

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.281 of 2015

Harendra Prasad Yadav S/o Jagi Lal Chaudhary, Resident of vill- Purab Tola,
Harkhauli, P.S. Mirganj, Distt- Gopalganj.

... Applicant/ Appellant

Versus

Asha Devi D/o Sri Jagar Nath Chaudhary, R/o Vill- Farhadawa, P.S.- Mirganj,
Distt- Gopalganj.

... Opposite Party/ Respondent

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary, Advocate

For the Respondent/s : Mr. Umesh kumar Singh, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 18-05-2018

Heard parties.



This appeal has been preferred against the judgment and decree dated 24.07.2015/31.07.2015 passed in CIS Case No. MM 1295-2013, corresponding to Old Case No. M.M. 10/2000 by which the application filed by the applicant-appellant under Section 13 of the Hindu Marriage Act for dissolution of his marriage with the opposite party-respondent has been dismissed.

The fact emanating from the pleadings of both the parties stands narrated as under:-

According to the applicant-appellant, the marriage between the parties was solemnized according to the Hindu rites and customs in the year 1993. After marriage, opposite party-respondent came to the matrimonial house, however, her behaviour was not up-to the mark being uncivilized as she always used to abuse the family members of the applicant-appellant. Apart from the above, she was also not performing household job. The old parents of the applicant-appellant were not being looked after by her. Despite several efforts by the applicant-appellant to convince her to mend her ways, the same proved futile. Further allegation is that in the month of February 1997, the opposite party-respondent, without informing the family members of the applicant-appellant, went to her parents' home and there she gave birth to a child. The applicant-appellant made several efforts to



pursue her to come back to the matrimonial house but she did not become ready. It is further alleged that since 1997, for a continuous period of two years, she deserted the applicant-appellant and given a complete go-by to the matrimonial obligations. In such a situation, an application under Section 13 of the Hindu Marriage Act came to be filed by the applicant-appellant for dissolution of marriage. The opposite party-respondent also filed her written statement admitting her marriage and birth of a male child in the year 1997 but she made allegation that her in-laws always neglected her with bad intention. She tried to adjust in the family by tolerating the trouble created by the applicant-appellant, who was practising as a compounder in Gopalganj, however, nothing proved fruitful as he has solemnized his second marriage with a stranger lady and he is living with her at Gopalganj. The opposite party-respondent claims that the second wife is not a legally wedded wife but merely a concubine. It is further stated that applicant-appellant willfully disregarded the opposite party-respondent and threatened to kill her and her family members. He deliberately turned out the opposite party-respondent on the pretext that his mother was seriously ill and he wanted to disconnect relationship with



opposite party-respondent and lead a luxurious life with the concubine.

In the background of the aforesaid factual matrix, the family court framed following issues:-

- I. Is the case as framed maintainable?
- II. Has the applicant got valid cause of action for the case?
- III. Whether, the applicant has been deserted by the O.P. since more than 2 years?
- IV. Whether, the opposite party treated the applicant with cruelty?
- V. Whether, the applicant is entitled to decree of divorce?
- VI. To what other relief or reliefs, if any, the applicant is entitled?

Altogether, four witnesses were examined on behalf of the applicant-appellant out of them, A.W. 4, Harendra Prasad Yadav is the applicant himself, A.W.3, Nagendra Yadav is applicant's brother, whereas, A.W.1, Dharmdeo Chaudhary and A.W.2 Rangi Chaudhary are other witnesses. That apart, documentary evidence such as certified copy of order sheet of complaint case No.1632/03, Trial No.1728/05, Jagarnath



Chaudhary Vs. Harendra Yadav and certified copy of Misc. Case No.161/10 (Asha Devi Vrs. Harendra Yadav) filed under Section 125 Cr.P.C. have been proved as Exts. 1 and 2 respectively. On behalf of the opposite party-respondent, three witnesses have been examined. O.W. 3, is opposite party-respondent Asha Devi herself, whereas, O.W. 1, Jagarnath Chaudhary is her father and O.W. 2, Baleswar Bhagat is another witness. She has also brought on record the certified copy of the judgment passed in Complaint Case No.1632/2003 as Ext. A, whereas, voter list of the year 2009 of the concerned M.L.A. constituency has been proved as Ext. B.

The applicant-appellant, while being examined as A.W.4, has stated that behaviour of the opposite party-respondent was cruel, impractical, abusive and quarrelsome. She was not looking after parents of the applicant-appellant and, as such, peace eluded the family. A.W.1 and A.W.2 have also deposed to that extent. It appears that after marriage in *Baishakh* in the year 1993 till February 1997, the opposite party-respondent lived in matrimonial house as A.W. 4 has also admitted in his testimony that she remained at the matrimonial house for four years but there is general allegation against her behaviour being rough, impractical and abusive. However, it is well established that however grave may be the allegation in the pleading, that has to



be supported by leading evidence either documentary or oral by giving instances of the incidence which is absolutely lacking in the testimony of the A.Ws. Neither in the pleading nor in the evidence, any specific date or any incident showing cruelty on part of the wife has been given. Thus, the allegation of cruelty would have to be discarded being vague. There is allegation in the pleading and also in the deposition of the A.W.4 that behaviour of the wife was not good with his parents and she was not serving her in-laws. However, surprisingly, the father-in-law and mother-in-law have not been examined as witness by the applicant-appellant. Two witnesses are outsiders though applicant-appellant has also examined his brother but neither the applicant nor his brother could give specific date and instance disclosing the incidence showing them to be treated in a cruel manner by the wife even during four years of her admitted stay in the matrimonial house.

So far the issue of desertion is concerned, the allegation is that in the month of February 1997, the opposite party-respondent escaped to her parental house without informing the applicant-appellant and his family members and, thereafter, even on persuasion on several occasions, she declined to return and for continuous period of 2 years. Thus, she has deserted the applicant-appellant and given complete go-by to her matrimonial



obligations. When the applicant-appellant's side went to pursue her and bring back, her father refused and kicked him out of his house.

However, case of the opposite party while being examined as O.W. 3 is that after marriage, she went to her matrimonial house and served all and also cooked food but the applicant-appellant and his family members started taunting her to be of a lower family and illiterate rustic lady. They directed her to call her father and go with him to her parental house. Her father tried to convince them but in vain. So far documentary evidence is concerned, Ext. A, it is apparent that the husband, i.e., the applicant-appellant has already been convicted by a competent court in the complaint case No.1632/03 for subjecting the wife to cruelty. Ext. B shows that in the voter list, one Geeta Yadav has been shown as his wife which corroborates the claim of the opposite party-respondent that the applicant-appellant has solemnized the second marriage.

In such a situation, in our view, the family court has rightly dismissed the application of the applicant-appellant as he had neither been able to prove to be treated with cruelty by the respondent nor could he prove desertion as it appears that he himself had treated the opposite party-respondent with cruelty and



her claim that she was thrown out of matrimonial home has some basis after a competent court has convicted the husband under Section 498 A and 406 of the Indian Penal Code.

In the result, this appeal being devoid of any merit, is dismissed.

Let the lower court records immediately be sent to the court below.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd / Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.06.2018
Transmission Date	NA

