
(2004) 05 JH CK 0086
In the Jharkhand High Court
Case No : A.F.O.D. No. 59 of 1993 (R)

Upendra Prasad Sinha

APPELLANT

Vs

Smt. Manju Sinha @ Sanyukta Sinha and Another

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Hindu Marriage (Amendment) Act, 1956 — Section 13

Citation : (2004) 4 JCR 463

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : R.S. Mazumdar and D.K. Chakraborty, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This appeal at the instance of the plaintiff-appellant is directed against the judgment and decree dated 2.3.1993 and 12.3.1993 respectively passed in Matrimonial Title Suit. No. 67 of 1989 (T.R. No. 2 of 1992) whereby and whereunder the learned VIth Additional Judicial Commissioner. Ranchi dismissed the suit.

2. The fact of the case he in narrow compass. Appellant who is plaintiff in Matrimonial Title Suit No. 67 of 1989 filed a Matrimonial Title Suit No. 67 of 1989 against the respondent wife for a decree of divorce u/s 13 of the Hindu Marriage Act, on the ground of desertion, adultery and cruelty alleging therein that he was married with the respondent No. 1-wife in the year 1963 according to the Hindu rites at the residence of respondent in village Nayangaon. P.S. Porbatta, Dis-trict-Khagaria. Thereafter out of the wedlock, a son, namely, Chulbullu was born to them in the year 1966. Immediately after a month or two of solemnization of the marriage, the respondent No. 1 started cruel behaviour with the petitioner-appellant, as the respondent No. 1 was illiterate and "arrogant lady and she leaked good manner. She is said to have abused the petitioner-appellant without any reasonable cause in presence of his guest, relatives and friends. She even

assaulted the petitioner's cousin's wife and other elderly members of his family and thereby humiliated the petitioner-appellant. It is further alleged that the respondent No. 1 stayed in her matrimonial house for a couple of years and thereafter went to her father's place without the consent of the petitioner-appellant and without any reasonable cause. Thereafter the petitioner alone came to Ranchi to work in H.E.C. The petitioner-appellant came to know from reliable sources that respondent No. 1 was having illicit relationship with the respondent No. 2. In February 1979 respondent No. 1 left the petitioner-appellant's house without any reasonable cause and without the consent of the petitioner and went with respondent No. 2 to live in other person's house. It is further alleged that the respondent No. 1 did not return to live with the petitioner-appellant thereafter and, thus, she has deserted the petitioner-appellant. It is further alleged that the respondent No. 1 is living as concubine of respondent No. 2 Radhey Shyam Singh.

3. On the other hand, respondent No. 1-wife as well as respondent No. 2 appeared and denied allegation levelled in the plaint against them. Respondent No. 1 has denied that she has ever misbehaved or abused or used abusive language to the petitioner or any member of his family; rather the fact is otherwise, as this petitioner-appellant has kept a concubine, namely. Manju Sinha and that is why, he does not want to keep her and neglect her and throw mud on her character. She has further alleged that when a son was born to her, the appellant-petitioner pressurized her to bring a sum of Rs. 10,000/- from her naihara. She has denied of having any Illicit relationship with respondent No. 2 Radhey Shyam Singh; rather the fact is that the respondent No. 1 had filed a case u/s 125 of the Code of Criminal Procedure against the petitioner-appellant for grant of maintenance and the Court was pleased to allow Rs. 500/- per month as amount of maintenance to her. Other respondent namely Radhey Shyam Singh also appeared and denied allegation.

4. On the pleadings of the parties, learned Court below framed following issues for determination in the suit.

I. Is the case framed maintainable?

II. Whether the petitioner has got valid cause of action?

III. Whether the Court has got jurisdiction to decide the case?

IV. Whether the respondent is guilty of cruelty?

V. Whether the respondent has withdrawn from the company of the petitioner without any reasonable cause?

VI, Whether the respondent is living in adultery with respondent No. 2?

VII. Whether the petitioner is entitled to a decree for the dissolution of his marriage with the respondent?

VIII. Whether the respondent is entitled to an amount of maintenance? If so, for

what amount?

5. Issue Nos. 4, 5 and 6 have been decided in favour of the respondents. Issue Nos. 3 and 8 were decided against the petitioner. Issue No. 7 were decided against the petitioner-appellant. Issue Nos. 1 and 2 have also been decided against the petitioner. Thus, almost all the Issues have been decided against the petitioner-appellant.

6. A case being Matrimonial Title Suit No. 67 of 1989 u/s 13 of the Hindu Marriage Act was brought by the petitioner-appellant seeking decree of divorce against the respondent No. 1 wife on the ground of desertion, adultery and cruelty. The learned Court below after recording evidence of the witnesses of both the sides-oral and documentary-and after scrutinizing the evidence, came to a finding that no ground for allowing decree of divorce is made out and, therefore, dismissed the suit. Learned Court below framed one issue for each type of allegation such as, he framed issue No. 4 as to whether she (respondent No. 1) is cruel to the petitioner-appellant; issue No. 5 whether respondent No. 1-wife has withdrawn from the company of the petitioner without any reasonable cause and issue No. 6 whether respondent is living in adultery with respondent No. 2 and after detailed discussion and after scrutinizing the evidence-both oral and documentary-came to a finding that no case is made out for grant of decree of divorce as levelled in the plaint. I have also gone through the oral as well as documentary evidence of the parties and I am of the view that the finding arrived at by the learned Court below does not require any interference as from the discussion of evidence, no case either on the ground of cruelty the ground of desertion or on the ground of adultery, is made out against the respondent-wife.

7. Learned counsel appearing on behalf of the appellant lastly made an attempt for grant of divorce on the ground that both the parties are living separate from each other from quite a long time and there is no chance of their living together as neither the wife nor the husband has shown any inclination to live together. Learned counsel, therefore, submitted that on flits ground of long separated life, this appeal should be allowed and the judgment and decree passed by the learned Court below be set aside and in this connection, placed reliance on 2002 (3) JCR 50 (Jhr.), in which decree of divorce was allowed on the ground that both the parties were living separate from each other for the last 22 years, although the case was not found proved u/s 13 of the Hindu Marriage Act. In the instant case also what I find from the foregoing discussions that has not been proved u/s 13 of the Hindu Marriage Act and appellant and respondent are living separate from each other for the last 20 years but the respondent is still willing to live with appellant but appellant is not willing to keep her and has. on the other hand, levelled several allegations Including of adultery also and if this appeal is allowed even on the ground of living separate from last so many years, it will be deemed that due to this very allegation against respondent that she was living in adultery, the prayer of divorce made by appellant- plaintiff has been found to be true.

8. Hence, considering the above facts, I am not inclined to allow this appeal and pass order for decree of divorce and, therefore, this appeal is dismissed but in the facts and circumstances, no order as to costs.