
(2003) 09 JH CK 0141

In the Jharkhand High Court

Case No : Appeal Form Original Decree No. 148 of 1992

Smt. Ratna Prabha Das

APPELLANT

Vs

Sri Dulal Shyam Chandra Choudhary

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Hindu Marriage Act, 1955 — Section 9

Citation : AIR 2004 Jhar 24 : (2004) AIR Jhar HCR 146 : (2003) 3 BLJR 2274 : (2004) 2 CivLJ 258 : (2004) 1 DMC 758 : (2003) 1 JCR 606 : (2004) 1 MarriLJ 654 : (2004) MatLR 193

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : A.K. Sahani, A.K. Sahani and Laljee Sahay, for the Appellant; Laljee Sahay and A.K. Sahani, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal at the instance of the appellant-wife is directed against the impugned judgment and decree dated 21-12-1991 and 8-1-1992 respectively passed in Matrimonial Title Suit No. 5 of 1989 by Shri J.K. Narayan, 2nd Additional Judicial Commissioner, Ranchi whereby and whereunder the matrimonial title suit filed by the petitioner/respondent-husband u/s 9 of the Hindu Marriage Act, 1955 for restitution of his conjugal rights with his appellant-wife was decreed and the appellant was directed to live with her husband or leading conjugal life and to render marital obligation within two months from the date of the decree.

2. The respondent-husband filed the Matrimonial Title Suit No. 5 of 1989 for restitution of his conjugal rights with his appellant-wife as she has withdrawn from his society without any reasonable excuse.

3. The case of the respondent-husband, in brief is that the appellant is his lawfully wedded wife and their marriage has been performed in accordance with Hindu religion and rites on 7-12-1981 at Indrapuri, P.S. Sukhdeo Nagar, District-

Ranchi and his appellant-wife came to her matrimonial home and she led her conjugal life with him and the marriage was consummated and during that period of their wedlock, she was blessed with a son on 27-5-1983. It is alleged that after the birth of their son, the mother of the appellant came to his house and she expressed her desire to take the appellant alongwith her new born child to her house for their proper" care and also for preparation of B.A. Examination of the appellant as the appellant had intended to appear in the B.A. Examination, 1983 and the appellant with her son went to her parent's house on 11-7-1983 with her mother due to the reason of the marriage of her younger sister. Thereafter, he visited the parent's house of the appellant several times and asked the appellant to live with him in his house at Morabadi, Ranchi but she evaded the same on one pretext or the other and his request to the parent of the appellant for her "Bidai" from therefore leading conjugal life with him, was also refused and this led to strained relationship between him and the mother of the appellant, who has complete dominion over the appellant. It is alleged that thereafter, he managed to meet the appellant on the road and in the month of December 1983 he requested her to lead happy conjugal life with her but she refused flatly and stated that she is a graduate having a son and she will stand on her own legs, but inspite of that he went on approaching her on several occasions between the period of 1984 to 1988 for leading conjugal life together and finally on 4-1-1989 but all in vain. It is also alleged that the appellant has withdrawn herself from his society without any just and reasonable excuse.

4. The case of the appellant-wife, inter alia, is that after her marriage she came to her matrimonial home where she led her conjugal life with her husband but she was treated with cruelty by him and he also took all her ornaments which were given to her by her after and he also used to assault and abuse her and in course of her conjugal life with him she came in the family way and went to her parent's house. It is alleged that her husband came to her parent's house on 8-3-1982 and requested her parent to send her for a day to his house for worship and she came to her matrimonial home with her husband in the company of her brother, but instead of taking her to his house at Marabadi he brought her to his house at Hoogly and on pretext of her treatment she was given injection as a result of which bleeding ensued and her conception was terminated and aborted and he left her alone with his brother and in State of unconsciousness she returned to her parent's house alongwith her brother and she was treated in the nursing home of Dr. Malti Sahu for ten days and her life was saved and despite of the advice of Dr. Malti Sahu she did not lodge any criminal case against her husband for his criminal act causing the termination of her pregnancy. The further case of the appellant-wife is that sometimes thereafter, her husband came to the house of her parent and he confessed his guilt and promised that there shall not be any overt act by him in future and he will lead a happy conjugal life with her and requested her parent to send her to his house but he was not believed by her parent and she was not sent to his house and thereafter, on the intervention of Shri Mohal Lal Sinha, Executive

Engineer of the office of the appellant and on his guarantee of her safety in her matrimonial home she was allowed to go to her matrimonial home with her husband and after the transfer of the said Executive Engineer her husband again started torturing her and she was also pressurized by her husband and his sisters and parent to demand rupees one lakh and a scooter as her husband is to marry his sister and on her refusal she was assaulted by her husband and his relatives aforesaid and they uttered that they would not keep a scheduled caste in their house and they will commit her murder and even her parent were not allowed to meet her and they were also abused and they were also not allowed to enter inside her matrimonial home. It is also alleged that she was tortured and assaulted everyday and was not allowed to enter into the kitchen and she has become pregnant again and she managed to come to her parent's house with the help of the well-wishers of the locality. It is also alleged that prior to that she heard her husband talking with his parent that the birth of her child shall ruin the reputation of the family and no issue should be allowed to be born from her as she belongs to scheduled caste. It is also alleged that her husband came to the house of her parent's house after twenty-one days of the birth of her son and at that time all the male members of her parent's house were out of the house and only Gorakh, the servant was present and her husband snatched her new born child from her and wanted to throw the said child and the said servant caught him and drove him out of his house and on arrival of people of the locality her husband fled away from there. The further case of the appellant-wife is that she did not want to live with her husband as her life is in danger and she will be murdered along with her son as she belongs to scheduled caste.

5. In view of the pleadings of the parties, the learned Court below framed the following issues for adjudication in the said suit :

- (i) Is the suit as framed is maintainable?
- (ii) Whether the petitioner has valid cause of action for the suit?
- (iii) Whether the petitioner is entitled to the decree as claimed and if the respondent can be ordered to come and live with the petitioner to lead conjugal life under the same roof of the petitioner and render marital obligation as contemplated u/s 9 of the Hindu Marriage Act?
- (iv) Whether the petitioner is entitled to the relief or other reliefs?

6. In view of the evidence oral and documentary on the record, the learned Court below held that the appellant-wife has willfully withdrawn from the society of her husband without reasonable excuse and there is no legal ground or denial of the relief to the husband and he accordingly decreed the suit and granted the decree of the restitution of conjugal rights.

7. Being aggrieved of the impugned judgment and decree passed in the matrimonial title suit aforesaid, the appellant-wife has filed this appeal.

8. Admittedly, the appellant is the lawfully wedded wife of the respondent their

marriage having been solemnized on 7-12-1981 in accordance with Hindu religion and rites at the residence of the father of the appellant in Inderpuri, P.S.- Sukhdeo Nagar, District-Ranch and the appellant-wife came to her matrimonial home in the company of her respondent-husband for leading conjugal life. It is an inter-caste marriage and the appellant-wife belongs to scheduled caste whereas the respondent-husband is of upper caste and their marriage was an arranged marriage and the brother of the appellant had taken active and key role in the negotiation and settlement of this marriage. There is no denying the fact that the appellant-wife came in the family way during her conjugal life but unfortunately the said pregnancy sands terminated. It is not worthwhile to look into the case of the rival parties in respect thereof as it has lost its all relevance in view of the fact that after the termination of the pregnancy the appellant-wife again continued to live to her matrimonial home leading her conjugal life with her respondent-husband and once again she came in the family way and she was blessed with a son on 27-5-1983. Ext. 1 is the birth certificate of the son of the parties to this suit. Ext. 2 is the positive photograph of the said son in the lap of his respondent-father. According to the case of the respondent-husband, the mother of the appellant-wife came to his residence and expressed her desire to take the appellant-wife alongwith her infant child to her house for proper" care as well as for preparation of B.A. Examination of the appellant-wife in the year 1983 and the appellant-wife went with her mother alongwith her infant child on 11-7-1983 on the pretext of the marriage of her younger sister and since then she did not return to her matrimonial home inspite of efforts made by the respondent-husband to bring her back to her matrimonial home for leading conjugal life. It is equally relevant to mention here that respondent-husband works as an Assistant Research Officer in the Public Works Department of the State Government having his evidence at Morabadi in the town of Ranchi though he is the native of village Milohpally, District-Hoogly. The case of the appellant-wife is that during her stay in her matrimonial home after the termination of the pregnancy, she was pressurized by her husband and his family members to demand rupees one lakh and a scooter as dowry to facilitate the marriage of his sisters and on her refusal she was assaulted by her husband and his family members and they stated that the appellant is a scheduled caste and she shall not be kept in their house and she will be done to death and she was not allowed to meet her parent and she was also not allowed to inter in the kitchen and she was tortured and assaulted everyday. The further case of the appellant-wife is that her respondent-husband came to her parent's house on the 21st day of the birth of her son when no male members except Gorakh, the servant was present in the said house and he snatched the child from her and wanted to throw the said child and he was caught by the servant aforesaid and the life of the said child was saved. Further case of the appellant-wife is that she did not want to live with her respondent-husband as her life is in danger and she will be murdered alongwith her son as she is of scheduled caste. The respondent-husband has taken oath in this case as A.W, 1. In paras 5, 6 and 9 of his evidence he has specifically denied all the allegations regarding ill-treatment,

assault and treating the appellant-wife and cruelty for demand of dowry during his conjugal life with her as well as attempt to cause the death of his infant son at her parent's house. He has also deposed that he used to provide money to his wife for her maintenance during her stay in her parent's house through her elder brother, Ajay Kumar Das. He has also deposed that he attempted several times to bring his appellant-wife to his house for leading conjugal life with her but she had declined as she intends to do some job and she is also under the dictates of her father. He has also deposed that he earnest desire to lead his conjugal life with her. His evidence is further to the effect that there is no feeling of caste in his community. It is the settled principal of law that the foundation of the right to bring a suit for restitution of conjugal rights is the fundamental right of matrimonial law that one spouse is entitled to the society and comfort of the other spouse and where either of the spouses has abandoned or withdrawn from the society of the other without reasonable excuse or just cause, there should be a decree for restitution of conjugal rights. The burden of proof of the withdrawal of the society of the spouse is on that spouse who withdraws from the society and refuses to discharge his/her marital obligation. If the husband or the wife refuses to discharge their marital obligation there must be strong weighty and convincing evidence in support of the refusal to discharge the marital obligation and the refusal to discharge matrimonial obligation can be said to be reasonable or justified only when it is impossible for one of them to live with the other. Here the burden is on the appellant-wife, who has left her matrimonial home on 11-7-1983 with her infant son in the company of her mother on the pretext of the marriage of her younger sister and since then she had not returned to her matrimonial home inspite of repeated attempts made by the respondent-husband to bring her back for leading happy conjugal life, Let us now advert to the evidence on the record adduced by the appellant-wife. In para 10 of her evidence she has deposed that after the termination of her pregnancy she had been to her parent's house and during that period her husband came there two to four times and she came to her matrimonial home with him and started living with him and leading conjugal life with him in a rented house at Morabadi where she lived with him for seven months. She has deposed that during this period there were quarrels between them and she was also assaulted but she did not report in respect thereof to anyone including her neighbours and her landlord used to make him understand in respect thereof. She has also deposed that she came to Nagarmal Modi Seva Sadan; Ranchi for delivery in the company of her mother. In para 3 of her evidence she has also deposed that her respondent-husband demanded rupees one lakh and a scooter from her to facilitate the marriage of his four sisters. She has also deposed in para 4 of her evidence that her parent came to see her during the pregnancy and her husband abused them and did not allow them to enter in the house stating that a cobbler cannot be allowed to enter in the house and thereafter, in one night her husband assaulted her brutally and told that he will not live with her. Her evidence is further to the effect that after the birth of the child she was living in her parent's house and her husband came there on 21st day of the birth of the child and attempted to cause the death of

the said child by throwing him and he, in fact, threw the child dashing against the wall and her servant, Gorakh turned her husband out of her parent's house. Lastly she has deposed that she is insecure mentally and physically in leading conjugal life with her husband. O.W. 4 is the elder brother of the appellant-wife, in para 2 of his cross-examination, he has deposed that he has no knowledge as to why the appellant does not intend to lead conjugal life with her husband. He has also deposed that he did not try to make her understand but in the next breath he says that he attempted to pursue the appellant to lead conjugal life with her husband but she is adamant not to do so. He has further deposed that it is not a fact that the respondent-husband had ever given him money for handing over to his appellant-wife. Therefore, the evidence of O.W. 4 has no relevancy in this case to support the just and reasonable cause of the appellant-wife withdrawing from the society of her respondent-husband. O.W. 5 Vijay Kumar Das is the younger brother of the appellant-wife. He does not whisper in his evidence regarding any assault, abuse and treating the appellant-wife with cruelty for demand of dowry as averred and deposed by the appellant-wife. He also does not say even regarding the alleged attempt of the respondent husband for causing the death of his newborn child. Therefore, the evidence of O.W. 5 does not at all support the case of the appellant-wife regarding any just and reasonable cause for withdrawing from the company-of her respondent-husband. The parents of the appellant-wife have not taken oath in this case to support the case of the appellant-wife. O.W. 3 Gorakh Yadav, is the servant in the parent's house of the appellant-wife. He has also deposed that after 20 or 22 days of the birth of the said son, the respondent-husband had come to the parent's house of the appellant-wife and he hold that he will not allow her as well as her son to live and he felled the said child on the ground in the courtyard. He has also deposed that the said child started suffering from breathlessness and he picked up the said child and rebuked the respondent-husband and also turned him out from the said house. O.W.-2 is a hearsay witness on this score. He has specifically deposed that he was not seen the respondent-husband felling the child on the ground. The evidence of O.W. 3 does not stand supported by O.W. 4 and 5 in respect thereof and it, therefore, lacks credence. There is also no evidence on the record to show that the said child was treated by any physician when he was thrown and dashed against the wall suffering of breathlessness. Therefore, it appears that the evidence of the appellant-wife in respect thereof is nothing but figment of her imagination to make out a case for not leading conjugal life with her husband. Ext. 2 on the other hand depicts a different picture and furthermore, when the respondent had come to the parent's house of his wife he had got the cry of the child recorded by tape recorder and the appellant-wife has stated that she has no remembrance in respect thereof. It appears that the appellant is deliberately did not admit this for the reasons best known to her. For this, the evidence of the appellant-wife appearing in the concluding portion of para 10 of her testimony is referred to. Therefore, the evidence aforesaid on the record totally negates her case that her husband had thrown the child on the ground dashing him against the wall with intention to cause his death, Therefore,

the evidence brought on the record by the appellant-wife does not at all substantiate her case regarding any just and reasonable cause to disassociate herself from her respondent-husband for not leading conjugal life with him and in the facts and circumstances of this case, the reasons assigned by the appellant-wife for withdrawing from the society of her husband is neither grave nor weighty nor convincing and it cannot be said that the appellant-wife has withdrawn from the society of her husband for any just and reasonable cause. I, therefore, see no reason to disagree with the finding of the learned Court below in respect thereof. Therefore, there is no illegality in the impugned judgment requiring an interference therein

9. There is no merit in this appeal and it fails. The impugned judgment of the learned Court below is hereby affirmed. The appeal is dismissed. The appellant-wife is directed to lead her conjugal life with her respondent-husband in her matrimonial home forthwith. There shall be no order as to costs.