

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

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

Civil Proceeding No. 470 of 2010

Smt. Lili Jena, aged about 19 years,
W/o-Mohan Nayak,
D/o-Matia Jena,
C/o-Bhikari Jethi,
At/P.O.-Khandagiri Bari,
P.S.-Khandagiri, Bhubaneswar,
Dist-Khurda.

... Petitioner

... Versus...

Mohan Nayak, aged about 25 years,
S/o-Dhoba Nayak,
resident of Vill.-Dhajala, P.O.-Giripalli,
P.S.-Odagaon, Dist-Nayagarh.

... Respondent

Date of Argument : 29.10.2015

Date of Judgment: 10.11.2015

J U D G M E N T

The petitioner-Smt. Madhumita Mohanty has filed a petition U/s. 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short, the Act 1955) praying for a decree of dissolution of her marriage with the respondent-Mohan Nayak on the ground of cruelty.

2. The facts of the case of the petitioner are that on 01.01.2007 i.e. on the date of negotiation, her brother-in-law had given a motor cycle to the respondent on the intervention of the mediator, Jugal Nayak and thereafter their marriage was solemnized in Odagaon Dutikeshar temple on 05.05.2008. According to the petitioner, there was no demand of dowry from the side of the respondent but on the date of marriage, the respondent and his parents demanded cash of Rs. 50,000/- or else not to proceed with the marriage. Finding no other alternative, her

brother-in-law had fulfilled their demand and thereafter marriage was performed. It is averred by the petitioner that during her stay in her matrimonial house, the mother of the respondent started torturing her both physically and mentally. She has also stated that he had got illicit relationship with her brother-in-law. Being invited, she and her husband went to her brother-in-law's house at Bhubaneswar. On the eleventh day of their marriage, the respondent leaving her in her brother-in-law's house went to his village. Thereafter, he insisted her to transfer the motor cycle in his name and also asked her brother-in-law to clear the loan and thereafter, she will be allowed entered into their house. According to the petitioner, the respondent assaulted her for which she has sustained pain in her abdomen. It is further averred by the petitioner that her brother-in-law and sister requested the respondent and his family members to give them five months time for compliance of their demand as they had incurred loans from their relations and friends. On 17.06.2008, the respondent came to Bhubaneswar and told her to tell her brother-in-law and sister for T.V., fridge, cooler, washing machine or else Rs.40,000/- to purchase the same and when she refused to tell the same to them she was assaulted by the respondent. Thereafter on her asking to her brother-in-law, he has given cash of Rs. 40,000/- for the said articles and after getting the said amount, went to her native village leaving her on the plea that he will take her directly to Rourkela. On 25th June her brother-in-law and sister had been to the village of the respondent and requested them to bring the petitioner back to his house and on 26.06.2008, her father-in-law along with the mediator came to her brother-in-law's house and threatened for dire consequence if she will return to their house. On 28.06.2008 she along with her brother-in-law and sister had been to the native village of the respondent. It is averred by the petitioner that on 03.07.2008, the assaulted and threatened to kill for which she informed the same fact to her brother-in-law and sister and accordingly, both of them had been to her material home and settle the matter amicable. On 18..07.2008 her father-in-law her at Bhubaneswar and fled away. Thereafter several attempts have been from her side to settle the dispute but all were in vain. It is further averred by her that the respondent and his family members had retained all her stridhan properties and

gold ornaments. Since the respondent debarred her from marital relationship, it is not possible for her to reside with the respondent, she has filed this proceeding seeking a decree of divorce on the ground of cruelty. Hence, the divorce petition.

4. The respondent-husband contested the proceeding by filing W.S. nixing all the allegations made by the petitioner against him. He resisted the claim of the petitioner that the petitioner is not his legally married wife. According to him, he married to one Mili @ Padmalaya Jena but not to the present petitioner. His further contention is that due to some difference between him and his wife Mili Jena @ Padmalaya who left her matrimonial home for which he had filed a proceeding U/s. 9 of the Hindu Marriage Act for restitution of his conjugal rights before Civil Judge, (Sr. Division), Nayagarh vide Mat Civil Suit No. 184/2008. He further averred that the petition is not maintainable in fact or law and there is no cause of action to file this case as the petitioner is completely stranger to him. The petition is also lacks of territorial jurisdiction of the this Court. According to the respondent the petitioner is not being his wife, she is not entitled to bring this proceeding for divorce against him. Further, the petition does disclose the cause of action and is also barred by law as the plain in whole does not contain all the essential ingredients of Order 7 Rule-1 of C.P.C. The entire reading of the plaint averments do not bring the right of the petitioner if stands un rebutted for any of the reliefs as prayed. However the contents of the whole averments of the plaint are strictly denied being brought by an imposter to the respondent and this kind of suit has been brought having malafide intention to extract money and harass him. Besides, the petitioner in a proceeding under Section 125 of Cr.P.C. filed before the Court of learned J.M.F.C, Bhubaneswar vide Crl. Misc. Case No. 107/09 has prayed for maintenance from him alleging herself as his wife wherein the he appeared has categorically changed their status of his wife and in the said proceeding he has averred that, he has got marriage to one Mili @ Padmalaya Jena but not to any Lili Jena and the said Lili Jena is not his wife. During her cross-examination, the petitioner has categorically denied that she is not Mili or Padmalaya Jena but she is only Lili Jena. So during pendency of the aforesaid proceeding under the above factual matrix, this proceeding is not at all maintainable both in fact as well as law.

5. The questions that require to be adjudicated are as follows:-

- (I) Whether the petitioner is the legally married wife of the respondent?
- (II) Whether there exists any cruelty on the part of the respondent-wife to allow the petition for divorce?
- (III) Whether the petitioner-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

6. The petitioner in order to buttress her case she, herself, has been examined as P.W.1 and one Bijuli Jena @ Jethy as P.W. 2 and placed reliance on eight documents. They are:- Ext. 1 is the certified copy of the marriage receipt, Ext. 1/a is the signature of the petitioner, Ext. 1/b is the signature of the respondent, Ext. 2 to 2/d are the purchase receipts of gold and silver ornaments, Ext. 3 is the insurance paper of the vehicle, Ext. 4 is the R.C. Book, Ext. 5 is the money receipt for purchase of furniture, Ext. 6 is the copy of list of articles given at the time of marriage, Ext. 7 and 8 are the voter lists, Ext. 8/a is the relevant entry in respect of Mochia Nayak, Ext. 8/b is the relevant entry of Krishna Nayak wife of Mochia Nayak, Ext. 8/c is the relevant entry in respect father of the respondent, Dhoba Nayak. In order to negate the claim of the petitioner the respondent, himself, examined as R.W. 1 and relied on five documents. They are:- Ext. A is the certified copy of judgment and decree in MCS No. 184 of 2008, Ext. B is the certified copy of the deposition of the respondent in I.A. No. 19 of 2011, Ext. C is the certified copy of deposition of Lili Jena in I.A. No. 19 of 2011, Ext. D is the certified copy of the deposition of Bijuli Jethi in I.A. No. 19 of 2011 and Ext. F is the certified copy of the enrollment card of the Lili Jena (petitioner).

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

7. Petitioner while being examined as P.W. 1 has stated that she married to the respondent Dutikeswar temple, Odagaon on 08.05.2008 and the temple authority has granted receipt vide Ext. 1. P.W. 2, who is the sister of the petitioner has acquiesced the petitioner. Ext. 1 is the certified copy of the receipt showing payment of dues for conducting the marriage in the temple. The signatures of the respondent and his father are found on Ext. 1. Ext. 1 further reveals that the petitioner's name has been mentioned as Mili Jena. The Opp. Party relied on Ext. A

i.e. MCS No. 184 of 2008. It is seen from the cause title of Ext. A, that the Opp. Party has mentioned that Mili Jena is the daughter of Matia Jena and her present address was C/o- Bhikari Jethy, Khandagiri back side of Durga Mandap, Bhubaneswar. P.W. 1 and 2 have stated that P.W. 1 was reared and brought up by Bhikari Jethy. The name of Bhikari Jethy is found mention in Ext. 1. Coalescing the aforesaid evidence and documents relied by the parties, it is as much clear in a noon day that the Lili Jena, the present petitioner is none other than the Mili Jena and therefore, the present petitioner is the legally wedded wife of the respondent. Accordingly, this point is answered in favour of the petitioner.

Point No.II

Whether there exists any cruelty on the part of the petitioner-wife to allow the petition for divorce?

8. The petitioner sought divorce on the ground of and cruelty. The petitioner has stated that the respondent and his family members meted out torture on her due to non fulfillment of their additional demand of dowry. She has also stated that on 18.07.2008 the father of the respondent left her at Bhubaneswar and went away. From Ext. 8/b, the copy of the voter list, filed by the petitioner, further establishes the fact that the respondent has contacted for the second marriage. Thus, from the aforesaid adduction of the ample convening evidence both documentary and oral to prove that the respondent has married to one Krishna Kumari Nayak for the second time. When the respondent has contacted a second marriage and is living with his second wife, the petitioner-wife has just an reasonable cause to leave separate from him. Contracting a second marriage in itself is an act of causing mental torture and tentamounts to cruelty for the purpose of Section 13 of the Hindu Marriage Act and hence, the petitioner could establish the ground of cruelty and as such, she is entitled for a decree of divorce. (If it needs assistance may be taken from *Dr. Suneer Sharma Vrs. Dr. Madhurlata Sharma reported in AIR 2000 MP 26 at page-28*).

Point No.III

Whether the petitioner-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

10. The petitioner has stated that she needed Rs. 50,00,000/- as permanent alimony. She claimed the aforesaid amount basing on the property of the respondent. She has filed the RORs in respect of the landed property of the respondent which have been exhibited. They are:- Ext. 7, 8 12 and 13. The petitioner has further stated that the respondent is the only son of late Ramakrushna Routray and late Ramakrushan Routray had one brother namely Laxman Routray. She has filed RORs in respect of land records stand in their name vide Ext. 23, 24. She has also filed RORs stand in the name of the father of the respondent vide Ext. 26 and 27. She has further filed RORs in respect of land stand recorded in the name of Mayadhar Routray and Haramani Dei is the grandparents of the respondent vide Exts. 4,5,16,18,19,20, 21, 22, 6 and 17 respectively. Further she has filed document in respect of landed property stand recorded in the name of the mother of the respondent vide 29. The petitioner has also filed documents in respect of vehicles stand in the name of the respondent vide Ext. 11, 12, 14 and 15. She has also filed Ext. 28 in respect of vehicle stands recorded in the name of the father of the respondent. The respondent has stated that the aforesaid landed properties and vehicles do not belong to him. Man may tell lie but Public documents do not. The respondent could not dispute the aforesaid Public documents rather, those documents are admitted on his admission. From the aforesaid documentary evidence, it can irrefragably be stated that the respondent belongs to an affluent family having vast properties and therefore, the living standard of the family is higher standard. Had the petitioner continued in the family of the respondent she would have enjoyed that standard of living and in order to maintain that standard of living, in my considered opinion, it would be just and proper to direct the respondent to pay permanent alimony of Rs. 35,00,000/- (Rupees thirty five lakhs) only.

Point No.3

Whether the petitioner is entitled to restitution of A scheduled property?

11. The next point for consideration is return of articles given to the respondent at the time of marriage. The petitioner mentioned the scheduled of properties given in her affidavit evidence as well as in her petition. There was no cross examination to

that effect. Therefore, irresistible conclusion would be the scheduled of properties given in the plaint as well as the affidavit evidence were presented to the respondent at the time of marriage. Section 27, Hindu Marriage Act, 1955 is a substantive provision empowering the court in any proceeding under the said Act to made a just and proper order regarding property presented at or about the time of marriage of the parties and belonging jointly to both of them. The ornaments which were either given to the wife by her parents or from the husband's side at the time of marriage belong to her and form a part of Stridhana which purely belongs to her only. It is also material to note that apart from the fact that the husband has filed no counter to the petitioner's claim for ornaments, in the oral evidence, there is no denial of the fact that either these gold ornaments were given by the wife's parents or purchased by her or gifted to her by husband's parents in marriage. On perusal of the scheduled of properties Rs. 10,000/- was given for dress and Rs. 20,000/- for barat expenses to the respondent at the time of marriage. Besides, Rs. 50,000/- for a two wheeler, gold chain and finger rings were given to the respondent as gift at the time of marriage. Though Section 27 of the Hindu Marriage Act could apply only to such property "which may belong to jointly to both the husband and wife, nothing therein would" exclude the jurisdiction or the power of the Court to pass an appropriate decree in regard to the property which may belonged solely to the husband or solely belongs to the wife. (Assistance may be taken Kamta Prasad Vrs. Omwati reported in AIR 1972 Allahabad 153). In that view of the matter, this court feels appropriate to direct the respondent to return all the articles except cost of dress materials, barat expenses and expense of sarees or in lieu thereof pay Rs. 5,00,000/- (Rupees five lakhs) only towards the cost of the materials. Hence, it is ordered;

ORDER

The petition of the petitioner for divorce is allowed on contest. 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 Rs. 35,00,000/- (Rupees thirty five lakhs) only towards permanent alimony to the petitioner. Further the respondent is directed to return all the

articles except cost of dress materials, barat expenses and expense of sarees or in lieu thereof pay Rs. 5,00,000/- (Rupees five lakhs) only towards the cost of the materials to the petitioner.

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Dictated, corrected by me and is pronounced on this the 19th day of August, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Lili Jena
P.W.2 Bijuli Jena @ Jethy

Witnesses examined for the respondent:

R.W.1 Mohan Nayak

List of documents by petitioner:

Ext. 1 Certified copy of the marriage receipt
Ext. 1/a Signature of the petitioner
Ext. 1/b Signature of the respondent
Ext. 2 to 2/d Purchase receipts of gold and silver ornaments
Ext. 3 Insurance paper of the vehicle
Ext. 4 R.C. Book
Ext. 5 Money receipt for purchase of furniture
Ext. 6 Copy of list of articles given at the time of marriage
Ext. 7 and 8 Voter lists
Ext. 8/a Relevant entry in respect of Mochia Nayak
Ext. 8/b Relevant entry of Krishna Nayak wife of Mochia Nayak
Ext. 8/c Relevant entry in respect father of the respondent, Dhoba Nayak

List of documents by respondent:

Ext. A Certified copy of judgment and decree in MCS No. 184 of 2008
Ext. B Certified copy of the deposition of the respondent in I.A. No. 19 of
2011
Ext. C Certified copy of deposition of Lili Jena in I.A. No. 19 of 2011
Ext. D Certified copy of the deposition of Bijuli Jethi in I.A. No. 19 of
2011 Ext. F Certified copy of the enrollment card of the Lili Jena
(petitioner)

JUDGE, FAMILY COURT,

BHUBANESWAR.