing disclosed either in the plaint or in the examination-in-chief on the relevant issue even the non cross-examination by the other side would not be fatal.

The Family Court has also held that there is no disclosure of any event or circumstance or any sort of evidence either in the petition or examination-in-chief of other witnesses regarding cruelty and the illicit relationship with Opposite Party No. 2/respondent no. 2, thus, the marriage cannot be dissolved on such ground.

Accordingly, in our considered view, this appeal is completely devoid of any merit.

In the result, this appeal is dismissed.

However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.06.18
Transmission Date	N.A.

