

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 203 of 2016

- Smt. Sushila W/o Amritlal, Caste- Panika, aged About 28 years, R/o Sadak Dafai, Police Station - Chirmiri, Tahsil- Khadgawan, District- Korea, Chhattisgarh.

---- Appellant

Versus

- Amritlal S/o Samaylal, Caste - Panikam aged About 32 Years, R/o Subhash Colony, Doman Hill, Post- Sonavani, Chirmiri, P.S.- Chirmiri, Tahsil- Khadgawan, District Koriya, Chhattisgarh.

---- Respondent

With

FAM No. 211 of 2016

- Smt. Sushila W/o Amritlal, Caste- Panika, aged about 28 years, R/o Sadak Dafai, Police Station - Chirmiri, Tahsil- Khadgawan, District- Korea, Chhattisgarh.

---- Appellant

Versus

- Amritlal S/o Samaylal, Cate – Panika, aged about 32 years, Caste - Panika, R/o Subhash Colony, Doman Hill, Post- Sonavani, Chirmiri, P.S.- Chirmiri, Tahsil- Khadgawan, District Koriya, Chhattisgarh, Presently Posted As Shiksha Karmi At Primary School, Bodemuda, Cluster & Post- Tamdad, Teh. & Block - Khadgawan, District- Koriya, Chhattisgarh.

---- Respondent

For the Appellant :- Ms. Sharmila Singhai, Advocate

For the Respondent :- Shri Ravindra Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

02.07.2019

1. This order shall govern disposal of the aforesaid two appeals which arise out of common judgment dated 12.02.2016 dismissing wife's application for grant of decree of divorce on the

ground of cruelty but allowing the application under Section 9 of Hindu Marriage Act for restitution of Conjugal Rights filed by the husband.

2. An application under Section 13 of the Hindu Marriage Act was filed by the wife - Sushila against her husband on the pleadings that the parties were married on 12th May, 2011 according to Hindu rites and rituals. Smt. Sushila – wife of Amritlal moved an application under Section 13 of the Hindu Marriage Act for grant of decree of divorce registered as Civil Suit No.67-A/2014 on the pleadings that ever since their marriage, husband's behavior towards his wife had not only been indifferent but also cruel inasmuch as he remained engaged in frequent quarrels on trivial issues. It is also stated in the application that the husband was in the habit of giving assault and unceremoniously shunting her out from the matrimonial house saying that he would contract second marriage because he does not like her. Her further pleading is that on 20th December, 2011 she was assaulted and deserted with the threat that if she came back to live with him, she would be killed. She, therefore, had no option but to go back to her parental house at Haldibadi and inform her parents about this act of the husband. Later on, a community meeting was called but the respondent/husband refused to continue with the marital life. Wife having waited for considerable period, in the absence of any response, was left with no option but to seek decree of divorce. In the reply filed by the husband, the cruelty attributed to him by his

wife was denied. Rather, the husband took a different stand that the wife was not interested in residing with him and after she went to her parental house, she did not return despite repeated efforts made by him and other members of his family. Even in the community meeting, wife - Sushila refused to come back to her matrimonial house.

3. An application under Section 9 of the Hindu Marriage Act was also filed by the husband – Amritlal, seeking restitution of conjugal rights which was registered as Civil Suit No.18-A/2014. In his application it was pleaded that on 16.01.2012 the uncle of Sushila had come for taking her to parental house. Thereafter, no information was given nor did Sushila return. The husband, therefore, sought indulgence of the respectable members of his community and when he went to the house of the wife - Sushila to take her back, her parents refused to send her along with him. Even Sushila did not agree to accompany him. Reply to the application for restitution of conjugal rights was filed by the wife on the ground that she was subjected to cruelty in connection with demand of dowry and, therefore, she was justified in living separately.

4. The two applications were tried together. On the basis of evidence led by both the parties, learned Family Court came to the conclusion that wife failed to prove cruelty or even desertion at the hands of her husband. The husband's application for restitution of conjugal rights was also consequently allowed and a

decree of restitution of conjugal rights was granted in his favour. These two orders have been challenged by these two appeals filed by Smt. Sushila - the wife.

5. Assailing legality and validity of the impugned judgment passed by learned Family Court in aforesaid two matters, learned counsel for the appellant would argue that despite specific pleading and evidence led by wife Sushila that her husband was quarrelsome by nature and that she was subjected to cruelty and assault by him on number of occasions and unceremoniously shunted out of the matrimonial house, the learned Family Court has wrongly rejected her application disbelieving coherent and reliable evidence led by her as also the witnesses examined by her. She would argue that the approach of the learned Family Court to place reliance upon the evidence of respondent/husband and his witnesses particularly Heeralal is not correct because he has admitted in his own evidence that in the community meeting an offer was made to take his wife back which only proves that it was not the appellant/wife who deserted her husband but it is respondent/husband who deserted his wife. It is also argued that learned Family Court has committed an illegality in disbelieving the evidence, finding certain variation in the pleadings which are not very material. Learned counsel for the appellant placed reliance upon two Supreme Court decisions in *Manju Kumari Singh Versus Avinash Kumar Singh*, AIR 2018 3629 and *C. Sembiam Sivakumar Versus V. Sivachitra Devi*, 2016 (16)

SCC 545 in support of her submission that at the stage of proceedings between the parties, when conciliation has also failed and they have been living separately since last about 7 years, the marriage is irreparably broken and when there is no possibility of any reunion between the parties, it would only be better to put an end to their relationship and, therefore, a decree of divorce may be granted in favour of the appellant/wife and decree of restitution of conjugal rights be also set aside because the husband is guilty of cruelty as appellant/wife has clearly stated that she was ill treated and subjected to cruelty by him, and being so, she cannot be compelled to live with the husband under a prejudicial order.

6. On the other hand counsel for the respondent would argue that the learned Family Court has dismissed the application of the wife for grant of decree of divorce after close scrutiny of the pleadings and evidence by recording a well reasoned finding. He would further argue that both the parties led their respective evidence with regard to cruelty aspect of the matter, desertion, community meeting and what transpired in the said community meeting. He would argue that learned Family Court preferred to rely upon the evidence led by the husband because the same is supported by the evidence of an independent witness – Heeralal who was neither related to the parties nor their neighbour but admittedly a respectable inhabitant and an office bearer in the community of the parties. He would also argue that even now, the

husband is willing to keep his wife with him and for this reason only he had moved an application for restitution of conjugal rights.

7. We have heard learned counsel for the parties and perused the records.

8. The application for grant of decree of divorce filed by appellant – Sushila is based on pleadings that right from the time of marriage, the behavior of the respondent – Amritlal has been very dry and cruel and time and again he used to indulge in quarrel on every issue and was also in the habit of giving assault and shunting her out of the matrimonial house saying that he was inclined to contract another marriage because he does not like his wife. A pleading was made that on 20.12.2011 the wife was assaulted and shunted out of the matrimonial house in the night which made her to go back to her parental house at Haldibadi and inform the matter to her parents. Further pleading was that at the instance of her parents, community meeting was called at Haldibadi where the husband and his family members were also invited where the respondent/husband declared that he was not inclined to keep his wife with him and left the meeting. Further pleading was that, though, the wife patiently waited for sufficient long time in the hope that some day the respondent/husband would come back to take her but ultimately when he did not come to take her, she moved an application for grant of decree of divorce.

9. The pleadings of the plaintiff/wife discloses that prayer for decree of divorce was sought both on the ground of cruelty as well as desertion.

10. In his written statement husband denied all the allegations stating that on 15.01.2012 wife had gone to her parental house along with her uncle Rajkumar and thereafter when she did not come back, he went to her house along with respectable inhabitants and members of the community but she refused to come back to stay with him which followed convening of community meeting but there also the wife and her parents did not agree to the offer of the husband for taking his wife along. He further pleaded that he is still willing to keep his wife with him. It is also pleaded in the written statement that one of the reasons for not sending his wife with him was that she was appearing in the MA Examination. It has also been pleaded by the husband that parents and relatives of the wife also used to say that since the husband was not providing proper facilities to her, she would not live with him as a maid servant.

11. In support of the allegation of the cruelty and desertion appellant/wife examined herself and 4 other witnesses.

Though appellant/wife (AW-1) has pleaded in her application that she was shunted out of the matrimonial house on 20.12.2011, no specific date was mentioned by her in her evidence regarding such incident. Allegation regarding frequent

quarrel and ill treatment at the hands of husband made by her are of quite general in nature. Further, though in her evidence, she has made an allegation that the husband called her an inefficient housewife, asked her to remove her 'Mangalsutra' and wipe off vermilion from the hair parting streak, no pleading to this effect was made by her in the application for divorce. Her evidence also shows that the dispute between husband and wife erupted on account of the fact that the husband used to get back home late in the night in a drunken state and pick up quarrel and thereby created nuisance in the family. An allegation of sexual intercourse without her willingness was also stated to be a reason for discord between them. The date on which she was shunted out of the matrimonial house and then she went to her parental house at Haldibadi was not stated in her evidence. It would thus be seen that evidence of the wife with regard to cruelty and the cause of dispute between husband and wife as pleaded and as stated in the evidence are at variance with each other. The allegation against the husband that he used to assault in a drunken state in the night has also not been pleaded by the wife. Even the allegation of physical relations was not whispered in her pleadings. In her cross-examination she admits that she was working as Shiksha Karmi and working at Village Kamalpur. She also admitted that in the year 2012-13, she completed Post Graduation from Annuppur in Madhya Pradesh. It has also been

admitted that the husband is also working as Shiksha Karmi in Khadgawan Block.

12. The evidence of AW-2 (mother of the appellant) is similar to what has been stated by AW-1. She has stated in her evidence that now they are not inclined to send their daughter back to the matrimonial house. In her evidence, she claimed that the community meeting was called at their instance. AW-3 – Jangilal - the father of the wife has also stated regarding convening of community meeting. The evidence of AW-2 and AW-3 reveals that the allegation of cruelty is being supported on the basis of what has been stated to them by their daughter. AW-4 and AW-5 both have stated regarding cruelty on the basis of what was disclosed to them by Sushila and her parents.

13. We thus find that entire allegation of cruelty is based mainly on the evidence of appellant/wife herself and all other witnesses only supported her version on the basis of what was disclosed to them by her.

14. The party which alleges cruelty and seeks a decree of divorce on that ground, is required to prove the allegation of cruelty by leading specific evidence and specific instances. The legal requirement in such cases is that in the application/plaint itself, specific allegation with proper pleadings are required to be made. Vague allegations without specific details would not constitute a ground for granting decree of divorce on the ground

of cruelty. Present is a case where the evidence of Sushila is at variance with what she has pleaded in her plaint. When no other witness has stated regarding any such cruelty except what was told to them by the appellant, we find it difficult to accept the submission that the finding of the learned Family Court that the appellant has failed to prove a case for grant of decree of divorce on the ground of cruelty needs interference. We would also like to mention here that in reply to application under Section 9 of the Hindu Marriage Act, opposing prayer for restitution of conjugal rights, the pleadings are that the cruelty was committed on the ground of demand of dowry. It is thus seen that not only in pleadings made in different proceedings but also in the evidence the wife has taken a different stand with regard to the cause of dispute and alleged cruelty as also the manner in which it was committed. This shaky evidence particularly when it is at variance with pleadings, could not be made a basis to grant a decree of divorce on the ground of cruelty, therefore, we do not find any good ground to interfere with the finding of the learned Family Court that the appellant has failed to prove cruelty.

15. It now takes us to the other aspect of the matter as to whether the wife has succeeded in establishing and proving that she was deserted by her husband – Amritlal.

In this regard, pleadings are that on 20th December, 2011, she was beaten up and unceremoniously shunted out of the matrimonial house in the night due to which she had no other

option but go back to her parental house at Haldibadi. It is also the pleading that, later on, community meeting was called in which the husband refused to keep his wife with him and, therefore, when he did not come to take his wife back, application for divorce had to be filed. In her evidence however, the appellant has not stated anything regarding the incident which is said to have happened on 20th December, 2011 as pleaded in her application. It has been vaguely pleaded that one day she was beaten up and shunted out of the matrimonial house. If the allegation is of desertion, the spouse who has alleged the same, is required to state clearly as to when and in what manner it had taken place. In Paragraph 8 of her cross-examination she admits that she went to her parental house in December, 2011. The excerpt of what has been stated by the wife is mentioned as hereunder:-

“मैं दिसम्बर 2011 में आखिरी बार अनावेदक के घर से अपने मायके गई हूँ।”

The statement made by the wife, as mentioned above, is contrary to her own pleadings that she was shunted out of the matrimonial house in the night of 20th December, 2011. AW-3 (father of the appellant) has admitted in his cross-examination that after his daughter came back and alleged that she was beaten up and shunted out of the matrimonial house but despite that he did not go to the house of her husband to find out as to why all that

happened. The story put-forth by the wife is thus rendered highly improbable that she was shunted out of the matrimonial house in the night of 20.12.2011. Had it been so, the natural conduct of the father would have been to meet the husband and his family members. What becomes probable is that the wife went to her parental house of her own as has been stated by her in Paragraph 8 of her cross-examination.

16. As to the conduct of the parties after appellant/wife was residing in her parental house, we find that both the parties have led evidence in this regard. While the appellant, in her own evidence as also her parents AW-2, AW-3 and two other witnesses AW-4, AW-5 have stated that community meeting was called at their instance where the husband and his family members refused to take the wife back despite an offer given by her parents, respondent/husband in his own evidence and his witnesses including his relatives have come out with the evidence that the community meeting was called at their instance where the husband and his family members expressed their willingness to take the Sushila back to matrimonial house but it was refused by Sushila and her parents themselves. The learned Family Court has, however, come to the conclusion that the evidence led by the husband that in the community meeting despite offer made by the husband – Amritlal and his family to take Sushila back to her matrimonial house, Sushila and her parents refused to do so, is more probable.

Amritlal (DW-1) and Heeralal (DW-3) both have deposed in their evidence that on 26.09.2013, a community meeting was convened at Haldibadi in which they were present. Heeralal (DW-3) has deposed that he had gone to attend that meeting along with Amritlal (DW-1) and his father – Samaylal (DW-2) for bringing Sushila back to their house. He has also deposed that in the meeting, despite an advice given to Sushila that she should come back to her matrimonial house and reside, she refused stating that she is the only daughter of her parents, therefore, she would prefer to stay back and serve her parents. Heeralal (DW-3) has further stated that despite all persuasions, Sushila did not agree to come back to her matrimonial house and ultimately they came back. The evidence of this witness sought to be impeached on the ground that he appears as a witness of the defendant at the request of Samaylal - father of the Amritlal, therefore, he is not reliable.

We are not inclined to disbelieve the testimony of this witness on the said ground because he has clearly denied the suggestion that he was tutored by Amritlal. The evidence led by both the parties with regard to what happened in the community meeting is more in the nature of self serving statement. The wife, her parents and neighbour have supported the version of the wife whereas the husband, his parents and neighbour supported him with regard to what happened in the community meeting. It is Heeralal (DW-3) who is neither related to either of the parties nor

happens to be their neighbour. His presence in the meeting was in his capacity as the office bearer/President of the community, which the parties belong to. The evidence of Heeralal supports the version of respondent/husband that in the community meeting, though, husband and his family were willing to take Sushila back to the matrimonial house but Sushila refused to accompany them thereto. This finding of the learned Family Court, therefore, does not warrant any interference. It would thus be seen that even the allegation of desertion could not be proved by appellant/wife.

17. Reliance is placed on two decisions of the Supreme Court to make last effort that even if ultimately it is found that the appellant/wife has failed to succeed in the case on its own merits, at this distance of time, when the parties are living separately since last about 7 years and there is no likelihood of any reunion, a decree or divorce may be granted in their favour.

18. In *Manju Kumari Singh Versus Avinash Kumar Singh* (Supra) the Lordships in the Supreme Court dealing with the cases of exceptional nature have held that in order to ensure that the parties may live peacefully in future and their daughter is settled properly, a quietus must be given to all litigations between them. Their Lordships also found it to be a fit case for exercise of jurisdiction under Article 142 of the Constitution of India.

In the other decision in *C. Sembiam Sivakumar Versus V. Sivachitra Devi* (Supra), peculiar circumstances of that case were

that the wife had already received Rs.5 lakhs as permanent alimony, one of the parties remarried more than a decade back and that for all practical purposes, there did not exist any matrimonial bond between the parties and also taking into consideration the evidence that a ground of cruelty was made out, decree of divorce granted by the Family Court was restored. The aforesaid decision is also distinguishable on facts.

19. In the result, both the appeals are dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Ajay/Pawan

Sd/-

(Vimla Singh Kapoor)
Judge