

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

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

Civil Proceeding No. 792 of 2011

Sri Aruna Kumar Chhotray, aged about 35 years,
S/o- Late Baina Chhotray,
At-Goda, Dharmasagar, P.O./P.S.-Jatni,
Dist-Khurda.

... Petitioner

... Versus...

Smt. Bijayalaxmi Pradhan @ Chhotray, aged about 34 years,
D/o-Purna Chandra Pradhan,
W/o-Aruna Kumar Chhotray,
At-Bhagabanpur Sasan (Kuaput) Haladia,
P.O.-Haladia, P.S./Dist-Khurda.

... Respondent

Date of argument : 24.12.2014

Date of order : 12.01.2015

J U D G M E N T

This order arises out of a petition u/s. 13 (1) of the Hindu Marriage Act, 1955 praying for a decree of dissolution of marriage of the petitioner with the respondent on the grounds of desertion and cruelty.

2. The admitted facts of the case of the parties are that their marriage was solemnized as per Hindu customs and at Bhagabpur Sasan (Kuaput) Haladia in the district of Khurda on 29.05.2011 and after marriage, they lived together as husband and wife for a short period in the house of the petitioner at Goda Dharmasagar, Jatni and both the parties have been living separately since 12.07.2011 having no physical relationship since then.

3. The petitioner previously filed a petition U/s. 9 of Hindu Marriage Act for Restitution of Conjugal Rights in which, the respondent did not appear and failed to file W.S. The facts of the present case of the petitioner are that

the respondent during her stay avoided to do household work and to serve his old and ailing bed ridden mother who was suffering from several old aged diseases. The respondent always insisted her to live separately from his family. On 12.07.2011 the father of the respondent came to his house and told that the respondent being a Anganabadi Worker, her presence is essential for the said job and took her away from his house without his consent and consent of his family members and while taking her promised to return her daughter within a short period but the respondent did not return to his house. Thereafter several attempts have been made from his side to bring back the respondent but all were in vain. On 10.09.2011 he tried to bring back the respondent to his house but the respondent refused to come. Rather suggested to stay at her parental home with an intention to perform her duty in Anganawadi situated in her village. On 16.09.2011 he sent telephonic message to the respondent join his company within four days from the date of receipt of the message, which was accepted by the respondent but the respondent remained a deaf ear to his request. On 12.07.2011 the respondent has withdrawn from his society depriving him from any conjugal rights for which he filed a proceeding U/s. 9 of Hindu Marriage Act, for Restitution of Conjugal Rights which was subsequently converted into U/s. 13 (1) of Hindu Marriage Act, 1955. It is further averred that their marriage has irretrievably been broken down as they have no physical relationship since 12.07.2011. Since the torture and cruelty to the petitioner became unbearable, he filed the proceeding seeking a decree of divorce on the grounds of desertion and cruelty.

4. The respondent entered contest the proceeding and filed written statement and denied all the allegations made by the petitioner against her. The facts of the case of the respondent are that, at the time of marriage, her father had given Rs. 1,00,000/-, gold ornaments weighing 14 to 15 tolas along with household article as per the demand. On 12.07.2011 while leaving her matrimonial home with her father, the sister-in-law of the petitioner retained her gold ornaments saying it was unsafe for her to keep in the house while

doing her job. Some pressure was exerted by the petitioner through his Bhauja to provide a fridge, but it has not yet been complied with. It is not out of place to mention here that since she did not return to his house, the petitioner probably apprehended that she may approach the Court against them, first and in order to save themselves from such apprehended danger the petitioner has filed this proceeding resorting to falsehood. It is further averred that the petitioner has avoided for any sex for which she believed that the petitioner has extramarital relationship with other lady.

5. From the aforesaid rival pleadings of the parties, the question that requires to be adjudicated is whether, there exists any desertion and cruelty on the part of the respondent to allow the divorce petition?

6. The petitioner in order to buttress his case he himself has been examined as P.W.1. The respondent in order to negate the claim of the petitioner has been examined herself as R.W. 1, one Narendara Ransingh as R.W. 2 and one Ganeswar Badajena as R.W. 3 and relied on two documents. They are:- Ext. A is the prescription of Dr. Baidyanath Nayak and treatment papers and Ext. B is the discharge certificate of SUM Hospital and Ext. B/1 to B/12 are the pathological reports of SUM Hospital.

7. The petitioner in his evidence has supported the facts as stated in his petition and has stated that the respondent has been torturing him physically and mentally and she has not cooperated for consummation since 12.07.2011 as she has left the marital home since then and has performed her duties as Anganbadi worker. P.W. 1 has stated that due to interference of the father of the respondent, their family life became changed and the respondent created problem with him as well as misbehaved him and his mother and other family members and always instigated him to live separately from family with a plea not to look after the old ailing mother and not to do household work. Several attempts have been made from his side for settlement of the disputes but all were in vain. He has further stated that the respondent threatened him to fulfill her evil intention /desires and refused to do household works, and withdrawing from his society without his consent and living with her parents

in order to support them from her earnings.

8. The respondent in her evidence has stated that knowing her husband's scanty income and to supplement and to have a better future from financial point of view, there was clear understanding between both the families that she will be allowed to serve as an Anganwadi worker. After marriage, she had noticed certain unfortunate things which were shocking and unbearable. During her short stay in matrimonial home, she did not find any cordial attitude of her husband and the family members of her husband. Rather her husband and her husband's sister-in-law (Bhauja) were very cruel to her and during her stay she noticed that her husband after his return from Bhubaneswar met her on the cot in late hours of night after spending rest of time with his sister-in-law. The petitioner not only most of the days, quarrel with her on the plea of non fulfillment of Rs. 10,000/- fridge and not purchasing of a scooty for commutation. She has also noticed that the petitioner was not interested to have sex with her. She has further stated that while her in-laws family did not provide a Scooty as promised, she could not commute from her in-laws village to serve as an Anganwadi worker in her native village. It is further stated by the respondent that she suffered from acute abdominal pain, for which a Gynecologist was consulted at Khurda and she had undergone medical treatment, since the month August, 2011 i.e. three months after her marriage. Several clinical tests were conducted and finally she had undergone a major operation in SUM, Hospital, Bhubaneswar and admitted into the said Hospital in January, 2012. The petitioner being well aware of her illness did not come to see her for a single occasion. She has further stated that several attempts have been from her side for settlement of the dispute but all were in vain. According to her, filing of a case for restitution of conjugal right was only sham and the petitioner has an oblique intention behind such proceeding. R.W. 2 and 3 corroborated the evidence of R.W.1.

9. The petitioner sought divorce on the grounds of respondent's desertion and cruelty. It is needless to say Section 13(1) (i-b) of the Act, 1954 provides

that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The petitioner at paragraph-10 of his petition has stated that the respondent deserted her since 12.07.2011. The petition for divorce in this case is presented was converted to U/s. 13 (a) of the Hindu Marriage Act, 1955 on 10.07.2012. Thus, it is clearly established that the petition has been filed before completion of two years from the date as alleged by the petitioner. Thus, the ground of desertion held not established.

10. The residue point that remains to be discussed is cruelty. P.W.1 In his evidence, has narrated the facts and circumstances of his marriage and subsequent cruelty made by the respondent to him and his parents. The circumstances of cruelty alleged by the petitioner against the respondent are that:- she did not cook food for the petitioner and did not look after his ailing mother. He has also deposed in the same fashion but his evidence is not corroborated by any other witnesses. He has further stated that he took several attempts for reunion but no credible evidence is forthcoming on this aspect. Further he has admitted that neither he nor his family members had visited the house of the respondent after marriage. When neither he nor his family members or any gentleman had visited to the parental home of the respondent, it is preposterous to think that the petitioner had taken attempt for his reunion with the respondent. On the other hand, his denial to accept the respondent as his wife, even the respondent opts to return to her matrimonial home, tells a volume about the conduct of the petitioner that he himself has got-up stories of cruelty to snap the marital tie with the respondent. The respondent as has been working an Anganbadi worker, twenty two kilometers apart from her matrimonial home, whose work is mostly filed work, it is not possible on her part to commute to her working place from her matrimonial home daily. She has stated that if the petitioner wants that she will commute, she would be given a Scooty but the petitioner instead of fulfilling the same, demanded that her father should provide that and when her father refused to provide the same, the disturbance arose.

Therefore, under no stretch of imagination it could be said that the respondent denied to continue her matrimonial relation with the petitioner. Rather, it is the petitioner, who is instrumental himself to break the marital tie. Therefore, there was no cruelty from the side of the respondent. The petitioner having failed to prove, the two grounds set up for a decree of divorce, his petition is liable to be dismissed. Hence, it is ordered;

O R D E R

The petition of the petitioner is dismissed on contest without any cost.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 12th day of January, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W. 1 Sri Aruna Kumar Chhotray

Witnesses examined for the respondent:

R.W. 1 Smt. Bijaya Laxmi Pradhan

R.W. 2 Sri Narendra Ranasingh

R.W. 3 Ganeswar Badajena

List of documents by petitioner:

Nil

List of documents by respondent:

Ext. A Prescription and treatment paper of Dr. Baidyanath Nayak

Ext. B Discharge Certificate

Ext. B/1 to B/12 Pathological reports of SUM Hospital

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