

Dhurjati Bhutesh Gowala Vs Smt. Putul Gope

Court: Jharkhand High Court

Date of Decision: Jan. 14, 2025

Acts Referred: Hindu Marriage Act, 1955 " Section 9
Family Courts Act, 1984 " Section 14

Hon'ble Judges: Rongon Mukhopadhyay, J; Arun Kumar Rai, J

Bench: Division Bench

Advocate: Anshu Kumari, J.N. Upadhyay

Final Decision: Dismissed

Judgement

Rongon Mukhopadhyay, J.Ã, Ã, Ã, Ã,

1. Heard Ms. Anshu Kumari, learned counsel for the appellant and Mr. J.N. Upadhyay, learned counsel appearing for the respondent.

2. This appeal is directed against the judgment and decree dated 12. 02.2020 (decree signed on 17.02.2020) passed by Sri Niraj Kumar Srivastav,

learned Additional Principal Judge, Additional Family Court, Jamshedpur in Original Suit No. 01/2018 whereby and whereunder, the suit preferred by

the appellant under Section 9 of the Hindu Marriage Act for restitution of conjugal rights has been dismissed.

3. For the sake of convenience, both the parties are referred to in this judgment as per their status before the learned trial court.

4. The plaintiff (appellant herein) had filed a suit for restitution of conjugal rights with the defendant (respondent herein) under Section 9 of the Hindu

Marriage Act, 1955 in which it has been stated that the marriage of the plaintiff was solemnized with the defendant on

3. 07.2017 as per Hindu rites and customs. After the marriage, the plaintiff and the defendant started residing together and the marriage was

consummated. It has been stated that both the parties are highly educated. On account of the wedlock, the defendant at present is carrying a

pregnancy of four months as per the diagnosis of Dr. Rupa Shekhar. The defendant, without any reasonable excuse, had withdrawn herself from the

society of the plaintiff and has been staying at her parents' house since 12.12.2017 denying the plaintiff his conjugal rights. Despite several efforts

made by the plaintiff through his parents and common relatives, the defendant is adamant not to stay with the plaintiff. The plaintiff and the defendant

after their marriage had lived together till 12.12.2017.

5. Despite service of notice to the defendant and notice published in the local newspaper, she did not appear as a result of which the case was fixed

for ex-parte hearing. The defendant had subsequently appeared by filing a written statement with a prayer to recall the ex-parte order and to accept

the written statement but vide order dated 11. 04.2019, such prayer was rejected.

6. The point for determination was whether the defendant had left her husband without any reasonable cause or not.

7. The plaintiff has examined two witnesses in support of his case including himself:

P.W.1 Dhurjati Bhutesh Gowala is the plaintiff who has stated about solemnization of his marriage with the defendant on 03.07.2017 as per Hindu

rites and customs and after marriage, the defendant started residing with the plaintiff and the marriage was consummated. At the time of his marriage,

he was working as a Mechanical Engineer in the Gulf. The defendant works in Tata Motors. Out of the wedlock, no children have been born, but the

defendant was diagnosed by Dr. Rupa Shekhar as having a pregnancy of 4 months. He has stated that the defendant, without any reasonable cause,

left for her parents' place on 12.12.2017 and since then, she is living with her parents despite repeated efforts made by him as well as his relatives to

bring back the defendant to her matrimonial house.

On Court question, he has deposed that the last time he had met the defendant was on 01.01.2018. The defendant had refused to go with him and stay

at his house despite efforts made by him.

P.W.2 Kalipado Gowala is the father of the plaintiff who has reiterated what has been stated by P.W.1.

On Court question, he has stated that he is unaware of the reason his daughter-in-law does not want to stay with the plaintiff. He has deposed that the

defendant has filed a case against the plaintiff.

8. It has been submitted by Ms. Anshu Kumari, learned counsel appearing for the plaintiff/appellant that the suit proceeded ex-parte and since the

evidence of the plaintiff was not controverted, the suit should have been decreed in favour of the plaintiff. Even otherwise, the plaintiff has been able

to prove that the defendant had left the plaintiff without any reasonable cause.

9. Mr. J.N. Upadhyay, learned counsel appearing for the defendant/respondent has submitted that the plaintiff had suppressed material facts which

have been considered by the learned trial court and which clearly reflects the reason for the defendant to stay separate.

10. We have heard the learned counsel for the respective sides and have also perused the trial court records.

11. The scenario created by the plaintiff/appellant seems to suggest that despite efforts made by the plaintiff, it was the adamant nature of the

defendant which prevented her from continuing with her marital relationship with the plaintiff. There has been no reason for the defendant to leave the

company of the plaintiff, but such innocuous statements by the plaintiff seems to have been thwarted by the evidence of P.W.2, who has stated about

a case filed by the plaintiff against the defendant. This apart, the plaintiff has suppressed the fact in his plaint as well as in his evidence that he had

filed a case against the defendant being C/1 Case No. 1278/18 making allegations that the defendant had aborted her pregnancy without the consent

of the plaintiff. This is based on a photocopy of the certified copy of C/1 Case No. 1278/18 submitted by the defendant. Though, the suit had

proceeded ex-parte, but the document submitted by the defendant was considered taking recourse to Section 14 of the Family Courts Act, 1984. The

basic tenet of Section 9 of the Hindu Marriage Act, 1955 with respect to the burden of proving reasonable excuse for withdrawing from the society of

the plaintiff has been discharged by the defendant and such circumstances having been aptly considered by the learned trial court, we find no reason

to interfere with such finding and consequently, we dismiss this appeal.

12. Pending I.A.s, if any, stands closed.