
(2012) 01 CHH CK 0036
In the Chhattisgarh High Court
Case No : First Appeal (M) No. 158 of 2010

Smt. Vaishali Kalmegh	Vs	APPELLANT
VS. Praveen Kalmegh		RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Family Courts Act, 1984 — Section 19
Hindu Marriage Act, 1955 — Section 10, 9

Citation : (2012) 1 CGBCLJ 388

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Goutam Khetrapal, for the Appellant; P.P. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

Gulam Minhajuddin, J.—This appeal has been filed u/s 19 of the Family Courts Act, 1984 against the judgment and decree dated 25.9.2010 passed by the II Additional Principal Judge, Family Court, Durg, in Civil Suit No. 31-A/09, whereby the application filed by the appellant/plaintiff u/s 9 of the Hindu Marriage Act, 1955 for grant of decree for restitution of conjugal rights, has been rejected. Facts not in dispute are that marriage between the parties was solemnized on 23rd May, 2006 at Durg as per the Hindu rites and ceremonies and out of their wedlock, on 21.4.2007 a male child was born. All other facts are disputed.

2. Brief facts of the case, as projected by the appellant, are that soon after the marriage, the respondent/husband and his family members were harassing and torturing her for bringing inadequate dowry and articles of inferior quality and they also used to instigate the respondent/husband to ill-treat her. When she was pregnant, the respondent/husband and his parents pressurized her for abortion and on her refusal, she was harassed and tortured all the more. In the month of September, 2006, when the respondent/husband was proceeding for Uttaranchal, she was dropped at her maternal home and even on his return, she was not taken back. When father of the appellant/wife went to drop her at her

matrimonial home on 13.10.2006, her father-in-law humiliated and abused her father on the ground that they have not given sufficient dowry. On 18.10.2006 also, her father-in-law quarreled with her for not bringing adequate dowry and on telephone, asked her father to take her back, whereupon her brother came there and took her back with him. On 25.1.2007, the appellant/wife moved an application before the State Woman Commission and thereafter, respondent/husband took her back to her matrimonial home, but she was not allowed to talk to her family members on phone. On 21.4.2007 she delivered a male child, but the respondent/husband and his family members did not allow her to meet her family members. After discharge from hospital, her in-laws asked her to reside separately, whereupon, the respondent/husband along with the appellant/wife started residing separately in a rented house at Shanti Nagar. There also she was not comfortable as the respondent/husband used to come at late night and did not take care of the newly born child and also used to beat her. Her family members tried to settle the matter at their individual level as well as by convening a meeting of their society, but the respondent/husband, without there being any fault on the part of the appellant/wife, refused to keep her. She has always been and is still ready and willing to discharge her marital obligations, therefore, she prayed for a decree for restitution of conjugal rights.

3. The respondent/husband, in his reply to the aforesaid application, denying all the adverse allegations, has stated that the appellant/wife used to misbehave with his family members and threaten to implicate them in a false case. While he was going to Uttaranchal, he had asked her to stay at her matrimonial home, but she went to her maternal home. On 18.10.2006, his father had requested the father of the appellant on telephone to settle the dispute, but father of the appellant did not agree and by calling back the appellant from her matrimonial home, aggravated the dispute. During counseling proceedings on 8.2.2007, the appellant was advised to behave properly with her in-laws, but even after that there was no improvement in her conduct. Due to this adamant and quarrelsome nature of the appellant, the respondent had to live in a separate rented house, where also she used to behave in an unusual manner and once she had even tried to commit suicide. This incident was narrated before the State Woman Commission and also to the Psychiatrist. The psychiatrist advised her for medical examination, but she refused for the same and quarreled. On 11.7.2007 after he had gone for his duties, the appellant ran away from the house. On return, when he found the house locked, he informed the State Woman Commission about the same and enquired from his in-laws, but they did not give any satisfactory reply. However, on the third day, the appellant contacted Smt. Hemlata Sahu, the Chairperson of the Commission on telephone, and informed her that she wants maintenance and does not want to live with the respondent/husband.

4. On 20.2.2009 during the course of proceedings u/s 10 of the Hindu Marriage Act, the appellant/wife misbehaved with the respondent/husband, humiliated him and even slapped him in the Court. The respondent/husband and his family members tried at their level best for resolving the disputes and bringing the

appellant/wife back to her matrimonial home, but all the time the appellant/wife refused to come back. In these circumstances, there seems to be no possibility of reconciliation or restitution of conjugal rights between the parties, therefore, the respondent/husband prayed for rejecting the application of the appellant/wife u/s 9 of the Hindu Marriage Act, 1955.

5. Learned Family Court, after affording due opportunity of hearing and of adducing evidence to the respective parties, by the impugned judgment and decree rejected the application of the appellant/wife u/s 9 of the Hindu Marriage Act, 1955 holding that the appellant/wife has been unsuccessful in making out her case for restitution of conjugal rights.

6. Heard learned counsel for the parties, perused the LCR as also the impugned judgment and decree.

7. The main question to be decided in this appeal is:

Whether the respondent/ husband, without any reasonable excuse, has withdrawn himself from the company of the appellant/ wife?

8. To substantiate the averments made in her application u/s 9 of the Hindu Marriage Act, 1955, the appellant/wife has examined herself as PW-1 and her father Babu Rao Poddar as well as her brother Jitendra Poddar as PW-2 and PW-3 respectively. On the other hand, in support of his case, the respondent/husband has examined himself and his father Gyandev Kalmegh as DW-1 and DW-2 respectively.

9. As per statement of the appellant/wife, in her cross-examination, the relations between the appellant/wife and the respondent/husband were cordial and she had no problem with him as he only used to support his family members. She did not lodge any report regarding demand of dowry against her in-laws with the hope that by the passage of time everything would be all right. She has admitted in her cross-examination that once she had tried to commit suicide, had slapped her husband (respondent) in the Court and in his absence, she had left her matrimonial home along with her brothers for her maternal home. She has further stated that her husband had taken her to the psychiatrist twice and at that time, the psychiatrist had advised for counseling and as she did not have time, therefore, she did not want to get herself examined.

10. Babu Rao Poddar (PW-2), father of the appellant/wife, has also admitted in his cross-examination that relations between: her daughter (appellant) and her son-in-law (respondent) were cordial they did not lodge any report with regard to demand of dowry. He has further admitted that father-in-law of the appellant had not told him or his son on telephone to take Vaishali (appellant) back to her maternal home, whereas On 18.10.2006 he himself had sent his son Devendra for bringing her daughter (appellant) back. He has also admitted that during the Court proceedings, the appellant had assaulted the respondent.

11. So far as demand of dowry is concerned the appellant wife has herself

admitted that relations between her husband (respondent) and herself were cordial. There is also no specific allegation, or report regarding demand of dowry against the family members of the respondent and only general, and bald allegations have been made in this regard. The appellant and her father both have admitted that since there used to be frequent quarrels between the appellant and her in-laws, they were asked to live separately, whereupon the respondent started living separately with the appellant at Shantinagar in a rented house. However, there also the appellant had a grievance that the respondent used to leave for his duties early in the morning and come late at night and used to take dinner with his parents at their home. Both the appellant and her father have admitted that while residing separately, the appellant had left the house of the respondent in his absence for her maternal home along with her brothers. On the other hand, the respondent/husband has deposed that while living separately, the appellant also used to quarrel with him on some petty matters. Though he has admitted that he used to leave for duties early in the morning, but he has denied that he used to come late at night and take dinner with his parents at their home. However, he has admitted that one day there was some quarrel between his wife and himself and on that day, he did not come to the house at night as he had gone to attend some marriage function of his friend at Raipur. However, he has expressed his readiness and willingness to keep the appellant with him on the condition that it is proved medically that she is not suffering from any mental disease and that in future she would not commit marpeet with him or the children.

12. Thus from perusal of the evidence of the parties, their witnesses and overall conduct of the appellant/wife, it is evident that present is a case where there is lack of coordination and harmony between the parties. The allegation of the respondent/husband that the appellant/wife used to get aggressive on some petty matters and even beat him and the child finds corroboration from the admission of the appellant/wife as well as her father in their Court statements, wherein they have admitted that the appellant/wife had once assaulted the respondent/ husband during Court proceedings. It is also not in dispute that the appellant had once attempted to commit suicide by trying to cut her nerves. With the intervention of the State Woman Commission, when the respondent/husband had gone to take her back from her maternal home, she had refused to come back. The appellant and her father both have admitted that the appellant was brought back by her father through his son on 18.10.2006 and as such, it cannot be said that the appellant was ousted from her matrimonial home by her in-laws or the respondent/husband. It is also undisputed that due to frequent quarrels between the appellant/wife and her in-laws, the respondent/husband had started residing separately with the appellant/wife in a rented house at Shanti Nagar. However, there also the attitude and conduct of the appellant/wife remained all the same towards the appellant and she used to quarrel with him on one pretext or the other. When she was taken to psychiatrist by the respondent, she refused to get herself medically examined on the pretext that she had no time for it.

Thus, on the basis of aforesaid discussions, we are of the opinion that the appellant/wife has failed to make out her case for procuring a decree for restitution of conjugal rights u/s 9 of the Hindu Marriage Act, 1955 as she has withdrawn herself from the company of the respondent/ husband without any reasonable cause, which amounts to cruelty. The learned Family Court has rightly rejected the application of the appellant/wife u/s 9 of the Hindu Marriage Act, 1955. We find no illegality or infirmity in the impugned judgment and decree and the same deserves to be affirmed.

13. Resultantly, the appeal being without merits deserves to be and is hereby dismissed. No order as to costs. The Additional Registrar (Judicial) shall draw up a decree accordingly.