

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 343 of 2012

Rashmirekha Panigrahi, aged about 24 years,
W/o-Sunil Panigarhi,
At present:- C/o- Laxminarayan Tripathy,
Plot No. 2664, Sarugadia, B.J.B. Nagar,
P.O.-B.J.B. Nagar, P.S.-Badagada,
Bhubaneswar, Dist-Khurda.

... Petitioner

... Versus...

Sunil Panigrahi, aged about 30 years,
S/o- Sitanath Panigrahi,
of village- Kasinagar,
P.O./P.S.- Gunupur,
Dist-Koraput,
At present:-Balikuda, Sadar Police Station,
P.O.- Balikuda, P.S.-Cuttack Sadar,
Dist-Cuttack.

... Respondent

Date of argument : 15.07.2014

Date of order : 30.07.2014

J U D G M E N T

This order arises out of a petition u/s. 13 of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the Opp. Party on the grounds of desertion and cruelty.

2. The facts of the case of the petitioner are that she married to the respondent at Brajabandhu Kalyan Mandap, Bhubaneswar 27.04.2009 and they lived as husband and wife and their marriage was consummated in the rented house of the respondent i.e. E/11, Sector-7, C.D.A., Cuttack. The marriage was a serendipity. The der-Tag started in their life sixteen days after the marriage when the Opp. Party and his family members demanded

additional dowry of Rs. 5,00,000/- and a plot of land at Bhubaneswar and non fulfillment thereof subjected to the petitioner with physical and mental torture. She has further averred that the respondent and his family members along with her sister-in-law and her husband abused her in obscene language. They did not allow the petitioner to talk with her parents over mobile phone. The respondent did not allow her for physical relationship. Finding no other way the father of the petitioner gave Rs. 1,00,000/- to the respondent's family towards further dowry to which they were not satisfied. They tried to kill her by LPG Gas Stove. The parents of the respondent forced the petitioner to be the devotee of Sree Sree Anukulchandra and when the petitioner did not agree, the difference between both became wider. In the meantime the respondent and his family members left from C.D.A. Cuttack for which the petitioner did not keep any contact with them. The father of the respondent told to the parents of the petitioner that unless additional dowry of Rs. 4,00,000/- would be fulfilled, they will not allow the petitioner to stay with them. It is further alleged that the respondent and her family members tortured her both mentally and physically and voluntarily deserted her since 22.09.2009.

3. The respondent contested the proceeding by filing the written statement questioning the maintainability of the proceeding on the grounds of barred by the limitation, non joinder and mis-joinder of necessary parties and lack of cause of action. He has denied marriage with the petitioner and torture due to non-fulfillment of additional demand of dowry. He has denied regarding rituals of the marriage. Respondent has averred that the petitioner in the connivance with the police has filed an F.I.R. against him and his family members. He has further averred that he had some acquaintance with the petitioner during the college life and the petitioner while visiting to one of his relatives namely Sura Prasad Panigrahi he had some occasion to see the petitioner and the petitioner had proposed to marry him and taking such advantage, the petitioner is claiming to be his wife, as such the respondent prayed for dismissal of the proceeding.

4. From the aforesaid rival pleadings of the parties, the following points are to be determined.

- (1) Whether the petitioner is the legally married wife of the respondent?
- (2) Whether the respondent and his family members tortured the petitioner and subjected her to cruelty on demand of additional dowry and deserted her?
- (3) Whether the petitioner is entitled to a decree of divorce of on the ground of cruelty.
- (4) Whether the petitioner is entitled for maintenance/permanent alimony from the respondent?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1. One Harekrushna Das who claims to be the priest of the marriage is examined as P.W. 2 and Baurbandhu Barik who claims to be the barber of the marriage is examined as P.W. 3 and the father of the petitioner is examined as P.W. 4. Apart from that the petitioner has relied on 12 documents. They are Ext. 1 is the Marriage Invitation Card, Ext. 2 to 2/5 are the marriage photographs, Ext. 3 is the money receipt of Brajabandhu Kalyan Mandap dated 04.03.2009, Ext. 4 is the Money receipt of Swarna Digital Studio for Rs. 1,000/- dated 22.03.2009, Ext. 5 is the photo album containing the photographs, Ext. 6 is the bail application filed in G.R. Case No. 2496/10 before the learned S.D.J.M., Bhubaneswar, Ext. 7 is the bail application No. 1864/10 filed before learned District and Sessions Judge, Bhubaneswar, Ext. 8 is the seizure list in respect of seizure of dowry articles, Ext. 9, Ext. 10, 10/a and 10/b are the zimanamas, Ext. 11 is the Marriage C.D., Ext. 12 is the certified copy of the bail application filed before the Hon'ble Court vide BLAPL No. 17530/10 and Ext. 13 is the order passed by the Hon'ble Court vide BLAPL No. 17530/2010 dated 06.10.2010. The respondent in order to nix the allegation of the petitioner he, himself, has been examined as R.W. 1.

7. Point No. 1:- Whether the petitioner is the legally married wife of the respondent?

The petitioner claims to have been married to the respondent on

27.04.2009 according to Hindu rites and customs. The respondent has renayed his marriage with the petitioner. According to the respondent the photographs and C.D. exhibited do not indicate performance of homa and saptapadi and as such, there was no marriage between them. Therefore, it is the duty of the petitioner to show that the customary rites and ceremonies were performed.

8. The essential requirements of a Hindu Marriage are:

(i) Invocation before the sacred fire and (ii) Saptapadi, that is before the sacred fire.

9. The Hindu marriage Act, 1955, was passed and certain marriage ceremonies were made obligatory. It can be illustrated by extracting Mulla on the Hindu Law (1959), 12 Ed. Para-437 which states:-

(ii) Marriage ceremonies:- (1) There are two ceremonies essential to the validity of a marriage, whether the marriage be in the Brahma form or the Asura form, namely:-

(1) Invocation before the sacred fire, and

(2) Saptapadi, that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire.

(3) A marriage may be completed by the performance of ceremonies other than those referred to in subsection 1 where it is allowed by the customs of the caste to which the parties belong”.

It is therefore, pertinent to remark that the law as conceived in the Evidence Act regarding proof and presumption has been made applicable both in regard to the legality of a marriage which has in fact taken place and also with regard to the performance of ceremonies. This principle later found statutory recognition in section 7 of the marriage Act; the words used in subsection (2) of section 7 state the effect of taking the seventh steps by the bridegroom and bride jointly before the sacred fire in the case of Brahmins.

10. A plain readings of sub-clause (2) of Section 7 would show that the marriage will be deemed as completed and binding when the seventh step is

taken, only in cases where the rites and ceremonies include the performance of “Saptapadi”. The Act does not, however, prescribe the ceremonies requisite for solemnization of the marriage but leaves it to the parties to choose a form or ceremonial marriage, which is in accordance with any custom or usage applicable to either party. In *Nelavva Somanath Tarapur v. Divisional Controller K.S.R.T.C, Bijapur*, reported in A.I.R. 2002 Kant. 347 at pp. 351-52; 2003(1) Marr.L.J.73:2003(1) H.L.R. 177; 2002(5) Kar.L.J. 67 (Karn.), it has been laid down that:-

“Which means that when such customary rights and ceremonies include the taking of seven steps by the couple together before the sacred fire, the marriage becomes complete and binding when the seven steps are taken. It only means that after this event namely after the taking of seventh step the marriage becomes irreversible or conclusive between the parties. There is no scope for going back on the event of marriage when once the parties have gone through this motion. It does not necessarily mean that it is only the taking of seven steps that brings about a marriage and not otherwise. These aspects apart, the contents of Section 7(2) assumes importance in a situation where the disputes between the parties is as to whether the marriage is conclusive by the completion of the taking of the seven steps before the sacred fire i.e. in the instance, as in the instant case that the plaintiff if has pleaded that marriage was solemnized in accordance with the customary rites and ceremonies including taking of seven steps together by the bride and the groom in front of the sacred fire. It was not the defence that the marriage was not solemnized or was not performed in accordance with Hindu rites for want of the couple taking the seven steps together in front of the sacred fire. In the light of such pleadings, the issue relating to the proof of the marriage does not involve the question of the plaintiff producing proof by the couple having taken by the vow and seven steps together in front of the sacred fire as is

indicated in Section 7(2) of the Act.

11. Herein in the instance case, neither the petitioner nor the respondent has pleaded that performance of “homa” and “saptapadi” are essentially the customary rites necessary to make the marriage complete and binding. Therefore, the respondent at this stage of argument cannot raise this point when he has not pleaded the same in his W.S. The petitioner in his petition nay, in her evidence has stated that their marriage was performed according to Hindu rites and customs. She examined the priest as P.W. 2 and the barber as P.W. 3 who officiated as priest and barber respectively to the marriage. These two witnesses have stated that the marriage between the parties was solemnized according to the caste customs and rites of the parties. The respondent has not questioned while cross examining them about performance of “saptapadi” and “homa”. The respondent even has not questioned the petitioner while being examined as P.W. 1 and her father as P.W. 4 about the non performance of these two rituals. On the other hand she has exhibited the photo Album as Ext. 5 series and C.D. as Ext. 11 where the entire photographs of the marriage function has been demonstrated right from the Batabaran to hastaganthan, homa, bandan, Kanyadana and etc. The respondent has questioned that his photographs have been edited. No doubt, with development of the science, there is every possibility of editing the steel photographs. The C.D. was played in the Court in presence of the respondent, where we found the movements of limbs of the respondent to the performance of each ritual delineated hereinbefore. In case of editing of the photographs, the different movements suited for performance of each parts of the rituals cannot be possible. Though these two documents i.e. album photographs marked Ext. 5 series and C.D. marked Ext. 11 with objection, the objection was that the photographs of the respondent have been edited. In other words the genuineness of these two documents have not been questioned. Therefore, the petitioner has not taken any steps to prove these two documents by examining the Scientific Experts. Apart from these, the admission of the respondent and his relatives in bail applications vide Exts. 7, 12 and 13 have

indicated that the petitioner is legally wedded wife of the respondent. When the family members have admitted that the petitioner is the legally wedded wife of the respondent, law enjoins to presume that necessary customary rites to complete the marriage were solemnized which would go a long way in establishing the factum of marriage. Thus, held that the marriage between the petitioner and the respondent was solemnized on 27.04.2009 according to Hindu rites and customs.

12. Point No. 2 & 3:- Whether the respondent and his family members tortured the petitioner and subjected her to cruelty on demand of additional dowry and deserted her? And whether the petitioner is entitled to a decree of divorce on the ground of cruelty?

The petitioner as P.W. 1 and her father as P.W. 4 have stated that the respondent and his family members tortured the petitioner for non fulfillment of their additional demand of Rs. 5,00,000/- and a plot of land at Bhubaneswar sixteen days after the marriage. The respondent denied it. A newly wedded wife will never complain against her husband and in laws unless such a demand made by the respondent and his family members. Additionally, when the respondent denied his marriage with the petitioner and deserted her since 22.09.2009 without informing her, about his whereabouts before leaving the rented house, at Sector-7, C.D.A. Cuttack held sufficient grounds to establish desertion of the petitioner and both physical and mental cruelty on the petitioner. Therefore, the petitioner is entitled to a decree of divorce. Accordingly, these issues are answered in favour of the petitioner.

13. Point No. 4;- Whether the petitioner is entitled for maintenance/permanent alimony from the respondent?

The petitioner-P.W.1 has stated that she is a house wife and she has no independent source of income. Although she has stated that the respondent is working as a lecture in Apex College, Pahala and is drawing salary of Rs. 50,000/- per month, in her cross examination she has admitted that she has no knowledge about the educational qualification of the respondent. She has not filed any scrap of paper showing the employment of the respondent.

Therefore, it is bit difficult on the part of the Court to fix the permanent alimony. Further, I am also not inclined to grant permanent alimony because there is every chance of remarriage of the petitioner as she is at her prime youth. However, taking into consideration that the respondent is an educated and physically able bodied youth, I direct the respondent to pay a monthly maintenance of Rs. 5,000/- to the petitioner till she is otherwise disqualified as per law to getting any maintenance from the respondent.

14. As regards to non-maintainability of petition on the grounds of limitation, non joinder of necessary party and mis-joinder of the party and lack of cause of action, the respondent has singularly failed to lead any evidence to establish the same and thus, the same have no merit.

O R D E R

The petition of the petitioner is allowed on contest against the respondent. A decree of divorce is passed and the marriage between the petitioner and the respondent is hereby declared dissolved with effect from the date of decree. The respondent is directed to pay a monthly maintenance of Rs. 5,000/- from the date of filing of application i.e. on 29.08.2012 till she is otherwise disqualified as per law for getting any maintenance from the respondent.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 30th day of June, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Rashmirekha Panigarhi
P.W.2 Harekrushna Das
P.W.3 Bauribandhu Barik
P.W.4 Laxminarayan Tripathy

Witnesses examined for the respondent:

R.W.1 Sunil Panigrahi.

List of documents by petitioner:

- Ext. 1 Marriage Invitation Card.
 Ext. 2
 to Ext. 2/5 Marriage photographs.
 Ext. 3 Money receipt dated 04.03.2009 of Brajabandhu Kalyan Mandap.
 Ext. 4 Receipt dated 22.03.2009 of Swarna Digital Studio for Rs. 1,000/
 Ext. 5 Photo Album containing the photographs taken during marriage
 Ext. 6 Bail application filed in G.R. Case No. 2496/2010 before S.D.J.M.,
 Bhubaneswar.
 Ext. 7 Bail application No. 1864/10 filed before the District and
 Sessions Judge, Bhubaneswar.
 Ext. 8 List seizure articles recovered by police.
 Ext. 9,10
 10/a &10/b Zimanamas
 Ext. 11 Marriage C.D.
 Ext. 12 Certified copy of the bail application filed before the Hon'ble Court
 vide BLAPL No. 17530/10
 Ext. 13 Order passed by the Hon'ble Court vide BLAPL No. 17530/2010
 dated 06.10.2010

List of documents by respondent:

Nil.

JUDGE, FAMILY COURT,
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