

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.104 of 2023

=====

Sudhir Rai @ Sudhir Ray S/o Late Jay Mangal Rai Resident of Village-Vishunpur Basant @ Shubhai, P.O.-Shubhai, P.S.-Hajipur Sadar, District-Vaishali.

... .. Appellant/s

Versus

1. Sulekha Devi W/o Sudhir Rai, D/o Manohar Prasad Yadav, Resident of Village-Vishunpur Basant @ Shubhai, P.O.-Shubhai, P.S.-Hajipur Sadar, District-Vaishali, at presently (K) Resident of Village-Anantpur, P.O.-Madhopur, P.S.-Chandi, District-Nalanda (kh) C/o Sudhir Kumar, R/o Ravindra Rai, Resident of Village-Terasia, P.O.-Ratnakar, P.S.-Ganga Bridge, District-Vaishali.
2. Sudhir Kumar, son of Ravindra Rai, resident of Village-Terasia, P.O.-Ratnakar, P.S.-Ganga Bridge, District-Vaishali

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar, Advocate
For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 02-07-2025

Heard learned counsel for the appellant. None appears on behalf of respondent.

2. The present appeal has been filed under Section 19(1) of the Family Court Act, 1984 impugning the judgment and decree dated 03.01.2023 passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Matrimonial (Divorce) Case No. 64 of 2022, whereby the matrimonial suit, preferred by the appellant, for a decree of



divorce, on dissolution of marriage, has been dismissed.

3. The case of the appellant as per petition filed before the Family Court is that the marriage of the appellant was solemnized with respondent No. 1 on 18.06.2018 as per the Hindu Rites and Custom and out of the wedlock one male child was born. After marriage and birth of male-child, the appellant went to the State of Madhya Pradesh for his livelihood. The appellant alleged that in the absence of appellant, his neighbour Sudhir Kumar (respondent No. 2) used to visit at his house regularly and had developed illicit physical relationship with his wife (respondent No. 1) which was protested by his mother. It is alleged that on 04.12.2020, Sudhir Kumar (respondent No. 2) came along with some anti-social elements and took his wife and minor children away with him and thereafter, she did not return to her matrimonial house. The respondents are living together in adultery. The appellant, therefore, prayed that the marriage between the appellant and respondent No. 1 be declared dissolved and a decree of divorce be passed in his favour.

4. The respondent Nos. 1 and 2 were issued notices



but they choose not to appear to contest their case. Hence, the case was proceeded *ex-parte*.

5. During course of trial, altogether four witnesses have been produced on behalf of the appellant which are P.W.1- Sudhir Rai (appellant himself), P.W. 2-Subodh Rai (brother of the appellant), P.W. 3- Suman Rai (brother-in-law of the appellant) and P.W.4-Leelawati Devi (mother of the appellant).

6. After conclusion of the trial, the learned Principal Judge, Family Court has held that appellant has not proved desertion and adultery as against the respondent No. 1 in the absence of any independent and cogent material evidence and accordingly, the Trial Court came to the conclusion that the appellant was not entitled for decree of divorce on the ground of adultery and desertion and the suit was accordingly dismissed.

7. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Principal Judge, Family Court in Matrimonial (Divorce) Case No. 64 of 2022, the present appeal has been filed by the appellant.



8. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Family Court is bad and appears to be mechanically passed without application of judicious mind. The witnesses who have appeared on behalf of the appellant have stated that marriage of the appellant with the respondent No. 1 was performed on 18.06.2018 and out of the wedlock, a male-child was also born. The behaviour of the respondent No. 1 towards her husband (appellant) and other in-laws family members was cordial for two years but thereafter, she established illicit relationship with Sudhir Kumar (respondent No. 2) and when her mother-in-law made objection, she left her matrimonial house with her minor children and went along with respondent No. 2. At present, she is staying with the respondent No. 2 in adultery along with her minor-child.

9. It appears from the case record and the judgment of the Court below that in spite of valid service of notice, neither respondent No. 1 nor respondent No. 2 appeared to respond on their behalf. Hence, the case was proceeded ex-parte.



10. This Court has also issued notice to the respondents on 29.01.2025. The office note dated 25.03.2025 suggests that respondent No. 1 refused to accept the notice. Thereafter, vide order dated 26.03.2025, Dasti Summon was issued to the respondent. A supplementary affidavit has been filed on behalf of the appellant which suggests that Dasti Summon was refused to accept by the family members of the respondents.

11. In view of the submissions made on behalf of the appellant and the evidences brought on record, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable/tenable in the eyes of law.

12. The appellant has prayed in Matrimonial (Divorce) Case No. 64 of 2022 for dissolution of marriage on the ground of adultery. The adultery may be defined as the act of a married person having sexual intercourse with a



person of opposite gender other than the wife or husband of the person. Personal laws all around the world condemn adultery and it is considered as a ground for divorce or separation. Under the present Indian personal laws, adultery is laid down as one of the grounds for divorce or judicial separation.

13. The essential ingredients in an offence of adultery are that: (i) There should be an act of sexual intercourse outside the marriage, and (ii) that such intercourse should be voluntary.

14. The appellant has not brought on record any proof to show that respondent No. 1 was having illicit relationship with the respondent No. 2 nor he has proved that they were living in adultery and only in order to make a valid ground in the divorce petition, these allegations were levelled against the respondent No. 1 without any supporting material evidence.

15. In "Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-



"24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is



erroneous, contrary to well-established principles of law or unreasonable..."

16. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant as well as materials available on record, we find that all the prosecution witnesses are family members of the appellant, hence, they are interested witnesses. They allege that respondent No. 1 fled away with respondent No. 2 but they had no knowledge regarding the whereabouts of the respondents. No independent witness has come forward in this case to support the factum of illicit relationship of the respondent No. 1 with respondent No. 2. The allegation of illicit relationship of respondent No. 1 with respondent No. 2 was only witnessed by mother of the appellant who was examined as P.W. 4. She has deposed that on 04.12.2020, she saw the respondent No. 1 and respondent No. 2 in compromising position but she did not disclose this fact to anyone nor any *panchayati* was called for. She also deposed that her another third daughter-in-law also



witnessed the illicit relationship of respondent No. 1 with respondent No. 2 but she has not been examined as appellant's witness. P.W. 4 further deposed that respondent No. 2 used to come to her house since one year before the alleged abduction but she did not make any complaint against him to anyone. Not any witness has come forward having seen the alleged abduction of respondent No. 1 and her minor child at the hands of respondent No. 2. P.W. 4, instead of registering an F.I.R., has filed Complaint Case No. 2269 of 2020 under Sections 323, 448, 148 I.P.C against the respondent No. 2 and others in which cognizance was taken and the case as against respondent No. 2 for abduction of respondent No. 1 was not found true. The extract of the order of learned Judicial Magistrate, 1st Class, Vaishali at Hajipur passed in Complaint Case No. 2269 of 2020 lodged by the mother of the appellant regarding abduction of her daughter-in-law (respondent No. 1 herein) reads as under:-

“From perusal of the complaint petition, S.A on oath of the complainant, depositions of the enquiry witnesses and documents filed on behalf of the complainant,



this court find that case is prima facie made out U/Sec. 323/448/148 of I.P.C. against the accused named in accused column of the complaint petition Bipin Kumar, Ramesh kumar, Guddu kumar, Sudhir kumar, Pramod rai, Saraswati devi, Akash kumar. So far the other allegation is concern it seems that witnesses have not established the basic ingredients of other alleged offence and appears to be super addition in order to make graver.”

17. The appellant has also not brought on record any proof regarding illicit relationship of respondent No. 1 with respondent No. 2. The appellant has also not brought on record any cogent and reliable evidence which could show that respondent No. 1 and respondent No. 2 are living in adultery. The appellant has also not filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which would reflect that he was interested to resume conjugal life with the respondent No. 1. The appellant alleges that respondent No. 1 and respondent No. 2 are living in adultery but he has not proved this fact with any cogent and reliable material evidence which clearly



suggests that only in order to make a legal ground in the divorce case, these baseless allegations have been levelled by the appellant.

18. Hence, we find 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.

19. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	18/06/2025
Uploading Date	02/07/2025
Transmission Date	N/A

