
(1989) 02 PAT CK 0027
In the Patna High Court
Case No : Civil Revision No. 630 of 1987

Usha Kumari

APPELLANT

Vs

Madan Lal

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 6 Rule 17
Hindu Marriage Act, 1955 — Section 10, 13(1)

Citation : (1990) 2 DMC 226 : (1989) PLJR 591

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Guru Saran Sharma and Ashok Priyadarshi, for the Appellant; B.P. Pandey, J.K. Pandey and C. Jawahar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against the order dated 25-4-1987 passed by Shri J.F. Kujur, 3rd Additional District Judge, Patna, in Matrimonial Suit No. 56 of 1985, whereby and whereunder the said learned court while allowing the said application for amendment of an application filed u/s 10 of the Hindu Marriage Act, permitted the applicant thereof to add Sri Lal Babu and one Sri Ashok Kumar as opposite parties in the aforementioned application describing as persons having adulterous relationship with the petitioner hereof.

2. The opposite party filed the aforementioned application for judicial separation purported to be u/s 10 of the Hindu Marriage Act, 1955 making various allegations therein against the petitioner. By reason of an application for amendment of the said application which is contained in annexure-1 to this civil revision application, it was asserted that as the petitioner was of a bad character having adulterous connection with several young men, the names and address of some of them, so far ascertained, had been given at the foot thereof and the opposite party had been advised to add the said persons as parties to the application in order to avoid future complication.

3. Mr. Sharma, learned counsel appearing on behalf of the petitioner, has drawn my attention to paragraph 10 of the application filed by the opposite party u/s 10 of the Hindu Marriage Act and contended that the statements made therein do not make out a case that the petitioner, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than her spouse. The learned counsel submitted that in view of the fact that no case, as contemplated u/s 13(1)(i) of the Hindu Marriage Act, has been made out, the learned court below has misdirected itself in passing the impugned order by allowing the application for amendment filed by the opp. party and thereby adding two persons as co-respondents in the suit.

4. Mr. B.P. Pandey, the learned counsel appearing for the opposite party, on the other hand, has drawn my attention to the Patna High Court Rules framed under the Hindu Marriage Act, 1955 and submitted that in view of the Rule 16 of the said Rules unless coadulteror is made a co-respondent, the application itself is bound to fail. The learned counsel in this connection has relied upon a decision of this Court reported in PLJR 1986 (NOC) (DE) 44 for the purpose of showing that such a co-respondent may be added even in appeal before the High Court.

5. Mr. Pandey has further submitted that necessary averments have been made both in paragraph 10 as well as in last sentence of paragraph 12 of the application u/s 10 of the Hindu Marriage Act, 1955. From a perusal of the said statements it would appear that necessary ingredients of extra marital sex of the petitioner have not been averred.

6. It is now well known that the allegation of adultery and/or extra marital sex has to be specifically pleaded. In my opinion, the aforementioned statements, as contained in paragraph 10 of the application for judicial separation or in the last sentence of paragraph 12 thereof do not make out a case as contemplated u/s 13(1)(i) of the Hindu Marriage Act.

7. For the purpose of obtaining a decree for judicial separation by the opposite party against his wife on the ground that she was having extra marital sex, it was incumbent upon him to make specific allegations and only in such event, the question of invoking Rule 16 of the Patna High Court Rules framed under the Hindu Marriage Act, 1955 could arise.

8. Evidently such is not the case here. It is now well known that a court shall not allow an application for amendment unless it is necessary for adjudication of the issues involved therein. Even no issue has been framed by the learned court below to the effect as to whether the petitioner was having extra marital sex with other persons or not for being determined in the suit.

9. Mr. Pandey, thereafter contended that the petition filed by the opposite party for amendment of the said application should be treated as

one under Order 1 Rule 10(2) of the CPC instead of an application under Order VI Rule 17 thereof.

10. True it is, that levelling of an application does not matter and in an appropriate case the court may consider an application for amendment of a plaint to be an application for addition of parties. But in such a situation also such a person must be necessary party or proper party to the suit.

11. In view of my aforementioned finding that the statements made in paragraph 10 of the plaint does not make out a case as envisaged u/s 13(1)(i) of the Hindu Marriage Act, in my opinion, there cannot be any doubt that the co-respondents, who are sought to be added were not necessary parties to the suit as no allegation has been made as against the petitioner that she was having extra marital sex with the said persons or with others. Extra-marital sex with any person other than her spouse is one of the grounds on the basis whereof an application for divorce or judicial separation can be filed and in absence of such allegation, such an application will not be maintainable.

12. In view of my aforementioned finding that no case u/s 13(1)(i) of the said Act, has been made out in paragraph 10 of the application, it must be held that the learned court below has exercised his jurisdiction illegally and with material irregularity in allowing the said application for amendment. Further the said application for amendment is also vague. In this view of the matter, the impugned order cannot be sustained.

13. In the result, this application is allowed and the impugned order dated 25-4-87 is set aside, but in the circumstance of the case, there shall be no order as to costs.