
(2019) 10 CHH CK 0039
Chhattisgarh High Court
Case No: FAM No. 57 Of 2014

Ganesh Tiwari

APPELLANT

Vs

Kamla Tiwari

RESPONDENT

Date of Decision: Oct. 4, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96
- Hindu Marriage Act, 1955 - Section 13

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Manoj Paranjpe, Shubhank Tiwari

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 5-5-2014 passed by the 1st

Additional District Judge, Surajpur (CG) in Civil Suit No. 42-A of 2009 wherein the said court dismissed the application filed by the appellant/plaintiff

for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act, 1955").

2. Appellant/plaintiff filed an application under Section 13 of the Act, 1955 on the ground that the marriage of appellant/plaintiff and

respondent/defendant was solemnised in the year 1980 and out of their wedlock four daughters were born. The appellant is posted at South Eastern

Coal Fields, Charcha. Appellant has purchased the house and agricultural land at village Anrokha and the defendant was taking care of the said

property. The respondent is residing separately since 1988 and she has left the matrimonial house and thereafter she did not join the company of the

appellant, that is why application was filed before the trial court on 13-11-2009 which was dismissed by the said court as mentioned above.

3. Learned counsel for the appellant submits as under.

i) The trial court has failed to appreciate the evidence on behalf of the appellant and as the marriage between the parties is unworkable decree of

divorce ought to have been passed .

ii) Looking to the period of separation, the marriage is beyond salvage and there is no chance of reconciliation.

iii) The appellant has made out a case of desertion, therefore, decree ought to have been passed by the trial court, therefore, decree should be passed

in favour of the appellant.

He placed reliance in the matter of Rishikesh Sharma vs. Saroj Sharma, reported in (2007) 2 SCC 263 and Sukhendu Das vs. Rita Mukherjee,

reported in (2017) 9 SCC 632.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The first question for consideration of this court is whether the respondent is withdrawn from the family of the appellant. Appellant adduced

evidence of himself as PW/1 and Shiv Dutt Pandey (PW/2) while respondent adduced evidence of herself as DW/1 and Ms. Radyamen (DW/2).

6. From the evidence of both sides it is clear that parties are living separately since 1988 which shows that relationship between the parties is not

normal because there had been allegations and counter allegations against each other. Now it is more than 30 years the parties are living separately.

7. Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage

becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage, on the

contrary it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

8. Today the position is that the marriage between the parties is totally unworkable, emotionally dead, beyond salvage and has broken down

irretrievably. Both sides have withdrawn company for about thirty years. In this view of the matter and other circumstances. Decree of divorce has been granted to put quietus to all the litigations between the parties and to save them from further agony, therefore, the order passed by the trial court is not sustainable and the same is hereby set aside.

9. It appears from the version of respondent that the appellant is working in SECL and he is getting salary of Rs. 60,000/- per month. The version of respondent is not rebutted by the appellant by producing his salary certificate. Looking to his length of service he can be directed to pay permanent alimony to the respondent.

10. Accordingly, the appeal is allowed and decree is passed in favour of the appellant and against the respondent on the following conditions.

i) The marriage between the appellant and the respondent solemnized in the year 1980 is dissolved on payment of Rs.10,00,000/- (Rupees Ten Lakhs)

by way of permanent alimony by the appellant to the respondent upto 31-12-2019 by way of bank draft which shall be condition precedent for dissolution of marriage.

ii) Parties to bear their own costs,

iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.

iv) A decree be drawn up accordingly.