

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.809 of 2017

Abhay Kumar Singh @ Abhay Kumar, son of Basant Singh, resident of
Village - Tikari, P.O. Bhedwa, P.S. - Rafiganj, District - Aurangabad.

... .. Appellant/s

Versus

Sobha Devi, daughter of Mahesh Singh, resident of Village - Dhandhopur,
P.O. - Cherki Bazar, P.S. - Sherghati, District - Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Niraj Kumar

For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 19.07.2023

1. The present appeal has been filed impugning the
judgment dated 13.06.2017 passed by Ld. Principal Judge



Family Court, Aurangabad in Matrimonial Case Nos. 120 of 2013 whereby the divorce petition of the petitioner filed under section 13 of the Hindu Marriage Act has been dismissed *ex parte* finding that no ground is proved for dissolution of marriage as provided under the Hindu Marriage Act.

2. The case of the appellant-husband/plaintiff as per the pleading is that the petitioner and the respondent were married on 23.06.2012 as per Hindu rites and customs at village Dhandhopur in district Gaya. However, the matrimonial home of the parties was at village Tikari in the district of Aurangabad, as the appellant-husband is resident of the place in the district of Aurangabad where respondent-wife had joined him and lived for 10 days after ceremonial function of *Gauna* (Second Marriage). The respondent-wife again joined the matrimonial home of the appellant-husband at village Tekari, the residential place of the husband appellant and lived there for 45 days. Thereafter, the respondent-wife fell ill and was treated at Gaya by Dr. Shobha Rani at the cost of appellant-husband and after the treatment she again joined the matrimonial home of the appellant-husband. As per the further averment made in the divorce petition, the respondent wife came to the matrimonial home of the appellant- husband in the month of January 2013



after a Panchayati was held at the residence of the father of the respondent-wife and she lived at the matrimonial house till 19.10.2013 when she left the matrimonial home with all her belongings. It is also averred in the divorce petition that the appellant-husband visited the matrimonial home of the respondent wife to take her back to the matrimonial home but she refused to return. It is also averred that appellant and respondent have lived like husband and wife till 19.10.2013. It is also alleged that the respondent wife has illicit relationship with one of her villagers and he frequently visited her at the place of her *Maike* during her stay there in the absence of her father and on account of this illicit relationship with her villager, she wanted to live at her *Maike*.

3. The respondent wife had not appeared before the Family Court despite service of notice and hence, she was proceeded *ex parte*. As such, there was no written statement filed on her behalf.

4. During trial, the appellant has examined two witnesses, including himself as PW- 3. PW-1 is Basant Singh, who is father of the appellant and PW-2 is Devenandan Singh, who is known to the appellant and the respondent. In the deposition, all the three witnesses including the appellant have



reiterated the allegation/ averment as stated in the divorce petition.

5. Ld. Family Court after analyzing all the pleadings and evidence on record, has found that no ground for divorce is proved by the appellant and by the evidence adduced before the Court and hence the divorce petition filed by the appellant was dismissed *ex parte*.

6. Ld. counsel for the appellant, however, assails the impugned judgment dated 23.06.2017 on the ground that Ld. Family Court has not properly appreciated the evidence adduced by the appellant and erroneously dismissed the petition finding no ground proved. He submits that as per the evidence, the appellant has proved that the respondent-wife has committed cruelty against him because she has deprived him of his marital cohabitation by going back to her parental house. He also submits that as per the evidence on record, the appellant has proved that the wife-respondent has also illicit relationship with a villager and such relationship is a ground for divorce.

7. After perusal of the material on record and consideration of submission made by learned counsel for the appellant, we find that there is no pleading or evidence in regard to any specific instance of cruelty with reference to time, place



and nature of behavioral misconduct which may be termed as cruelty. Pleading and evidence are general and omnibus in nature.

8. In regard to the allegation of depriving the appellant-husband of the conjugal life by the respondent-wife, it is relevant to find that the appellant-husband has himself pleaded/deposed that they lived like husband and wife during stay of the wife at his matrimonial home till 19.10.2013 and it is also found that when she went back to her matrimonial home he has not taken any legal steps for restitution of conjugal rights by filing petition under section 9 of the Hindu Marriage Act.

9. As far as allegation of illicit relationship of the respondent-wife with one of her villagers is concerned, the appellant-husband has not impleaded the alleged adulterer having illicit relationship with his wife. In the absence of alleged adulterer in the proceeding, allegation of adultery cannot be considered because the alleged adulterer is a necessary party. Moreover, no evidence worth the name has been adduced to prove the alleged illicit relationship. There is no circumstantial or direct evidence to prove the alleged illicit relationship. The deposition of the witnesses in regard to alleged illicit relationship at best amounts to suspicion and not proof.



10. Hence, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce. The present appeal is dismissed accordingly, affirming the impugned judgment.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

Skm/chandan/-

AFR/NAFR	NAFR
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