

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 1 of 2016

- Vinod Kumar Sahu, aged about 34 years, S/o Antram Sahu
Caste – Sahu, R/o Tusma, P.S. and Tahsil- Shivrinarayan,
District Janjgir-Champa, Chhattisgarh. ----- **Appellant**

Versus

- Ramin Bai, aged about 28 years, W/o Vinod Kumar Sahu, D/o
Geeta Sahu, Caste – Sahu, R/o Village Dhardei, P.S. and Tahsil
– Pamgarh, District Janjgir-Champa, Chhattisgarh.

----- **Respondent**

For the Appellant :- Mr. Shashi Kumar Kushwaha, Advocate.

For the Respondent :- None

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

Order on Board by Justice Manindra Mohan Shrivastava J.

18.02.2020

This appeal is directed against impugned judgment and decree dated 05.12.2015 passed by Family Court, Janjgir, District Janjgir-Champa (CG), by which, the appellant's application for grant of decree of divorce on the ground of desertion, has been dismissed.

2. An application for grant of decree of divorce on the ground of desertion was filed by the appellant/husband on the pleadings *inter alia* that parties were married in the year 1999 according to Hindu rites and rituals. It was pleaded that the parties are blessed with two daughters and one son. The pleadings with regard to desertion were that the respondent/wife frequently used to go to her parental house and she used to come back after a lot of persuasion. Lastly, on 10.06.2012, the respondent/wife left the

matrimonial house stating that she intends to meet her parents. After she left the matrimonial house along with her son Gyaneshwar, she started residing in the parental house and thereafter, despite repeated efforts, wife has not come back. Appellant made several efforts, but even then wife is not prepared to come back to matrimonial house and for the last two years, there were no relation between the parties. On this ground decree was sought.

3. Rebutting the pleadings of the appellant's application, respondent/wife stated that she never deserted her husband. She was subjected to cruelty and harassment.

4. The learned Court below found that the appellant failed to come out with any clinching pleading and evidence with regard to desertion and his application was rejected.

5. Assailing legality and validity of the impugned judgment and decree learned counsel for the appellant argued that even the appellant made specific pleading that the wife has left the matrimonial house on 10.06.2012, the respondent/wife failed to establish and prove any reasonable cause which was her burden in view of provision contained in explanation appended to Section 13 (1) of Hindu Marriage Act. The respondent/wife has pleaded cruelty which could not be proved by her, therefore, the Family Court ought to have granted decree of divorce on the ground of desertion.

6. None appears for the respondent/wife.

7. The appellant/husband in his pleading, stated that his wife left the matrimonial house on 10.06.2012 and thereafter, she did not come back. In his evidence, the appellant however, has not stated any particular date on which his wife left the matrimonial house. In paragraph 3 of his evidence, all that he states is that the wife went to her parental house in the year 2012. Neither date, nor the month in which she left the matrimonial house, has been stated. The date and the month in which she allegedly left the matrimonial house assumes importance because the suit itself has been filed on 20th June, 2014. In the evidence, it has nowhere been stated as when the wife left the matrimonial house prior to 20th June, 2014. This apart, from the evidence itself, the appellant could not prove that the suit was filed after expiry of period of two years from the date on which the wife allegedly deserted him. What has been stated in the plaint is not proved. The appellant was required to lead specific evidence with regard to the date and the month as on which, according to him, the respondent/wife left him. In the cross-examination, he admits that the members of the parental house had come to take the wife. Even there, no specific date has been mentioned. The evidence of PW-2 and PW-3 who are the daughters of the appellant and respondent have also not clearly stated regarding the date on which the respondent/wife went to the matrimonial house.

8. The respondent/wife has come out with the pleading and evidence that she was subjected to beating in state of intoxication by the husband and she was finally shunted out of the matrimonial

house. She has clearly stated that if the husband assures that he will accord proper treatment, she is willing to reside with him.

9. Learned counsel for the appellant submits that, though, an application for restitution of conjugal rights was filed, the same was dismissed as withdrawn.

10. The evidence of respondent/wife that she was subjected to cruelty, is supported from the evidence of Pramod Kumar (DW-2) and Ramnath Sahu (DW-3). In any case, in order to get a decree of divorce on the ground of desertion the appellant was required to lead specific evidence that since prior to two years from the date of filing of application i.e. on 20th June, 2014, the respondent/wife deserted him.

11. In view of above, we do not find any good ground to interfere with the impugned judgment and decree passed by the Family Court.

12. Appeal is thus dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

13. However, Learned counsel for the appellant submits that he may be granted liberty to take appropriate proceedings for restitution of conjugal rights.

The scope of two proceedings are different. In case the appellant revives his application for restitution of conjugal rights, the same shall be decided in accordance with law.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge