

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1185 of 2016

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Banti Kumar, Son of Kapil Mandal, Resident of Naya Tola, Lakhisarai, P.S.
and District Lakhisarai.

... .. Appellant

Versus

Soni Kumari, Daughter of Kishori Ram, Resident of Santar, Ward No.13,
Railway Colony, Purani Bazar, P.S. and District Lakhisarai.

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Upendra Prasad-II, Advocate Mr. Narsingh Tanti, Advocate
For the Respondent	:	Mr. Binay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

25-09-2020

Heard learned counsel for the appellant and the
respondent.

I.A. No. 2843 of 2017

The aforementioned Interlocutory Application was
preferred for condoning the delay of 30 days in filing the
present appeal.

It appears that notices were issued in the limitation
matter to the sole respondent vide order dated 29.8.2017. The
office note dated 18.10.2017 reflects that notices were validly
served upon the respondent and she entered appearance through
her counsel but the delay was condoned vide order dated
27.11.2017, when none appeared on behalf of the sole



respondent.

The present Miscellaneous Appeal has been filed for setting aside the judgment dated 01.08.2016 passed by learned Principal Judge, Family Court, Lakhisarai in Matrimonial Case No.14 of 2016 whereby the appellant has been directed to restitute the conjugal rights with the respondent.

The factual matrix of the case is that the respondent claimed to have performed marriage with the appellant in the year 2011 at Rajgir with consent of the appellant in accordance with the Hindu rites. Receipt nos. 297 and 298 dated 12.6.2011 were issued by Rajgrih Tirth Raksharth Panda Samiti, Rajgir in favour of the appellant and the respondent and consequently, joint photograph was taken. The respondent along with the appellant went to Lakhisarai after the marriage. Subsequently, they were blessed with a baby boy who was two and half years old at the time of filing of matrimonial case. Since the appellant subsequently developed relationship with some other girl and was also aggrieved with non-fulfillment of dowry demand, the respondent was driven out from the matrimonial house on 27.11.2015. As a result, the respondent filed Matrimonial Case No. 14 of 2016 under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) before Principal Judge,



Family Court, Lakhisarai for restitution of conjugal rights.

The impugned judgment suggests that the appellant appeared and filed written statement but thereafter he never appeared before the learned Court below, nor produced any evidence nor cross-examined the witnesses of the respondent.

The respondent produced two witnesses- PW-1 being the respondent herself and PW-2 Mala Devi being the mother of respondent. Both the witnesses have deposed to the effect that the marriage was performed at Rajgir on 12.6.2011, a receipt was provided by the religious authority and subsequently, the respondent and the appellant were blessed with a male child. The birth certificate of the child reflects the mother's name as Soni Kumari, the respondent and father's name as Banti Kumar, the appellant.

The learned Principal Judge, Family Court, Lakhisarai framed three issues which read as follows:-

1. क्या आवेदिका विपक्षी की वैध पत्नी है?
2. क्या आवेदिका को वाद लाने का valid cause of action है?
3. यदि आवेदिका विपक्षी की वैध पत्नी है, तो आवेदिका विपक्षी से दाम्पत्य अधिकार प्रत्यास्थापना (Restitution of Conjugal rights) के अधिकारी हैं या नहीं?

The learned court below examined the Receipt nos. 297 and 298 dated 12.6.2011 issued by Rajgril Tirth Raksharth Panda Samiti, Rajgir in favour of the appellant and the



respondent, which have been marked as Exht. 1 and 1/1 and the said receipts bear the names of the respondent and the appellant. The mother and child safety card also bears the names of the appellant and respondent as the parents, which was marked as Exht. 2. The joint photographs of the appellant and the respondent has been exhibited as Exht. 3.

Considering the evidence of AW 1 and AW 2, the learned Court below came to a definite finding that the respondent is the legally wedded wife of the appellant. The respondent has valid cause of action and since the respondent is legally wedded wife of the appellant, hence she is entitled to seek the remedy for restitution of conjugal rights. The appellant did not even choose to appear nor to deny the factum of marriage and to cross-examine the witnesses. Hence, the impugned judgement was passed in favour of the respondent, which is under challenge in the present Miscellaneous Appeal.

The learned counsel for the appellant submits that in the written statement, the appellant denied the factum of marriage and since there is no substantive piece of evidence with regard to marriage, hence the order for restitution of conjugal rights ought not to have been passed. Moreover, there is nothing on record to suggest that the appellant had withdrawn



from society of the respondent and there is no evidence on the said issue.

Learned counsel for the respondent, however, submits that she was married with the appellant and the proof of marriage has been produced before the learned Court below but the appellant did not choose to appear, even to deny the factum of marriage, nor he led any evidence. On scrutinizing the oral evidence and documentary evidence on record, the learned trial court has rightly arrived at the conclusion that the respondent is legally wedded wife of the appellant and hence has passed the order for restitution of conjugal rights.

Having heard counsel for the parties, the only question in the present appeal which is to be considered is whether the respondent has proved her marriage with the appellant and whether the appellant has left the company of the respondent.

The suit for restitution of conjugal right was brought by the respondent. Hence as per Sections 101 and 102 of the Evidence Act, burden of proof was on the respondent to prove that she was the legally wedded wife of the appellant and the appellant has deserted her. Section 101 of the Evidence Act prescribes that whoever desires any Court to give judgment with



regard to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Sections 101 and 102 of the Evidence Act read as follows:

“101. Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.—
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

Prima facie the impugned judgment reflects that the respondent – wife has proved her marriage with the appellant.

Section 9 of the Act provides the circumstances in which the Court can pass decree for restitution of conjugal rights. It mandates that when the husband or the wife without reasonable excuse, withdraws from the society of the other, the aggrieved party may apply, by petition to the District Court, 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 applicant should not be granted the relief, may decree restitution of conjugal rights accordingly. The



explanation of Section 9 suggests 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.

In support of her claim, the respondent examined herself as well as her mother as AW-1 and 2 and produced the receipt of the marriage issued by the religious authority which have been exhibited as Ext-1 and 1/1, joint photographs and the child birth certificate and the evidence to the effect that the appellant has left the company of the respondent. The appellant after filing the written statement never appeared before the court, even to deny the marriage or examined any witness on his behalf or to cross-examine the witnesses. In such circumstance, the evidences produced before the learned Court below remained unchallenged.

Mere denial of marriage in written statement becomes meaningless without any evidence being adduced on behalf of the appellant.

Section 103 of the Indian Evidence Act suggests that the burden of proof as to particular fact lies on that person who wishes the Court to believe in its existence. Hence the respondent has discharged her burden by giving evidence in



proof of the marriage and if the appellant was denying the marriage then he had to prove the same before the learned Court below by cogent evidence but the appellant miserably failed to discharge the liability of burden of proof upon him.

In view of the discussions made above, we do not find any infirmity in the judgment impugned and no merit with Appeal.

Accordingly, the Miscellaneous Appeal is dismissed.

(Dinesh Kumar Singh, J)

(Prabhat Kumar Singh, J)

B.Kr./-Anil/

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

