

(2017) 04 JH CK 0030
In the Jharkhand High Court
Case No : 69 of 2016

Bhuneshwar Prasad Yadav, & Antr.

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Hindu Marriage Act, 1955, Section 9 -
Restitution of conjugal rights

Citation : (2017) 04 JH CK 0030

Hon'ble Judges : H.C.Mishra, Dr. S.N.Pathak

Bench : DIVISION BENCH

Advocate : Kailash Prasad Deo, A.K. Kashyap, Supriya Dayal

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and the learned counsel for the respondent.
2. The appellant husband is aggrieved by the Judgment and Decree dated 25.04.2016, passed by the learned Principal Judge, Family Court, East-Singbhum, Jamshedpur, in Matrimonial Suit No. 384 of 2009, whereby the suit, filed by the appellant husband for dissolving the marriage between the parties by a decree of divorce on the grounds of cruelty and desertion, has been dismissed by the Court below.
3. It may be stated that the efforts for mediation between the parties at the hands of a trained Mediator was also taken through the trained Mediator at Jharkhand High Court Legal Services Authority, Ranchi, but the efforts of mediation have also failed. As such learned counsels for both the sides were heard on merits.
4. According to the appellant's case, the marriage between the parties had been solemnized on 12.03.2000 according to the Hindu rites and customs at Jamshedpur, and both the parties were living together and leading a conjugal

life. Out of the wedlock a son was also born to them on 12.08.2005. As regards the cruelty, it is the only case of the appellant-husband that relationship between the parties became bitter and the parties were not able to live happy matrimonial life. It is also alleged that the father of the respondent wife obtained signatures of the applicant husband on blank papers by coercing him to sign on those papers and finally, the respondent left her matrimonial home without consent or knowledge of the applicant with her minor son on 15.11.2007 and since then, the parties were living separately. The matrimonial suit was filed in the year 2009 on the ground of the aforesaid cruelty and desertion since 15.11.2007.

5. Upon notice, the opposite party wife appeared in the case and she filed her written statement, in which the facts of marriage and being blessed with a son were admitted. The other allegations were denied and it was stated that it was the applicant-husband who was subjecting the opposite party wife with cruelty and torture for the demand of dowry. According to the opposite party wife's case, they were living together in the quarter allotted to the husband by M/s. Tin Plate Company, in which the husband was employed. Subsequently, he got involved in one inter-religion marriage, due to which some raid was conducted by the police which compelled him to leave his official quarter allotted by the Company. It is stated that all the efforts made by the oppose party-wife and her parents to rejoin the matrimonial life, had failed and she was rather surprised with the notice in the present suit.

6. The impugned Judgment shows that on the basis of the pleadings of the parties issues were framed, including the issues relating to the cruelty and desertion. Witnesses were examined on both the sides and the applicant husband, who had examined himself as A.W.-1, had supported his case in his evidence. In his cross-examination he failed to give the details about the signing of the blank papers and he also admitted that no case was filed by him under Section -9 of the Hindu Marriage Act . Though there was an allegation of withdrawal of Rs.3,50,000/- from the joint account, but even that could not be proved by the husband in the Court below.

7. On the other hand, the respondent wife had also examined herself, her father and a neighbor in the case and all of them supported the case of the respondent wife about the cruelty and torture for the demand of dowry. The evidence of the respondent wife and her father also showed that both the parties were living together in the quarter allotted by the Company till the month of September 2009, and only thereafter, the husband had left the quarter.

8. On the basis of the evidence on record, the Court below came to the conclusion that no specific act of any such cruelty, so as to entitle the applicant husband to a decree of divorce, could be proved by the applicant husband, nor the applicant husband was able to prove his case that the parties were living separately since the year 2007, rather the Court came to the conclusion, on the basis of the evidence on record, that the parties were living together till

September, 2009. As it was in the year 2009 itself, that the suit was filed, even the case of desertion was not made out against the respondent wife and accordingly, the suit was dismissed by the Court below.

9. Learned counsel for the appellant husband has submitted that the impugned Judgment passed by the Court below cannot be sustained in the eyes of law, inasmuch as, on the basis of the evidence on record the appellant has been able to prove his case of cruelty as well as desertion by the respondent wife.

10. Learned counsel for the respondent wife on the other hand has submitted that on the basis of the evidence on record, the suit has rightly been dismissed by the Court below and the respondent wife is always ready to live and lead a conjugal life with her husband.

11. Having heard learned counsels for both the sides and upon going through the record, we find that no act of any such cruelty, has either been pleaded or proved against the respondent wife in the suit filed for dissolution of marriage, so as to entitle the husband to a decree of divorce on the ground of cruelty. The other ground on which the suit was filed was desertion. Though the suit was filed in the year 2009 alleging that the wife had deserted the husband since the year 2007, but the evidence has been brought on record to show that both the parties were living together in the quarter allotted by the Company to the husband, till September 2009. As the suit has also been filed in the year 2009 itself, no ground for a decree of divorce on the ground of desertion was also made out in the present case. We are of the considered view that in the facts and circumstances of the case, the suit filed by the appellant husband has rightly been dismissed by the Family Court below.

12. For the foregoing reasons, we do not find any illegality in the Judgment and Decree dated 25.04.2016, passed by the learned Principal Judge, Family Court, East-Singhbhum, Jamshedpur, in Matrimonial Suit No. 384 of 2009.

13. There is no merit in this appeal and the same is accordingly, dismissed.