

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.474 of 2021

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Ranju Devi aged about 30 years (female) Wife of Chitranjan Singh, Daughter of Late Shiv Bachan Singh Resident of Village and P.O.- Manjurahi, Police Station- Aurangabad Muffasil, District- Aurangabad at present residing at Village- Bheriya, Police Station- Kachhawa, District- Rohtas.

... .. Appellant/s

Versus

Chitranjan Singh Son of Suresh Singh Resident of Village and P.O.- Manjurahi, Police Station- Aurangabad Muffasil, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jitendra Prasad Singh, Advocate
	:	Mr. Rajeev Kumar, Advocate
For the Respondent/s	:	Mr. Madanjeet Kumar, Advocate
	:	Mr. Anil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 21-08-2023

The appellant has preferred the instant appeal against the judgment and decree dated 30.06.2021 and 7.7.2021, respectively passed by learned Principal Judge, Family Court [for short 'Ld., Family Court'], Aurangabad, Bihar in Matrimonial Case No. 55 of 2013 (CIS-946/2013).

2. The respondent had filed a petition before the Ld., Family Court, Aurangabad against the appellant for dissolution of marriage under Section 13 of Hindu Marriage Act, 1955.

3. Briefly stated the case of the respondent-petitioner is that his marriage was solemnized on 27.05.2002 with the appellant



in accordance with Hindu Rites and Rituals. Out of the wedlock, birth of a son took place on 03.03.2006 who died on 15.05.2006. Further, case of the respondent is that the behaviour of the respondent was not good with the appellant and her in-laws and she indulged in cruelty against them. The respondent further alleged that the appellant was in illicit relationship with her brother-in-law, namely, Ranjan Singh. Thereafter, on 7th August, 2009, the appellant left her matrimonial home saying that she would not like to live with the respondent and, thereafter, she continued to stay in her parental home and refused to come back to her matrimonial home. On the aforesaid grounds, the respondent brought the petition for dissolution of his marriage with the appellant.

4. The appellant appeared and filed her written statement. She admitted her marriage with the respondent and submitted that after passage of conjugal life for some time respondent-husband started demanding dowry since she was not having any brother and the respondent insisted that she should get her father to register his property in the name of the respondent. Thereafter, when father of the appellant did not do so, she was tortured, assaulted and humiliated by the respondent. The appellant has further submitted her written statement that when she became



pregnant in the year 2006, her husband entered into an illicit relationship with his sister-in-law. The appellant gave birth to a child in her parental home who died for want of care within two months. She denied that she ever entered into an illicit relationship with her brother-in-law and further submitted that she wanted to stay with her husband.

5. The Ld., Family Court framed a single issue as to whether the respondent was entitled to get a decree of divorce or not? Thereafter, both sides adduced evidence and the Ld., Family Court after consideration of evidence passed the orders for dissolution of marriage of the appellant with the respondent subject to payment of Rs. 15,00,000/- as permanent alimony. The said order has been assailed in the instant appeal.

6. Heard learned counsel for the appellant as well as the respondent.

7. It has been submitted by learned counsel for the appellant that the order of Ld., Family Court is without any merits. The Ld., Family Court has not framed issues properly and has not appreciated the evidence in right perspective. Serious illegality and irregularity has been committed while passing the order by Ld., Family Court. Learned counsel further submitted that the person against whom the allegation of adultery has been levelled has not



been made party in this case and the case was bad for non-joinder of necessary parties as the alleged adulterer was a necessary & proper party.

8. On the other hand, learned counsel appearing on behalf of the respondent has supported the order of the Ld., Family Court. Learned counsel submitted that the judgment and decree of the Ld., Family Court does not suffer from any infirmity. Learned Family Judge has considered the evidence of both the parties and passed the orders after considering the same. Further, learned counsel submitted that the respondent has prepared a draft of Rs. 15,00,000/- in terms of the orders of the Ld., Family Court but the appellant did not accept the same and still has been denying to accept the same.

9. On the basis of the pleadings of the parties and submission made above, the following points are before this Court for determination for deciding the appeal:-

"(i) Whether the issues have been framed on the basis of pleadings and evidence has been appreciated for proper adjudication by the learned Family Court?

(ii) Whether the petition of the respondent-husband was bad for non-joinder of necessary party?

(iii) Whether decree or dissolution of marriage could be



granted to the petitioner on the basis of evidence recorded in the instant case?"

10. We have considered the material in the light of points formulated for determination. We have gone through the judgment and decree of the Ld., Family Court. It is evident from the impugned judgment that the Ld., Family Court has failed to frame the proper issues in this case on the basis of pleadings of the parties. Evidently, the Ld., Family Court has framed the single issue:

"Whether the petitioner/plaintiff is entitled to get a decree of dissolution of marriage under Section 13 of Hindu Marriage Act, 1955?"

Ld., Family Court has not considered the pleadings of the parties wherein the petitioner has taken the specific contention that the appellant-wife has deserted the respondent-husband and cited instances of cruelty during the period the appellant-wife stayed with the respondent-husband. Further, there is allegation of adultery against the appellant-wife showing that she has entered into sexual relationship outside her marriage. But no issues have been framed on the aforesaid points. Further, the Ld., Family Court failed to take into consideration the issues raised by the appellant-wife regarding husband himself deserting the appellant



and taking advantage of this fact to get decree for dissolution of marriage. Similarly, the Ld., Family Court failed to frame issue on the point of allegation of adultery of the respondent-husband though it has been specifically pleaded in the written statement of the appellant-wife.

11. No doubt, the proceeding before the Ld., Family Court is summary in nature but the Family Court has to frame issues on the basis of pleadings of the parties and, thereafter, it has to appreciate the evidence in the light of those issues. So it is very much clear that there has been complete failure on the part of Ld., Family Court so far as framing of issues are concerned. The Hon'ble Apex Court in the case of **Ramrameshwari Devi and Ors. vs. Nirmala Devi and Ors.** reported in **(2011) 8 SCC 249** has held framing of issues is a very important stage in the civil litigation and it is the bounden duty of the Court that due care, caution, diligence and attention must be bestowed by the Court concerned while framing the issues.

If the issues have not been framed then the Court becomes handicapped in appreciating the evidence since the parties would be adducing the evidence in terms of the issue framed. Since issues have not been framed properly in the instant case, the appreciation of evidence becomes suspect.



12. The Ld., Family Court even decided the matter at hand against the findings recorded by it. Even though the Ld., Family Court came to a conclusion that there was no proof of adulterous relationship of the appellant with her brother-in-law and evidence adduced by respondent shows the respondent does not want to stay with the appellant to lead matrimonial life, still it went on to pass order of dissolving the marriage between the parties, that too, in a cryptic manner. Since the petition was filed for dissolution of marriage on ground of desertion, cruelty and adultery under Section 13 of the Hindu Marriage Act, 1955 but the Ld., Family Court did not record any findings in support of the respondent, it clearly went outside the purview of law in passing the impugned judgment. Now, Section 13 (1) of the Hindu Marriage Act, 1955 provides as under:-

"13. Divorce.- (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

[(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two



*years immediately preceding the
presentation of the petition; or]*

(ii) xxxxxxxxxxxxxx

(iii) xxxxxxxxxxxxxx"

13. Thus, the Ld., Family Court recorded its finding against the respondent-husband, yet it went on to pass a decree of dissolution of marriage in favour of the respondent-husband albeit with condition that he will pay the permanent alimony of Rs. 15,00,000/- to the appellant-wife and in case of failure, the appellant-wife shall be entitled to claim her share in the immovable properties of the respondent-husband. Section 13 of the Hindu Marriage Act, 1955 does not provide for any such ground when the grounds taken by the respondent-husband were not believed by the learned Family Court. Thus, the order of Ld., Family Court is completely erroneous, contradictory finding and, is against the provisions of law.

14. In the light of discussion made so far point no. 1 and 2 are decided accordingly and against the respondent. It has been submitted on behalf of the appellant that the alleged adulterer has not been made party by the Ld., Family Court and for this reason the case of the respondent was bad for non-joinder of the necessary party. Since an allegation of illicit relationship of the appellant-wife was made with a person, namely, Ranjan Singh fairness demanded that the said person be made party for the



present case in the light of nature of allegations & proceeding, this person becomes a necessary & proper party. In our view, if there were allegations of adultery and illicit relationship against appellant-wife, the Ld., Family Court ought to have insisted to make the alleged adulterer a party in this case and his petition suffers from the vice of non-joinder of necessary & proper parties.

15. In the light of aforesaid facts and circumstances, we are of the view that the judgment and decree of the learned Family Court is sketchy in nature, erroneous and bad in the eyes of law and, hence, the impugned judgment and decree dated 30.06.2021 and 7.7.2021, respectively passed by learned Principal Judge, Family Court, Aurangabad, Bihar in Matrimonial Case No. 55 of 2013 (CIS-946/2013) are set aside and the matter is remanded to the Ld., Family Court, Aurangabad for passing judgment afresh after considering all the points from the defective stage of framing of issues and after framing fresh issues and recording further evidence, if any, pass a detailed order and dispose of the matter within six months from the date of receipt of this order.

16. The parties are also hereby directed to co-operate in the matter and further directed not to take any unnecessary adjournment.



17. Accordingly, the present appeal stands allowed at the stage of admission itself.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

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

