

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.657 of 2014

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Subhash Kumar Sah, Son of Late Chhedi Sah Resident of Village-Bahadurganj,
P.S.-Bahadurganj, District-Kishanganj. Appellant.

Versus

1. Radha Rani, Daughter of Uchit Lal Sah, resident of Naya Tola Bari Hat, Purnia,
P.S.-Purnia, District-Purnia.
2. Barun Sah Son of Budhulal Sah, resident of Belauri, P.S.-Sadar Purnia, District-
Purnia.

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Satish Chandra Mishra, Advocate.
Mr. Nurul Hoda, Advocate.

For the Respondent/s : Mr. Hare Ram Sah, Advocate.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 06-04-2018

Heard learned counsel for the appellant and
learned counsel for the respondents on this miscellaneous
appeal.

This miscellaneous appeal has been preferred
against the judgment dated 19.07.2014 and decree dated
25.07.2014 passed by the Principal Judge, Family Court, Purnia
in Matrimonial Case No.35 of 2001, whereby the learned lower
Court dismissed the divorce petition filed by the appellant.

The factual matrix of the case is that the
appellant-Subhash Kumar Sah filed a divorce petition vide
Matrimonial Case No.35 of 2001 under Section 13 of the Hindu
Marriage Act for dissolving his marriage with respondent no.1-



Radha Rani on the ground of desertion, adultery and cruelty with the case in succinct that the appellant was married with respondent no.1-Radha Rani on 19.04.1998 at Purandevi Temple, Purnia. He was blessed with a son out of the aforesaid wedlock on 28.03.2000. Further case of the appellant is that the appellant and respondent no.1 lived as husband and wife till 05.10.1999 and, thereafter, the respondent no.1 left the house of the appellant for her maternal house without his consent and stayed there till 11.03.2001. However, she regressed to the house of the appellant on intervention of the common relatives but she did not allow the appellant to have any sexual cohabitation with her. Further case of the appellant is that respondent no.1 had been leading adulterous life with respondent no.2 since before marriage and despite objection made by the appellant she continued the said misdeed and she did not like to live with the appellant. She was in habit of visiting her maternal house frequently. When she was caught red-handed and protested by the appellant, she compelled the appellant to live separately so that she may enjoy the adulterous life with respondent no.2 in absence of the appellant from his house in connection with his business. His relatives and villagers had also seen respondent no.1 leading adulterous life with respondent no.2. They also



objected the aforesaid misdeeds of respondent no.1 whereupon respondent no.1 started maltreating and defaming the appellant and his family members. She also began to live outside of her house to relish the adulterous life sometimes for an hour and sometimes for the entire day and on the objection made by the appellant and his family members she turned cruel. She stopped performing the household works. She left the house of the appellant on 05.10.1999 on objection made by the appellant against her aforesaid misdeeds, but she again regressed to his house on 11.03.2001. When the appellant tried to have access to the respondent no.1 she extended threatening of false implication of the appellant and his family members in criminal cases. She also filed false case of torture and dowry demand against him and his family members vide Bahadurganj P.S. Case No.77 of 1999. To overcome the rigors of the said case, the appellant compromised the said case with respondent no.1 by purchasing Kisan Vikash Patra worth of Rs.31,000/- in her name but the respondent no.1 continued to lead adulterous life with respondent no.2 and started extending threatening to the appellant to pay Rs.1,00,000/- to her to lead a wayward life. Further case of the appellant is that on 11.07.2001 respondent no.1 extended threatening to eliminate him by administering



poison or setting him ablaze in case of entering into her room. He accorded sufficient opportunity to respondent no.1 to lead loyal life with him but in vain. Thus, the respondent no.1 has been treating the appellant with cruelty.

Both the respondents put their appearance in the case and filed a joint written statement and contested the suit by taking defence that respondent no.1 used to live with the appellant as his wife with full honour and dignity and give respect to his parents and the appellant also established sexual cohabitation with her and with the sexual enjoyment one child, namely, Suraj Kumar was born to them. She always used to obey her husband and was living in his command but the appellant and his parents deserted her subjected her to torture and cruelty for not coughing up demand of Rs.50,000/- and Rajdoot motorcycle. It is further stated that on 08.06.1999 respondent no.1 was brought to her parents' house by her husband after brutally assaulting her and was left at her parents' house in mental agony. Thereafter, she filed Bahadurganj P.S. Case No.77 of 1999 against the appellant and his family members. The appellant, however, got the aforesaid case compromised and he continued to pay visit to her and assured her not to repeat the said occurrence in future and also



established sexual cohabitation with her several times. Thereafter, she went to her matrimonial house with the appellant and lived there for sometime but, appellant again started subjecting her to torture and cruelty due to non-fulfillment of the dowry demand. Succumbing to the said torture she left the matrimonial house on 24.08.2001 and is now living in her maternal house and the appellant has not been taking care of her and her child and deserted them. They have denied the allegation of adultery levelled against them by the appellant submitting that the respondent no.2 never visited the matrimonial house of respondent no.1. Respondent no.1 also denied deserting the matrimonial house on 05.10.1999 and extending threatening to appellant and his family members of false implication in the case. She also denied making demand of money from the appellant. Respondent no.1 has also submitted that her parents accorded her stridhan, cash and other articles which have been wrongfully withheld by the appellant, which is liable to be returned. By filing the written statement, they have prayed for dismissal of the aforesaid suit.

On the basis of the pleadings of the parties, the learned lower Court framed several issues. In buttress of his case appellant examined three witnesses, namely, Abdul Wahid as



A.W.1, Md. Chani as A.W.2 and the appellant himself as A.W.3. Respondent no.1 also examined three witnesses in buttress of her case, namely, Hare Ram Sah as D.W.1, who is the brother of respondent no.1, Uchit Lal Sah, the father of respondent no.1, as D.W.2 and respondent no.1 herself as D.W.3.

After hearing the parties and perusing the record, the learned lower Court deciding the case issue wise dismissed the aforesaid case of the appellant.

Being aggrieved and dissatisfied with the aforesaid judgment and decree, the appellant has preferred this miscellaneous appeal.

For deciding the case properly and effectively, we hereby formulate following three points for consideration:

- I. Whether the respondent no.1 had deserted the appellant for continuous period of not less than two years immediately preceding the filing of the divorce case by the appellant?
- II. Whether the respondent no.1 was leading adulterous life with respondent no.2 since the beginning of the marriage?
- III. Whether the respondent no.1 subjected the



appellant with cruelty?

Point No.I

From perusal of the case and evidence of the appellant, it appears that respondent no.1 stayed with the appellant for 1½ years till 05.10.1999 and thereafter she deserted him and left to her maternal house and filed Bahadurpur P.S. Case No.77 of 1999 against him and his family members but after compromise in the aforesaid case respondent no.1 came back to her marital house on 11.03.2001. Thereafter she stayed at her marital house for around 18 months and then in the rented house of Rajendra Choudhary for 2-3 months with the appellant. Thus the respondent no.1 stayed with the appellant till 11.12.2002. But from perusal of the record, it appears that the appellant had filed divorce case on 20.07.2001 i.e. during her stay at her marital house after regressing there following the compromise in the case on 11.03.2001. Thus, it is crystal clear that respondent no.1 has not deserted the appellant for more than two years before filing of the divorce case against her by the appellant. While as per Section 13 (1) of the Hindu Marriage Act the desertion must be for continuous period not less than two years immediately preceding the filing of divorce case. Hence, the divorce case on the ground of desertion filed by the



appellant against the respondent no.1 is not maintainable.

Point No.II

The burden to prove that respondent no.1 was enjoying adulterous life with respondent no.2 since before marriage and during the pendency of the marriage squarely lies on the shoulder of the appellant. To discharge the aforesaid burden, the appellant has examined two independent witnesses, namely, A.W.1 and A.W.2, and himself. A.W.1-Abdul Wahid in his examination-in-chief has made vague statement that respondent no.1 is having illicit relation with respondent no.2. While in his cross-examination he has candidly stated that he had not seen respondent no.1 enjoying the illicit relation with Barun Sah (respondent no.2) rather had simply seen the Barun Sah visiting her house. Likewise A.W.2-Md. Chani has also stated in his examination-in-chief that in absence of the appellant respondent no.2-Barun Sah always paid visit to the respondent no.1 and Barun Sahh was having illicit relation with respondent no.1-Radha Rani. But, in his cross-examination he has stated that neither he had seen any illicit relation between them nor anyone has divulged him about any illicit relation of Barun Sah with Radha Rani. Though the appellant in his examination-in-chief has stated that respondent no.1 was having



illicit relation with respondent no.2 who always used to pay visit to his house. He has also seen them in objectionable position and protested it. On protest, the attitude of his wife turned bad and she always used to quarrel with him and stopped working the household work and misbehaved and extended threatening. She did not terminate her illicit relation and always remains absent from his house. As per the case of the appellant, his relatives and villagers had also witnessed the respondent no.1 enjoying the illicit relation with respondent no.2 but neither any relative nor any of his villager has been examined by the appellant to substantiate the aforesaid case. While A.W.1 & A.W.2 are residents of other villages than of appellant. Appellant has also not adduced any cogent and tangible evidence regarding leading of adulterous by respondent no.1 with respondent no.2. As stated by him in para-7 of his cross-examination he has also not given any information or filed any case in the police station regarding the aforesaid illicit relation rather he had organized panchayati but he had failed to disclose the date of panchayati. He has also not examined any punch in substantiation of holding panchayati regarding the aforesaid illicit relation of respondent no.1 with respondent no.2. Mere making vague allegation of leading adulterous life against his wife without establishing the



same with tangible and cogent ocular and documentary evidence, the aforesaid case of adultery does not stand established rather the appellant by making such allegation committed the cruelty against the respondent no. 1 by her character assassination. Admittedly, respondent no.2 happens to be brother-in-law (Sharu) of the appellant and often visit of respondent no.2 in the house of appellant by no stretch of imagination gives inference of leading adulterous life by him with his Sali (respondent no.1). Thus, in the aforesaid facts and circumstances of the case, we find and hold that the appellant has utterly and miserably failed to substantiate his aforesaid case of leading the adulterous life by respondent no.1 with respondent no.2 since the beginning of marriage.

Point No.III

Regarding this point, it is the case of the appellant that on protest made by the appellant on leading adulterous life by respondent no. 1 with respondent no.2 and on finding them in the compromising position, she started maltreating him and his family members and stopped doing the household work and also did not allow him to have sexual cohabitation with her and thus subjected him to great mental agony and cruelty. A.W.1 has stated in his examination-in-chief that respondent no.1 used not



behave properly with appellant and his family members and used bitter language against them till her stay in the marital house. But, in his cross-examination he has failed to disclose the date, day and time on which the respondent no.1 used bitter language against her in-laws in her marital house. A.W.2 though has stated in his examination-in-chief that respondent no.1- Radha Rani was having bad relation with her in-laws and she used to quarrel with them. But, from perusal of the record, it appears that A.W.1 is the resident of village Samesar and A.W.2 is the resident of village Guf Chaurasi while appellant is the resident of village Bahadurganj. Thus, they happens to be residents of different villages and of different religion and being the resident of different village they have no occasion and scope to see the affairs of the appellant and respondent no.1, their relation and behaviour of respondent no.1 with the family members of appellant. Moreover from perusal of the evidence of the appellant it appears that he has also not mentioned any specific day, date and time of subjecting him and his family members to cruelty, maltreatment and misbehave by respondent no.1. He also does not appear to have filed any petition or case against the respondent no.1 or organized any panchayati in the village regarding the aforesaid aspect of the case. More so,



neither his parents nor any member of his family nor any of his relative has come forward in corroboration of the aforesaid case of the appellant. Thus, the aforesaid vague allegation of the appellant remained uncorroborated by any ocular or documentary evidence.

On the other hand, respondent no.1 denied the aforesaid allegation made by the appellant against her. Respondent no.1, his brother and father examined in this case as D.W.1 and D.W.2 respectively have stated that it is the appellant who used to thrash the respondent no.1 over dowry demand and broke her teeth assaulting her. Regarding the aforesaid misdeed of appellant, Bahadurganj P.S. Case No.77 of 1999 was lodged against the appellant and his family members, which the appellant got compromised.

So far as non-establishing of sexual cohabitation as stated by the appellant is concerned, the respondent no. 1 has vehemently denied the same and stated that the appellant used to establish sexual relation with her several times in her matrimonial house and in her maternal house and they were blessed with a son out of the aforesaid bed lock. Birth of a son out of aforesaid bed lock has not been denied by the appellant. Taking birth of a son out of bed lock of the appellant and



respondent no. 1 itself indicates establishing of sexual cohabitation between the couple.

On the other hand, the appellant has made allegation of leading adulterous life against the respondent no.1 with respondent no. 2, but he has failed to substantiate the same which tantamount to subjecting the respondent no.1 to cruelty at the hand of appellant himself by making her character assassination.

In view of the aforesaid facts and circumstances and the discussions made by us hereinabove, we find and hold that the appellant has utterly and miserably failed to substantiate his aforesaid case and the impugned judgment and decree passed by the learned lower Court dismissing the aforesaid divorce petition of the appellant does not suffer from any illegality or impropriety warranting our intervention hence the same is hereby upheld. Accordingly, this miscellaneous appeal is dismissed. The cost of appeal is made easy.

(Dr. Ravi Ranjan, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2018
Transmission Date	21.05.2018

