

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1053 of 2018

Shambhu Prasad Sinha, Son of Late Narayan Chandra Sinha, resident of Village- Jagdishpur, Police Station- Bhagwanpur, District- Begusarai.

... .. Appellant

Versus

Binita Bharati, wife of Sri Shambhu Prasad Sinha, daughter of Sri Ashok Kumar Das, resident of Mohalla- Bari Kharyarpur, Police Station- Barari, Post and District- Bhagalpur.

... .. Respondent

Appearance :

For the Appellant : Mr. Ajay Kumar-Advocate

For the Respondent : Mr. Anand Prakash-Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 16-01-2020

Interlocutory Application No.01 of 2019 has been filed for condonation of delay of eight days in filing this appeal. On the grounds averred in I.A. No.01 of 2019, the delay in filing this appeal is condoned.

2. Accordingly, I. A. No.01 of 2019 stands disposed of.

3. Heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondent on the point of admission and with consent of both the parties, this appeal is being disposed of on admission stage itself.

4. The respondent filed Matrimonial Case No.306 of 2010 against the appellant seeking decree of divorce on the ground of cruelty. The appellant appeared and contested the suit by filing written statement. Learned Principal Judge, Family Court, Bhagalpur framed



issues, recorded the evidence of the parties and thereafter, decreed the aforesaid suit dissolving the marriage of the parties and also directed the appellant to make payment of Rs. One Lac to respondent by way of permanent alimony.

5. Learned counsel appearing for the appellant submits that the appellant has challenged the impugned judgment and decree dated 15.09.2018 by which, the learned Principal Judge, Family Court, Bhagalpur decreed the above stated Matrimonial Case No.306 of 2010 dissolving the marriage of appellant and respondent and directing the appellant to pay Rs. One Lac to respondent by way of permanent alimony.

6. Learned counsel appearing for the appellant, however, submits that the respondent brought the above stated suit on the ground of cruelty but the learned Court below did not give any finding in respect of the so called cruelty rather decreed the suit on the ground of irretrievable break down of marriage. Learned counsel of the appellant submits that the learned Principal Judge, Family Court, Bhagalpur had got no power to decree the suit on the above stated ground. He further pointed out that the appellant had also preferred Matrimonial Case No.8 of 2011/ 184 of 2012 against the respondent for restitution of conjugal rights and the same Family Judge decreed the aforesaid Matrimonial Case No.8 of 2011/ 184 of 2012, on the same day when the impugned judgment was passed directing the respondent to go with the appellant to her matrimonial home. He, further, submits that the learned Judge



himself passed two contradictory judgments and therefore, the impugned judgment can not sustain in the eye of law.

7. Learned counsel appearing for the respondent supported the impugned judgment arguing that the respondent had filed aforesaid Matrimonial Suit No.306 of 2010, not only on the ground of cruelty, but also on the ground of desertion and the learned Principal Judge, Family Court, Bhagalpur while evaluating the evidences available on the record came to the conclusion that appellant deserted the respondent without any rhyme and reason and on the aforesaid basis, the learned Principal Judge, Family Court, Bhagalpur decreed the above stated Matrimonial Case No.306 of 2010 dissolving the marriage of parties.

8. It is surprising enough that the learned Principal Judge, Family Court, Bhagalpur passed two contradictory judgments on the same day. Moreover, in Matrimonial Case No.306 of 2010, the learned Principal Judge, Family Court, Bhagalpur passed the impugned judgment on the ground of irretrievable break down of marriage. In my opinion, learned counsel of the appellant rightly submitted that the learned Principal Judge, Family Court, Bhagalpur had got no power to decree the above stated Matrimonial Case on the ground of irretrievable break down of marriage and the learned Principal Judge, Family Court, Bhagalpur ought to have confined his decision on the grounds mentioned under Section 13 of the Hindu Marriage Act, 1955. Therefore, in the aforesaid circumstances, we have no option except to set aside the impugned judgment and decree dated 15.09.2018 passed



by the learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No.306 of 2010.

9. On the basis of aforesaid discussion, the impugned judgment and decree dated 15.09.2018 passed in Matrimonial Case No.306 of 2010 is, hereby, set aside and the aforesaid Matrimonial Case No.306 of 2010 is remitted to learned Principal Judge, Family Court, Bhagalpur to pass a fresh judgment in accordance with law after giving proper opportunity of hearing to the parties. The learned Principal Judge, Family Court, Bhagalpur shall pronounce the judgment in Matrimonial Case No.306 of 2010 within four months from the date of receipt/ production of a copy of this order.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	21.01.2020
Transmission Date	N.A.

