
(2011) 05 GAU CK 0008
In the Gauhati High Court
Case No : Matrimonial Appeal No. 20 of 2005

Sri Pradip Dutta

APPELLANT

Vs

Smt. Parinita Dutta Hazarika

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Constitution of India, 1950 — Article 142
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2011) 4 GLT 406

Hon'ble Judges : Madan B. Lokur, C.J.; A.C. Upadhyay, J

Bench : Division Bench

Advocate : D.C. Mahanta, T.J. Mahanta and P. Bhattacharya, for the Appellant;
N. Barma, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—Heard Ms. P. Bhattacharya, learned Counsel, appearing on behalf of the Appellant-husband. None appears on behalf of the opposite party-wife, despite service of notice.

2. This matrimonial appeal is filed by the Appellant-husband against the dismissal of his petition for divorce u/s 13(1) of the Hindu Marriage Act, 1955.

3. The facts, leading to filing of this appeal, may be narrated briefly, as follows:

On 27.04.2001, the Appellant-husband and opposite party-wife got married according to the Hindu rites and customs and thereafter started living together at Garakhiodol, Jorhat, peacefully as husband and wife. The Appellant alleged that from the very beginning of their marital life the Appellant noticed the conduct and behaviour of the opposite party-wife to be "mentally imbalanced". In spite of best efforts made by the Appellant, the condition of the opposite party did not improve; rather it started deteriorating day by day. However, they continued to live together peacefully and eventually on 27.04.2001, opposite party gave birth to a female child, but even thereafter her mental condition was not better than

before, contrary to his expectation of her full recovery of her condition after the child birth.

4. The Appellant took his wife to a physician and got her admitted in a nursing home for intensive care and treatment. The attending physician of the nursing home reportedly opined that she was suffering from mental disorder. According to the Appellant, the mental disorder of the opposite party-wife being continuous, intermittent and incurable the condition of the opposite party progressively deteriorated. And for this reason on 18.04.2002, the Appellant sent his wife with her mother to stay with her parents at Mazuli. The Appellant alleged in the petition for divorce that he came to realize that the opposite party had been suffering from mental disorder since childhood and thus a fraud was played on him by the parents of the opposite party by dumping a mentally deranged daughter to him. The Appellant also felt that it was not safe to live together with the opposite party. Accordingly the Appellant filed the suit u/s 13(1)(iii) of Hindu Marriage Act, 1955, seeking divorce from the opposite party-wife

5. The opposite party-wife entered appearance in the suit and filed written statement in defence denying the allegations made against her by the Appellant. The opposite party-wife alleged in her written statement that the Appellant and his family members treated her with cruelty and behaved with her like a maid servant, and the Appellant also showed no love and affection towards her; rather the Appellant avoided her, during advanced stage of her pregnancy. The opposite party-wife stoutly denied the allegations of being mentally imbalanced. On the contrary, she stated that she led a normal family life by offering to the Appellant cohabitation with full satisfaction and enjoyment. The opposite party-wife stated in her written statement that on 24.08.2002, when she came to the matrimonial home with absolute desire to stay together, the Appellant refused to keep her with him.

6. On the basis of the pleadings of the parties, the learned District Judge, Jorhat framed the following issues for just decision of the divorce suit:

(i) Whether the Opposite Party had been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the Petitioner could not reasonably be expected to live with her being his wife?

(ii) Whether the Petitioner subjected the Opposite Party to cruelty and deserted her being his wife?

7. In order to establish the issues outlined for decision in the suit, the Appellant examined as many as four witnesses including him, and however, the opposite party did not adduce the testimony of any witness, but all the witnesses adduced by the Appellant were duly cross-examined on behalf of the opposite party-wife.

8. On conclusion of the hearing, the learned trial Court dismissed the petition for divorce, which gave rise to this appeal.

9. The question, which arose for consideration in this appeal, is whether the

Opposite Party had been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the Appellant could not reasonably be expected to live with her being his wife?

10. In order to appreciate the arguments advanced by the learned Counsel for the Appellant, we consider it to be apposite to extract and discuss herein below the core of the evidence adduced by the respective parties in the suit for divorce in the trial Court.

11. The Appellant, by examining himself as PW.1, stated in his evidence that after her discharge from Nursing home, she stayed with him for about two weeks and during this period she was provided with continuous treatment, however, thereafter she was not taken to any doctor again for medical check up. Though the Appellant alleged mental imbalance and abnormal behaviour by the opposite party-wife, but did not adduce the testimony of any qualified Doctor, who had examined Opp. Party during the period of alleged abnormality, in order to prove that the opposite party-wife was, in fact, suffering from incurable mental disorder. Except producing some photocopies of medical papers relating to treatment of the opposite party-wife, the Appellant did not even examine the doctor as a witness in the proceeding.

12. From the evidence of PW.1 it cannot be ascertained with certainty that the opposite party happened to be a woman suffering from mental disorder of any kind and/or she happened to be incurably of unsound mind of such a kind and to such an extent that the Appellant cannot reasonably be expected to live with her. Further, there is no materials on record to arrive at a finding that the opposite party wife was unfit for leading a conjugal life with the Appellant.

13. The relevant statutory provisions of the Hindu Marriage Act, 1955 regarding "mental disorder", [13(1)(iii)], for adjudication of this case are outlined as follows:

13. Divorce. (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the Petitioner cannot reasonably be expected to live with the Respondent. Explanation.-In this clause,

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, Psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical

treatment;

14. Now the question is, whether a mere allegation of mental disorder or unusual behaviour of the spouse is sufficient to obtain a decree of divorce? In *Sharda Vs. Dharmpal*, Hon''ble Supreme Court held that a sound mind indisputably is a key to a happy married life. A party to the marriage must, thus, have normal and sound mind, so as to live a happy marital life. A disorder of thought, behaviour and mind leading to unsoundness of mind may give rise to a cause of action for filing an application u/s 13(1)(iii) of the Hindu Marriage Act. The burden of proof of the existence of requisite degree of mental disorder is on the spouse making the claim on that state of fact. The decisions rendered by various courts of this country including this Court lead to a conclusion that a decree for divorce in terms of Section 13(1)(iii) of the Act can be granted in the event the unsoundness of mind is held to be not curable. A party may behave strangely or oddly inappropriate and progressive in deterioration in the level of work may lead to a conclusion that he or she suffers from an illness of slow growing developing over the years. The disease, however, must be of such a kind that the other spouse cannot reasonably be expected to live with him or her. A few strong instances indicating a short temper and somewhat erratic behaviour on the part of the spouse may not amount to his/her suffering continuously or intermittently from mental disorder.

15. In *Vinita Saxena Vs. Pankaj Pandit*, Hon''ble Supreme Court observed that mental disorder as a ground of divorce is acceptable only where it is of such a kind and degree that the Appellant cannot reasonably be expected to live with the Respondent. We may depict relevant extract of the decision as follows:

Section 13(1)(iii) "mental disorder" as a ground of divorce is only where it is of such a kind and degree that the Appellant cannot reasonably be expected to live with the Respondent. Where the parties are young and the mental disorder is of such a type that sexual act and procreation of children is not possible, it may furnish a good ground for nullifying the marriage because to beget children from a Hindu wedlock is one of the principal aims of Hindu marriage where sanskar of marriage is advised for progeny and offspring. This view was taken in *Smt. Alka Sharma Vs. Abhinesh Chandra Sharma*,

16. As a matter of fact, mere submission of some medical papers, and that too, in photocopies, cannot be treated to be evidence to clinch the issue in question, to establish unsoundness of mind of the opposite party wife.

17. Had the Appellant been serious regarding alleged mental disorder of the opposite party-wife, he would have made some attempts to render better medical treatment. On the contrary, the Appellant appears to be quite content after having left opposite party to reside with her parents.

18. In our opinion, there was no sincere effort on the part of the Appellant to greet her back to her matrimonial home. On the contrary, it is difficult to believe that a husband yearning for the revisit of his wife, in his true wits could remain

silent. There is evidence to show that the Appellant continues to affirm her marriage and her readiness and willingness to resume her married life with the Appellant. The Respondent, on the other hand, miserably failed to establish any of the grounds set forth in the petition for divorce.

19. With regard to the allegations made by the Appellant regarding "mental disorder" of opposite party-wife, the evidence of PW.2, Kamal Dutta could not divulge anything substantial to show that the opposite party-wife ever exhibited any overt act or behaviour to prove alleged mental disorder. PW.3, Ashok Dutta, being a neighbour of the Appellant, stated that he knew about the fact that the opposite party was treated by some Doctor, but he could not ascertain with certainty, if at all opposite party-wife had been mentally imbalanced woman. PW.4, Gunaram Borah, who is also a neighbour of the Appellant stated that the opposite party-wife used to wear her clothing in a disorderly manner. Wearing cloth in a disorderly manner by a person cannot even be remotely considered to be conclusive proof of mental unsoundness of the opposite party-wife.

20. The evidences on record adduced on behalf of the Appellant persuade us to hold that the Appellant could not successfully prove the allegation of mental disorder or unsoundness of mind of his wife. Apparently, the Appellant intentionally did not take back the opposite party-wife to his house.

21. Learned Counsel for the Appellant strenuously submitted that the marriage ties between the parties have irretrievably broken down and there is no possibility of reconciliation between the husband and the wife, and all attempts for reconciliation have also failed. However, it is worth mentioning that irretrievable breakdown of marriage is not a ground by itself for divorce. We are aware that this Court is not authorized by any of the proviso of law to dissolve the marriage between the Appellant and the Respondent on the ground of irretrievable breakdown of marriage. The equity jurisdiction exercised by the Apex Court under Article 142 of the Constitution to do complete justice is admittedly not available with us.

22. From the evidence of witnesses examined by the Appellant it appears that the Appellant could not discharge the burden of proving mental disorder of the Opp. Party, for obtaining a decree as sought for. On the contrary, it has been amply established by the very action of the Appellant that he was trying to get rid of his wife, on the pretext of her suffering from incurable mental ailment. He was thus, evidently absorbed only in creating a inhospitable atmosphere at home to discourage the return of the opposite party-wife to his house and then take advantage of his own wrong to obtain a decree of divorce by falsely projecting that she has deserted him due to mental disorder. This is not at all acceptable.

23. Failure of the Appellant to prove his own assertion of mental disorder of his wife, coupled with lack of endeavour of the Appellant to bring back his wife to live with him, reasonably concludes that the Appellant-husband wanted to get rid of the opposite party-wife. A responsible husband would not leave or escape

from his wife, if she is suffering from some kind of ailment, rather, he would make an effort, to the extent possible to provide suitable medical treatment by a qualified medical practitioner. Admittedly, the Appellant never attempted to do so.

24. In view of the above discussion, we are of the considered view that the Appellant could not substantiate the grounds for divorce as alleged by him. We find no illegality or infirmity in the judgment of the trial court warranting interference by this Court in appeal.

25. 9 In view of the above discussions the judgment and decree of the learned Court below is affirmed and the appeal is dismissed with costs.

Trial Court records be sent back.