

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 187 of 2015

- Teksai Rajwade, son of Balsai aged about 38 years, Caste - Rajwar, Occupation - Cultivator, resident of village - Girvarganj, Police Station & Tahsil - Surajpur, District - Surajpur (C.G.)

---- Appellant

Versus

- Leelavati, wife of Teksai Rajwade, aged about 35 years, Caste - Rajwar, Occupation - Housewife, resident of village - Girvarganj, at present village - Badkapara, Surajpur, Police Station & Tahsil - surajpur, District - Surajpur (C.G.)

---- Respondent

For Appellant	: Shri D. N. Prajapati, Advocate
For Respondent	: None appears

SB : Hon'ble Shri Justice Sharad Kumar Gupta

17.04.2018

- 1) Challenge in this appeal is levied to the judgment and decree dated 14.10.2015 of the District Judge, Surajpur, District Bilaspur passed in Civil Suit No.40-A/2014, whereby and whereunder he dismissed the suit of the Appellant filed under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955').
- 2) This is admitted by the Respondent that 20-22 years ago from 18.09.2014 marriage of the parties solemnized under the Act, 1955 and customary rights and rituals, in wedlock, four children have born, namely, Ku.Babita, Ku.Deepmala, Arjun and Ku.Anju. Ku.Babita, Ku. Deepmala and Arjun are living with the Appellant and Ku.Anju is living with the Respondent, Respondent has filed an application under Section 125 Cr.P.C. for obtaining maintenance of herself and daughter Ku.Anju, the Appellant had kept another

woman, Respondent is living in her maternal house in village Badkapara, Surajpur.

- 3) In brief, Appellant's case is that the Respondent has abandoned his house and living in her maternal house, though he is willing to keep her along with him.
- 4) In brief, Respondent's case is that the Appellant is habitual drunker and is addicted to narcotic drugs. He was harassing her saying that she is dark complex and ousted her after beating. The Appellant also had contracted second marriage with Belabai and they are living as husband and wife.
- 5) After completion of the trial, the trial Court pronounced the judgment and decree as aforesaid. Being aggrieved, the Appellant preferred this appeal.
- 6) Shri D. N. Prajapati, learned counsel for the Appellant, argued that the Respondent had left the matrimonial house without any just and sufficient reason. Thus, the aforesaid judgment and decree may be set aside.
- 7) The Respondent has not appeared today nor she is represented. She has refused to take notice.

Points for determination :-

The following points are for determination in this case :-

- (1) Whether the Respondent has withdrawn the society of the Appellant without any reasonable cause ?

- (2) Whether the Appellant is entitled to get the decree of restitution of conjugal rights against the Respondent ?
- (3) Relief and costs.

Point for determination No.1 - Findings with reasons :-

- 8) The trial Court did not frame the issue regarding withdrawal of the society without any reasonable excuse by the respondent, for determination, though it ought to have been done by the trial Court. The evidence available on record shows that the Appellant has adduced evidence regarding this point for determination and the Respondent had followed the opportunity to adduce evidence regarding this point for determination. The evidence available on record is sufficient to enable the Court to pronounce the judgment. Non-framing of the issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions of Order 41 Rule 24 of the Civil Procedure Code, 1908, this Court finds that it may pronounce the judgment in this appeal.
- 9) A.W.-1, Tekesai, A.W.-2, Lakhan Ram in paragraph 2 of their evidence given on oath submitted that Respondent has deserted the Appellant without any reasonable cause.
- 10) In the matter of **P. Rajeshkumar Bagmar vs. Swathi Rajesh Kumar Bagmar {CRP (PD) 3006 of 2007}**, in para- 10, Hon'ble Madras High Court has held as under :-

"when either of the spouse, without any reasonable cause withdrawn from the society of the other, the

aggrieved party may apply by petition for restitution of conjugal rights and the Court on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted may decree restitution of conjugal rights accordingly. The explanation to the said section speaks that where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. The explanation means that the spouse alleges reasonable excuse has to prove it. I endorse the view expressed by the learned single judge in the case reported in ([Smt. Jyothi Pai vs. P.N. Pratap Kumar Pai](#)) AIR 1987 Karnataka 241 that explanation to [Section 9](#) does not make any change and that initial burden to prove the allegation on the basis of which restitution of conjugal rights is sought is on the person who comes to the Court. In this case, the petitioner, who approached the Court for a judgment and decree in his favour on the assertion that the respondent had withdrawn from his society without any reasonable excuse. The burden of proof in the proceedings lies on the petitioner to prove those averments made by him to get a decree in his favour. Hence, the petitioner who alleges withdrawal without reasonable cause failed to lead evidence, he may not be in a position to satisfy the Court regarding the truth in the pleadings, hence, he has to lead evidence, then the burden will be shifted to the respondent to establish reasonable excuse. Even when the respondent made counter claim under [Section 23-A](#) of the Hindu Marriage Act, it does not make any change in the position of law."

- 11) A.W.-1 Teksai, A.W.-2 Lakhan Ram say in paragraph 4 during their cross-examination that this is true that the Appellant has kept a woman named Belabai as wife.
- 12) After appreciation of the evidence discussed herein before, looking to the appellant's case, this Court finds that keeping another woman Belabai is just and sufficient ground for the Respondent to live separately from the Appellant.
- 13) After the appreciation of the evidence discussed here before and looking to the judicial precedent, laid down by the Hon'ble Madras High Court in **P Rajeshkumar** (supra) case, this Court finds that the Appellant failed to prove that the Respondent has withdrawn from his society without reasonable excuse. Thus, this Court decides point for determination No.1 accordingly.

Point for determination No.2 - Findings with reasons :-

- 14) This has been earlier decided that the Appellant failed to prove that the Respondent has withdrawn his society without reasonable excuse, thus the Appellant is not entitled to get the decree for restitution of the conjugal rights against the Respondent. Thus, this Court decides point for determination No.2 accordingly.

Point for determination No.3 - Findings with reasons :-

- 15) After complete appreciation of the evidence discussed herein before, this Court finds that there is no substance in this appeal. Thus, the impugned judgment and decree of the trial Court are

hereby affirmed as to aforesaid extent. The appeal deserves to be and is hereby dismissed.

16) Appellant shall bear his own costs as well as costs of the Respondent also.

17) Decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
JUDGE