

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.80 OF 1995

Jagdeorao s/o Raghoji Suryawanshi
Age-30 years, occu- Agriculture,
R/o- Babhli, Taluka Kalamnuri,
District- Parbhani.

..Appellant

VERSUS

Anusayabai W/o Jagdeorao Suryawanshi,
Age-26 years, occu- Agriculture,
R/o- Kamari, Tq- Hadgaon,
District. - Nanded.

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Mrs. P.P. Mandlik h/f P.V. Mandlik, Advocate for Appellant.
Mrs. S.G. Chincholkar h/f Mr. G.N. Chincholkar, Advocate for
Respondent.

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : MARCH 13, 2025

PRONOUNCED ON : MAY 09, 2025

JUDGMENT :

1. The appellant takes exception to order dated 29.08.1994 passed by District Judge, Nanded in Regular Civil Appeal No.9 of 1991, by which judgment and decree dated 14.12.1990 passed by Joint Civil Judge, Senior Division, Nanded in Hindu Marriage Petition No.5 of 1990 granting decree of divorce in favour of appellant/husband on the ground of desertion has been reversed.
(Parties are hereinafter referred to as per their original status)

2. Briefly stated facts giving rise to present appeal are as under.

3. The appellant (petitioner) instituted Hindu Marriage Petition No.5 of 1990 under Section 13 of Hindu Marriage Act seeking decree of divorce on the ground of desertion and cruelty against respondent/wife. It is the contention of petitioner that he married respondent on 30.04.1985 as per Hindu customs and rights. Respondent resided with him for two years; however, within first year of marriage, the petitioner realized that respondent has no love and affection for him. She was interested to marry with some other boy. She was fed up with his financial condition. She used to insult him, quarrel for petty reasons and reluctant to have sexual relations. She left petitioner's home along with her brother under pretext of Diwali, but never resumed back. The petitioner made efforts to bring her for cohabitation through Madhavrao and Shamrao, but such attempts were failed. The petitioner issued notice to her for resumption of cohabitation, but she failed to comply.

4. The respondent refuted contentions of petitioner. She pleaded that since she begotten a daughter, the petitioner was disturbed and started giving ill-treatment towards her. When her brother tried to persuade petitioner to mind behaviour, petitioner assaulted him. He drove her out of matrimonial home prior to two years. She was required to file application for grant of maintenance. He never made attempts to fetch her back to matrimonial home.

5. The Trial Court framed issues, recorded evidence of parties and finally decreed the suit of plaintiff accepting the ground of desertion but declined to accept the ground of cruelty. Aggrieved respondent/wife filed Regular Civil Appeal No.9 of 1991, which came to be allowed by setting aside judgment and decree passed by Trial Court.

6. The aggrieved husband filed present second appeal before this Court. Second appeal has been admitted vide order dated 08.04.1996 on ground No.12 stipulated in appeal memo being substantial question of law, which reads thus :

“I) When the petitioner-husband has filed a case under section 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 for divorce on the ground that after solemnization of the marriage, the wife treated the petitioner with cruelty and deserted the petitioner for continuous period of more than two years immediately preceding the presentation of petition, and established these facts by adducing concrete evidence on record. Whether a decree for divorce can be refused ?

II) That, the petition for divorce was entertained by Civil Judge, Senior Division under the delegated powers of the District Judge. Because, the original jurisdiction to file a petition for divorce lies with the District Court. Under such circumstances, whether the appeal against that original decree is maintainable before the Joint District Judge?

III) The Judgment and decree passed by the Joint District Judge in R.C.A. No. 9/1991 is without Jurisdiction, whether that decree is sustainable or liable to be set aside ?

IV) That, on 14/12/1990, the learned trial Judge passed a decree and ordered that marriage between the parties stands dissolved by that decree of divorce. Thereafter, there was no stay to that Judgment and decree. It was observed that, after that decree, husband performed marriage before the Judgment and Order of Appeal Under such circumstances, whether it is just and proper to allow the Appeal by setting aside the Judgment and decree passed by the trial Court ?

v) The finding given by the learned District Judge is contrary to law, facts on record, arbitrary and perverse, Wit Whether it is sustainable?

VI) That, without giving any strong and concrete reasons, whether it is proper to interfere with the finding of the trial court and to reverse the decree of the trial court ?”

7. Learned advocates appearing for respective parties advanced their submissions on ground No.12(I) and conceded that other grounds stipulated in Clause (II) to (Vi) needs no independent consideration.

8. Having considered submissions advanced, it can be observed that the petitioner/husband instituted proceeding for divorce on the ground of cruelty and desertion. The Trial Court accepted petitioner's case on the point of desertion and decreed the suit. However, refused to entertain the ground of cruelty. Aggrieved wife filed appeal before learned District Judge. The husband did not file any cross objection particularly objecting finding on the point of cruelty. The Appellate Court on re-appreciation of evidence reversed

the decree passed on the ground of desertion. Therefore, in present appeal, the limited issue requires consideration as to whether the petitioner proved desertion as provided under Clause (i-b) of Section 13(1) of Hindu Marriage Act, 1955.

9. The petitioner to bring home his case as to cruelty, relied upon depositions of Madhavrao and Shamrao in support of his own testimony. Both these witnesses endeavours to contend that the petitioner made efforts to bring back respondent for cohabitation, but respondent refused saying that she is not willing to go to marital home. The Trial Court concluded that aforesaid evidence is sufficient to accept the case of desertion and disbelieved evidence of respondent as to ill-treatment.

10. An important facet of this case is that immediately after passing decree of divorce by Trial Court, petitioner performed second marriage. The evidence indicates that during pendency of divorce proceeding, respondent shown her willingness to join matrimonial life with the petitioner. Endorsement dated 09.10.1990 below Exhibit-1 by the learned Trial Judge clearly stipulates that husband refused to accept her when wife shown her readiness to resume company of husband. In deposition of respondent/wife, she made clear statements that she was ever desirous to cohabit with the petitioner. The aforesaid material would show that although respondent lived separate from the petitioner for the period of more than two years,

there is nothing to show that the wife had animus deserendi of deserting spouse. Mere separation would not amount to desertion. The learned District Judge observed looking to conduct of parties and evidence on record that husband could not prove respondent animus deserendi. The finding recorded by learned District Judge is based on appreciation of material on record.

11. Mr. Mandlik, learned advocate appearing for appellant relying upon observations of Hon'ble Supreme Court in the case of ***Debananda Tamuli Vs. Smti Kakumoni Katakya*** (Civil Appeal No.1339 of 2022) decided on 15.02.2022 submits that the issue as to desertion will have to be decided on the basis of evidence led by parties in particular case, since every matrimonial dispute is different from another. There cannot be two opinions on the aforesaid exposition of law. However, in present case, respondent/wife appears to have maintained her desire to resume matrimonial relationship. The petitioner and his witnesses are making allegations against mother and brother of respondent. No genuine efforts appears on part of husband to continue cohabitation with respondent/wife. His conduct clearly shows that he was intending to have second marriage and took advantage of decree of Trial Court by performing second marriage.

12. In this background, this Court hold that the petitioner miserably failed to prove desertion on the part of respondent/wife. Therefore, no interference is required in well reasoned judgment and

decree passed by First Appellate Court. Hence, second appeal stands dismissed.

(S.G. CHAPALGAONKAR, J.)