

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

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

Civil Proceeding No. 495 of 2013 and I.A. No. 125 of 2013

Smt. Rasmirenu Pradhan (Mahapatra), aged about 33 years,
W/o- Shri Dillip Kumar Moahapatra,
D/o-Shri Raj Kishore Pradhan,
At/P.O.-Gualipada, Via-Berboi,
P.S.-Delanga, Dist-Puri.
At present residing at Plot No. 132/214, Paika Nagar,
Baramunda, Bhubaneswar-751012

... Petitioner

... Versus...

Dillip Kumar Mahapatra, aged about 48 years,
S/o-Shri Narayan Mahapatra,
Plot No. 2200/2299, Sundarapada,
P.S.-Airfield, Bhubaneswar-751002.

... Respondent

Date of Argument : 19.01.2016

Date of Judgment: 27.01.2016

J U D G M E N T

The petitioner has filed this Civil Proceeding U/s-12 of the Hindu Marriage Act, 1955 (in short, the Act, 1955) praying for annulment of her marriage by passing a decree of nullity on the ground of non consummation of marriage due to impotency of the respondent and also filed a petition U/s. 27 of the C.P.C. which was registered as I.A. No. 125 of 2013 praying to return the articles as per the scheduled in the petition vide C.P. No. 495 of 2013.

2. The case of the petitioner Rasmirenu Pradhan (Mahapatra) inter alia is that their marriage was solemnized as per Hindu customs and rites in her

parental home on 10.05.2007. It is the further case of the petitioner that in fourth night of the marriage, the respondent avoided to consummate the marriage on the plea that he was not feeling well and on subsequent days despite her offers, the respondent avoided it on some plea or other. It is further averred by the petitioner that after examination of the respondent by doctor, she came to know that he is unable to consummate the marriage due to his impotency. It is also averred by her that the respondent and his family members knowing very well about the impotency of the respondent made her pregnancy test for which she and her family members suffered mental agony. According to the petitioner till her departure from her matrimonial home i.e. on 28.08.2009 they have no physical relation between them. It is averred by the petitioner that at the time of negotiation of the marriage, the parents of the respondent told her father that their son is having higher academic qualification and also four to five years older than her but after her departure from her matrimonial home, she came to know that the respondent is a matriculate and fifteen years older than her. It is further averred by her that the marriage was obtained by practicing fraud and misrepresentation as regards to the qualification, job and age of the respondent. She was also not aware about the status of the respondent. Hence she sought to declare her marriage with the respondent as nullity by presenting the petition before this Court on 23.09.2013.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

4. The following points are formulated for determination of case:-

- (i) Whether the marriage was not consummated due to impotency of the respondent?
- (ii) Whether the respondent-wife is entitled for any monthly or permanent alimony in case of divorce is allowed?

(iii) Whether the petitioner is entitled to restitution of scheduled property?

5. The petitioner in order to prove her case she, herself, has been examined as P.W. 1 and did not chose file any document on her behalf.

Point No. (i)

6. Whether the marriage was not consummated due to impotency of the respondent?

The petitioner while being examined as P.W. 1 has stated that marriage was not consummated ever since its solemnization till the date of her departure from her matrimonial home i.e. on 28.08.2009. The wife is the best person who is competent to speak about the reason for non consummation of the marriage and vice versa. Non consummation of marriage is certainly a ground for annulment of marriage. When the evidence of P.W. 1 has gone unchallenged that the marriage has not been consummated, the same must be accepted as true. Therefore, the petitioner could prove one of the grounds embodied in Section 12 of the Act of 1955 for annulment of the marriage. According point No. (i) is answered in her favour.

Point No. (ii)

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

Considering the status of the parties, present day of cost of living and other attendant circumstances, the respondent is directed to pay Rs. 5,000/- to the petitioner towards her monthly maintenance as earlier directed by this Court in the interim petitions until she gets remarried or otherwise disqualified to get the maintenance under the statute. According this issue is also answered in favour of the petitioner.

Point No. (iii)

8. Whether the petitioner is entitled to restitution of scheduled property?

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, the irresistible conclusion would be that 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 make 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. On perusal of the scheduled of petition it is seen that Rs. 1,00,000/- in cash, gold chain valued Rs. 20,000/-, six numbers of gold rings valued at Rs. 15,000/-, one pair of gold ear ring valued at Rs. 5,000/-, Colour T.V.(Samsung company), Cooler (Bajaj Company), and Godrej Almira along with other household articles as per scheduled 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 belong 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 as per the scheduled appended in the petition or in lieu thereof pay Rs. 8,00,000/- (Rupees eight lakhs) only towards the cost of the materials. According this issue is also answered in favour of the petitioner. Hence, it is ordered;

ORDER

The petition of the petitioner vide C.P. No. 495 of 2013 for annulment of

marriage and I.A. No. 125 of 2013 are allowed ex-parte in favour of the petitioner. The marriage between the petitioner and the respondent is hereby annulled by passing of a decree of nullity. The respondent is directed to pay monthly maintenance allowance of Rs. 5,000/- (Rupees five thousand) only to the petitioner until she gets remarried or otherwise disqualified to get the maintenance under the statute. Further the respondent is directed to return all the articles as the scheduled appended in the petition or in lieu thereof pay Rs. 8,00,000/- (Rupees eight lakhs) only towards the cost of the materials to the petitioner.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 27th day of January, 2016.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Rasmirenu Pradhan (Mahapatra)

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.