

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.143 of 2020

Bibek Kumar Jaiswal @ Vivek Kumar Jaiswal S/o Satyadeo Choudhary
resident of Village- Kumarganj, P.O. Tharbitta, P.S.- Kishanpur, District-
Supaul.

... .. Appellant/s

Versus

Shabnam Jaiswal @ Sabnam Jaiswal W/o Bibek Kumar Jaiswal @ Vivek
Kumar Jaiswal D/o Surya Narayan Jaiswal R/o Village- Daulatpur, P.S.-
Raghopur, District- Supaul, At. present C/o Bibek Kumar Jaiswal, resident of
Mohalla- Lohianagar, Ward No. 9, P.S.- Supaul, District- Supaul.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kamal Kishore Singh
For the Respondent/s : Mr.Uday Chand Prasad

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 02-09-2025

Heard the parties.

2. The present appeal has been filed under Section 19 (1) of the Family Court Act, 1984 impugning the judgment and decree dated 18.01.2020 passed by learned Principal Judge, Family Court, Supaul in Matrimonial (Divorce) Case No. 21 of 2015, whereby the matrimonial suit, preferred by the appellant Vivek Kumar Jaiswal, seeking dissolution of marriage, has been dismissed.

3. The case of the appellant as per petition filed



before the Family Court is that the marriage of the appellant with respondent was solemnized on 01.03.2000 as per Hindu Rights and Customs. After marriage, the respondent came to the house of appellant and they started living together as husband and wife. The marriage was consummated however, no child was born out of the wedlock. After the marriage the respondent complained about her unusual mense cycle and during the intercourse she complained acute pain in her stomach and told to have suffering pain since last two years and thereafter the appellant requested his parents-in-law to make consultation with the doctor and accordingly the respondent was medically examined by Dr. D. Singh at Patna who after examination disclosed that it is a case of surgery as cyst has developed on the placenta of the ovary. Further case is that in June, 2008, the appellant took away the respondent along with her brother to Patna and on 23rd June, 2008, the respondent undergone surgery and in November, 2008 the respondent began to vomit and thereafter the appellant consulted the doctor at Kishanpur Hospital and thereafter Dr. Narayan Kumar Das, Supaul and lastly the respondent



remained under the treatment of Dr. A. K. Verma who found the case of intestinal obstruction and advised surgery and the second Surgery was done by Dr. Motilal Singh at P.M.C.H Patna. Further case is that thereafter the respondent developed further complication and the respondent was treated at several places and the respondent was also sent to the camp of Yog Guru Ramdev but to no effect. The respondent was also shifted to the emergency unit of Dr. A. I. Hai and for sometime the respondent was kept in I.C.U. and the respondent was also taken away to the infertility center, Silliguri (West Bengal). Further case is that despite of passing of 12 years, the respondent has no pregnancy and the appellant was blamed for being impotent and the blame of impotency caused serious mental anxiety to the appellant as it was a false allegation. Further case is that since 2008 to 2014 the respondent remained under treatment and the behavior of the respondent was not normal and she was giving tooth bite and slap to the appellant and weeping aloud using abusive languages etc. On 26.06.2014, the appellant and the respondent both were admitted in the institute of reproductive medicine, Salt Lake



City, Calcutta. The appellant tendered himself for fertility analysis where the linear movement of sperm was found actively good. The appellant suffered mental, physical and economical loss in the aforesaid process. However, instead of understanding the pain and grief of the appellant, the respondent tried to put pressure upon him to part his share from the joint family property and get it transferred in her favour. The respondent compelled the appellant to transfer Rs. 5,00,000/- which he handed over to her father and got a sale deed registered for a piece of land at Simrahi Bazar in her name. The respondent forcibly took possession of a flat at Lohiya Nagar, Simrahi by dispossessing the tenant and also threatened the appellant. The respondent has deserted the appellant without reasonable cause and without the consent and has extorted the earnings of the appellant and all the ornaments gifted by the appellant to the respondent has been handed over to the parents of the respondent for ulterior motive. The marriage of the respondent was solemnized with the appellant on false representation and fraud as the respondent and her parents had knowledge of the fact of the sexual and the productive disability of the



respondent and now after 15 years of marriage when respondent knew the fact of inability to conceive and to give birth to any child, she has become violent against the appellant and used to abuse and assault upon the appellant making the life of the appellant miserable. Since the last 15 years, the appellant has devoted himself for the treatment of the respondent with tolerance. The appellant has been terminated from his service. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life. Hence, the divorce petition was filed for dissolution of marriage between the parties

4. In response to the summons/notices, the respondent appeared and filed her written statement. In her written statement, she has disputed and denied the claim of the appellant. The respondent has denied that she suffered pain and was treated by her parents. The respondent has denied that from 2008 to 2014 she always used abusive languages against the appellant. The appellant always demanded money and used filthy languages. The father of the respondent got a sale deed registered in favour of the



respondent which was registered in the name of brother of the respondent so that the appellant will keep mum but even thereafter, the appellant was not pleased. The respondent has denied that she has forcibly captured one flat in Supaul and has deserted the appellant, rather after holding *Punchyati*, the respondent was allotted to live in a room of the appellant who snatched all the articles and compelled to live at Supaul and as a result thereof the respondent is living with her parents. The respondent has filed Complaint Case No. 204C of 2015 against the appellant and other in-laws on 12.03.2015 under Sections 323, 324, 498(A) and other provisions of the Indian Penal Code. The respondent in her written statement has stated that due to misdeeds of the appellant and his family members, she has been infected with some disease which has been cured after the treatment of the doctor and it is false to say that this respondent is unable to procure child and the respondent has never shown cruelty and has not deserted the appellant. Further case of the respondent is that none of the ground of divorce has been specifically made in the divorce petition and the divorce petition is based on surmises and conjecture and



prayer is made to dismiss the same with costs.

5. After conclusion of the trial, the learned Principal Judge, Family Court came to the conclusion that the appellant has not proved his case and the suit was accordingly dismissed.

6. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Additional Principal Judge, Family Court, Supaul in Matrimonial (Divorce) Case No. 21 of 2015, the present appeal has been filed by the appellant.

7. It is submitted by learned counsel for the appellant that the Family Court has failed to appreciate the cruelty meted out to the appellant. The respondent and her parents concealed this fact that respondent has been suffering complications in her ovary and on account of this deficiency, she cannot conceive. After marriage, the appellant got the respondent treated to many doctors but her conditions continuously became deteriorated and after 15 years of the marriage, she is unable to conceive. The respondent is a quarrelsome lady and always used to fight with the appellant and her in-laws without any reasonable



cause. The respondent also put pressure to buy a piece of land from her brother, for which the appellant gave Rs. 5 lakhs and got the sale deed registered in favour of the respondent. The respondent also forcibly took possession of the flat of the appellant at Lohiya Nagar, Simrahi by dispossessing the tenant. The appellant also alleges that respondent is not willing to stay at her matrimonial house and she deserted the appellant for a long span of time. It is therefore submitted that these issues suffice to say that appellant was facing humiliation and embarrassment in the family circle and these issues would fall under mental torture and leads to cruelty at the hands of the respondent-wife.

8. *Per contra*, learned counsel appearing on behalf of the respondent-wife has submitted that the impugned judgment and decree is just, legal and in accordance with law. The learned Trial Court has rightly appreciated the evidence adduced on behalf of both the parties in the right perspective and has correctly dismissed the suit filed on behalf of the appellant-husband. Learned counsel further submitted that appellant himself ousted the respondent from



her matrimonial house due to non-fulfillment of 2 katha of land and now he has performed second marriage with one Arti Kumari, daughter of Subhash Kumar Chaudhary without dissolution of first marriage.

9. In view of the submissions made on behalf of the appellant and the evidences brought on record, the main points for determination in this appeal are as follows:-

(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.

(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable/tenable in the eyes of law.

10. The appellant has prayed for divorce in Matrimonial (Divorce) Case No. 21 of 2015 for dissolution of marriage on the ground of cruelty and desertion.

11. So far as, the ground of cruelty for taking divorce is concerned, the word 'cruelty' has not been defined in specific words and language in the Hindu Marriage Act, 1955, but it is well settled position that cruelty is such of character and conduct as cause in mind of



other spouse a reasonable apprehension that it will be harmful and injurious for him to live with O.P.- respondent.

12. It is observed by the Hon'ble Apex Court in leading case of Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511 that a sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty. More trivial irritations, quarrel, normal wear and tear of the married live which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

13. In this context, we are tempted to quote the golden observation made by the Hon'ble Apex Court during decision in case of Narain Ganesh Dastane vs. Sucheta Naraih Dastane reported in, AIR 1975, 1534, which are as follows:-

"One other matter which needs to be clarified is that though under Section 10(1) (b), the apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable, it is wrong,



except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence of judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Some one may want to keep late hours of finish the day's work and some one may want to get up early for a morning round of golf. The court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an Individual under one set of circumstances may be extreme cruelty under another set of



circumstances". The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to draw their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

14. During the course of trial, altogether four witnesses have been examined on behalf of the appellant which are PW-1, Vivek Kumar Jaiswal (appellant), PW-2, Janki Devi, PW-3, Sudha Jaiswal and PW-4, Promod Kumar Choudhary.

15. The appellant has also brought on record the following documents.

Ext-1 Certified Copy of the complaint petition of Case No. 204C/2015

Ext.1/A Certified Copy of the complaint petition of complaint case no. 646C/2015

Ext. 2 Certified Copy of the order dated 01-02-2016 of Case No. 204C/2015



16. The respondent has also examined six witnesses which are O.P.W-1, Shabnam Jaiswal (respondent) O.P.W-2, Saikh Abdul Mazid, O.P.W-3, Raman Kumar Jaiswal, O.P.W-4, Suryanarayan Jaiswal, O.P.W-5, Brajbhushan Jaiswal and O.P.W-6, Satayanarayan Choudhry.

17. The following documents were exhibited by the respondent.:-

Ext-1 Certified Copy of the complaint petition of Case No. 204C/2015

Ext.1/A Certified Copy of the complaint petition of Complaint Case No. 646C/2015

Ext. 2 Certified Copy of the order dated 01-02-2016 of Case No. 204C/2015

18. In the entire evidence no specific date of incidence regarding cruelty and cause of action to file this case has been mentioned nor in his plaint, the appellant has mentioned the same before this Court. The same fact has been narrated by learned Family Court in para 9 of its order which reads as under:-

“For the sake of convenience I take up this issue first. From the perusal of the divorce petition and also from the perusal of the



Examination-in-Chief of the petitioner Vivek Kumar Jaiswal (PW-1), it appears that neither in the divorce petition nor in his evidence the petitioner has stated about the facts constituting the cause of action which led for filing the instant suit and has also not stated about the date on which it arose. Thus I find that the petitioner has no cause of action to sue. This issue is decided accordingly against the petitioner.”

19. After going through the aforesaid facts adduced on behalf the appellant-husband, it is crystal clear that appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the appellant-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the respondent towards him. Not even single incident with reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. Furthermore, alleged certain flimsy act or omission or using some threatening and harsh words may



occasionally happen in the day-to-day conjugal life of a husband and wife to retaliate the other spouse but that cannot be a justified/sustainable ground for taking divorce. Some trifling utterance or remarks or mere threatening of one spouse to other cannot be construed as such decree of cruelty, which is legally required to a decree of divorce. The austerity of temper and behaviour, petulance of manner and harshness of language may vary from man to man born and brought up in different family background, living in different standard of life, having their quality of educational qualification and their status in society in which they live.

20. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that appellant has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of respondent which is legally required for grant of decree of divorce under section 13(1) (ia) of the Hindu Marriage Act.

21. So far as ground of desertion is concerned, it has come in the evidence of the appellant-husband that marriage of the appellant with respondent was solemnized



on 01.03.2000. After marriage, he came to know that respondent is a quarrelsome lady and she always used to quarrel with the appellant and other in-laws. The appellant further alleges that respondent herself deserted the appellant, however, no specific date of desertion was mentioned by the appellant which clearly suggests that in order to get advantage in the divorce case, this false allegation of desertion was alleged against the respondent. The appellant has not filed any petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which further suggests that he was not interested to continue matrimonial relationship with the respondent. Now, it is claimed by the respondent that appellant has performed second marriage without dissolution of first marriage which is not permissible under the provisions of Hindu Marriage Act.

22. In "Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-

"24. It is no doubt true that the High



Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established



principles of law or unreasonable..."

23. Hence, we find no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce.

24. The present appeal is dismissed accordingly, affirming the impugned judgment.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	23/07/2025
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