

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.336 of 2019

Shashi Bhushan Poddar S/o Late Satya Narain Poddar, Resident of Chmra Gudam Lane, (Burhanth Road), Khalifabagh, P.S. - Kotwali, District- Bhagalpur.

... .. Appellant/s

Versus

1. Gyan Bharti @ Rekha Poddar W/o Shashi Bhushan Poddar, Resident of Chamra Gudam Lane, (Burhanath Road), Khalifabagh, P.S.- Kotwali, District- Bhagalpur.
2. Bijay @ Binay Kumar Poddar, S/o Sri Anuplal Poddar, Resident of Mohalla- Sikandarpur, P.S.- Mojahidpur, P.O.- Mirjahat, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Radha Raman Verma
For the Respondent/s : Mr.Suman Kumar

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 27.02.2019 passed by learned Principal Judge, Family Court, Bhagalpur in Matrimonial Case No. 58 of 2008, whereby the matrimonial suit, preferred by the appellant, for a decree of divorce, on 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 was solemnized with respondent No.1 on 01.03.1993 as per the Hindu Rites and Custom and after marriage both the parties started leading a happy conjugal life and one son was born from their wedlock in the year 1995 and now he is aged about 13 years (at the time of filing of this case). The appellant was doing a business of wholesale of Straw and due to loss in the said business, ultimately the said business was closed. The appellant has a double story building at Chamra Godown Lane and first floor was being used for residential purpose and three rooms on the ground floor were on rent. After closing of Straw business, the appellant engaged himself in private job. It has been further submitted that the respondent No. 2, who was the Manager in Repurse Clip India, a private Chit Fund Company, which was functioning at the ground floor of the house of the appellant and was known to the appellant from before and was of the same caste, occasionally used to visit at the house of the appellant. It is alleged by the appellant that he was engaged in his private job which gave a chance to the respondent Nos. 1 and 2 to develop intimacy with each other as



respondent No. 1 was high ambitious lady and due to financial crunch, the appellant was not able to fulfill her desire. The appellant alleged that respondent Nos. 1 and 2 developed intimacy in the year 2002 and since then respondent No. 1 is living in adultery with respondent No. 2 and due to this reason, the appellant requested his mother to keep his son with her. The appellant made every possible steps to stop the respondent No. 2 from coming to his house but it was the respondent No. 1 who became violent and told to implicate him in a false case, if he does not allow the respondent No. 2 to come to his house. It has been further submitted by the appellant that since the Holy Festival of the year 2003, he has no relation with respondent No. 1 much less cohabitation with her. The respondent No. 1 gave birth of a male child in year 2004 and appellant has reason to believe that said child was born out of illicit relation between respondent Nos. 1 and 2. In the year 2007, the appellant became a patient of tuberculosis but respondent No. 1 did not take care of him and ultimately his mother brought him to her residence in MundiChak in the month of January 2008 and since then appellant is living with his



mother and under treatment of the Doctor. The respondent No. 1 did not come at MundiChak to look after the appellant and she became free to lead the adulterous life with the respondent No. 2. The appellant, therefore, prayed that the marriage between the appellant and respondent No. 1 be declared dissolved and a decree of divorce be passed in his favour.

4. In response to the summon/notice issued by the Court, respondent/O.P appeared and filed her reply/written statement.

5. In her written statement/reply, the respondent No. 1 has stated that all the allegations levelled by the appellant against her is false, concocted and without any basis. She has admitted that she got married with the appellant on 01.03.1993 and one son was born in the year 1995, out of the wedlock. The appellant has already sold his residential house at Chamra Godown Lane by a registered sale-deed to his younger brother and at present, she has got no place to live. The respondent No. 1 herself sent her son with her mother-in-law for his proper education. The respondent No. 1 completely denied any illicit relationship with respondent



No. 2 and the allegation of birth of second child out of illicit relationship with respondent No. 2 is shameless, false and baseless. The respondent No. 1 has admitted that appellant is patient of tuberculosis but she alleges that whenever she went to look after her husband, her mother-in-law and others in-laws restricted her to enter into her house and also abused and assaulted her. She is still ready to leave a conjugal life with the appellant.

6. The respondent No. 2 also appeared and filed his show cause in which he has denied the allegation levelled against him by the appellant and stated that he has not started any Chit Fund company at the house of the appellant. The allegation of having illicit relationship with respondent No. 1 is false and concocted and it was levelled in order to grab the amount of Rs. 1,52,000/- which was given by the respondent No. 2 on humanitarian ground to the appellant.

7. On the basis of the rival contentions of both the parties, following issues were framed in this case by the learned Trial Court :-

1. Whether the case as framed is



maintainable?

2. Whether the appellant has cause of action to file this case?

3. Whether respondent No. 1 is legally wedded wife of the appellant ?

4. Whether the applicant is entitled for a decree of divorce ?

5. Whether the petitioner is entitled to any other relief or reliefs?

8. During course of trial, altogether four witnesses have been produced on behalf of the appellant.

9. P.W.1- Lakhani Lal Poddar is the uncle of the appellant who has deposed in his examination-in-chief that he has seen in the year 2000 that respondent No. 1 was traveling with respondent No. 2 on a rickshaw and both were working in a Chit Fund company.

10. P.W. 2 Anand Poddar is brother of the appellant who has deposed that he has purchased the house which was allotted to him and respondent No. 1 has filed a dowry case.

11. P.W. 3 Sumitra Devi is the mother of the appellant who has deposed that respondent No. 1 is residing



separately from her husband since 2006 and presently she is living in the house situated at Khalifabagh.

12. P.W. 4 Shashi Bhushan Poddar is the appellant himself who has supported his case and stated that respondent No. 1 is living with respondent No. 2 in the house situated at Khalifabagh. He has further deposed that he has sold the aforesaid house to his brother through registered deed but respondent Nos. 1 and 2 are forcibly living in the aforesaid house.

13. The respondent-opposite party has also produced five witnesses in support of her case.

14. O.P.W.-1 Laxmi Poddar, who has supported the version of respondent and has stated that respondent No.2 had given Rs.1,52,000/- to the appellant for his treatment in the form of loan. The appellant and his family members tortured and demanded for dowry for which she has filed Complaint Case No. 3334 of 2008. The appellant has also sold out his house situated at Khalifabagh to his brother Anand Poddar through registered sale-deed and he has filed Eviction Suit No. 19 of 2010 which is pending. She has stated in her cross-examination that the appellant became ill



in the year 2003 and she had seen respondent No.2 at the house of the appellant in the year 2003 so many times and respondent No. 1 is doing a job of Teacher.

15. O.P.W.-2. Ram Dulari Devi is mother of the respondent-wife who has supported the case of the respondent No. 1 during her examination-in-chief and stated that appellant and other family members always used to torture her daughter, whenever she went to visit her matrimonial house. She denied to identify respondent No. 2 in her cross-examination.

16. O.P.W-3 Pappu Paswan, has also supported the case of respondent No.1.

17. O.P.W-4 Chandra Suraj Kumar is the nephew of appellant and supported the case of respondent No.1 and this witness also stated that he has given Rs. 12,000/- in so many installments to the appellant for his treatment. This witness has stated in his cross-examination that appellant is suffering from Tuberculosis.

18. O.P.W5 Gayan Bharti, is respondent No. 1 and wife of the appellant who has supported her version in her examination-in-chief and stated that after marriage, she was



living at the house situated at Chamra Godown Lane. She has also stated that her husband (appellant) had taken Rs. 2 lacs as loan from respondent No. 2 for his treatment. The appellant has also taken Rs. 1 lakh from her parents but till date he has not returned the above amount. In the year 2008, the brother and mother of appellant forcibly brought the appellant back to the house situated at MundiChak without consent of respondent No 01. It has been further submitted that her brother-in-law forcibly got the house at Chamra Godown Lane registered in his favour without giving any amount. It has been further submitted that due to torture meted out by the appellant and other family members, she became a heart patient and on 11-08-14, an open heart Surgery was done at Secundrabad (A.P). This witness has stated that she is employed as Panchyant Teacher since 2007 and living in the house situated at Chamara Godown Lane Khalifabagh since 2000 and she was unable to say that any Chit Fund Company was running its business on the ground floor of the house from 1998 or not. She has further deposed that respondent No. 2 is friend of the appellant and he had given Rs. 2 lakhs to the



appellant in her presence. She has also stated that she is ready for D.N.A test for second child.

19. After conclusion of the trial, the learned Principal Judge, Family Court has held that appellant has not proved that he was subjected to cruelty at the hands of the respondent No.1 as well as leading an adulterous life by the respondent No. 1 and the case filed by the appellant is not maintainable and also the appellant has no valid cause of action to file the instant case. Accordingly, the Trial Court came to the conclusion that the appellant was not entitled for decree of divorce on the ground of cruelty as well as adultery and the suit was accordingly dismissed.

20. Thereafter, being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Principal Judge, Family Court in Matrimonial Case No. 58 of 2008, the present appeal has been filed by the appellant.

21. Learned counsel appearing on behalf of the appellant has submitted that the judgment and decree passed by the learned Family Court is bad and appears to be mechanically passed without application of judicious mind. The witnesses who have appeared on behalf of the appellant



have stated that since the inception of marriage, the behaviour of respondent No. 1 towards her husband and other in-laws family members was not cordial and she always used to misbehave with them. The respondent No. 1 has illicit relationship with respondent No. 2 and at present, she is staying with the respondent No. 2 in adultery and has given birth to a child also. In their cross-examination the witnesses have stated that on many occasions, they had seen respondent Nos. 1 and 2 together. Therefore, the allegations of cruelty and adultery both stands established.

22. *Per contra*, learned counsel appearing on behalf of the respondents 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 for divorce filed on behalf of the appellant.

23. In view of the rival contentions, evidences and the arguments adduced on behalf of both the parties, 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.

24. After perusal of the materials available on record and consideration of submissions made by learned counsel for the appellant and the respondents as well as materials available on record, we find that appellant-husband has deposed in his evidence that respondent-wife always used to make quarrel with him and his family members but no any specific instance of date has been mentioned in the plaint as well as in his evidence. He has also admitted in his evidence that prior to filing of this divorce case, for the last five years, there were no relationship between the appellant and respondent No. 1 as husband and wife but he has not explained under which circumstance, he has waited for five years to file the divorce petition. The appellant has also not brought on record any proof regarding illicit relationship of respondent No. 1 with respondent No. 2. The appellant has also not



brought on record any cogent and reliable evidence which could show that respondent No. 1 and respondent No. 2 are living in adultery. The appellant has also not filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which would reflect that he was interested to resume conjugal life with the respondent No. 1. The appellant though alleges that respondent No. 1 and respondent No. 2 are living in adultery and a child was born, which he claims as illegitimate but neither he has made any effort to make a DNA test of the child nor he had filed any such petition before any authority or court, which clearly suggests that only in order to make a legal ground in the divorce case, these baseless allegations have been levelled by the appellant.

25. 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.



26. 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.

27. 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."

28. After going through the above entire documentary and oral evidence adduced on behalf the appellant-husband, it is crystal clear that appellant-husband has failed to prove the cruel behaviour of the respondent No. 1 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 No.1 towards him. Not even single incident with reference to specific date of alleged cruelty has been urged in the plaint before the Family Court. Moreover, wife (respondent No. 1) is still ready to live with the appellant. 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.

29. 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.

30. So far as ground of adultery is concerned, adultery may be defined as the act of a married person having sexual intercourse with a person of opposite gender



other than the wife or husband of the person. Under the present Hindu Marriage Act, adultery is laid down as one of the grounds for divorce or judicial separation.

31. The essential ingredients in an offence of adultery are that: (i) There should be an act of sexual intercourse outside the marriage, and (ii) that such intercourse should be voluntary.

32. The appellant has not brought on record any proof to show that respondent No. 1 was having illicit relationship with the respondent No. 2 nor he has proved that they were living in adultery and only in order to make a valid ground in the divorce petition, these allegations were levelled against the respondent No. 1 without any supporting material evidence.

33. 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..."

34. 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.

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

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

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