

Tulsi Das Kumbhkar Vs Dandi Kumharin and Another

Court: Jharkhand High Court

Date of Decision: July 3, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 125
Hindu Marriage Act, 1955 â€” Section 13(1)(i)(ia)(ib)

Citation: (2013) 1 DMC 265 : (2012) 4 JCR 232

Hon'ble Judges: Prakash Tatia, C.J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: P.K. Mukhopadhyay, for the Appellant; Shafique Rahman, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

This first appeal has been preferred by the petitioner - husband against the judgment and decree dated 19th July,

2004 passed in Title(Matrimonial-divorce) Suit No. 99 of 1993 -24 of 1995, whose suit against his wife, respondent no. 1, Dandi Kumharin under

sections 13(1)(i)(a)-(i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce has been dismissed. As per the case

of the appellant - husband, he was married to the respondent no. 1 in the year 1969 in ""Sangha Form"" according to the prevalent custom and

started living with her in the matrimonial home. It has been alleged that the respondent no.1, Dandi Kumharin had earlier been married with one

Mansu Kumbhkar- respondent no. 2, which was suppressed by her while marrying with the appellant- husband and she continued to have illicit

relationship with the respondent no. 2 even after the marriage with appellant, which was seriously objected to by the appellant. As a result she left

his house and started living with the said Mansu Kumbhkar. It has been stated that they last resided together in June 1973. It has also been stated

on the part of the appellant that the respondent no. 1 was allowed maintenance against this appellant in a proceeding u/s 125 C.P.C. being filed by

her as M.P. Case No. 40 of 1978 and the appellant has been paying maintenance to the respondent no. 1, since then. The Divorce Suit has been

preferred on the ground of adultery, serious mental torture and also on the ground of desertion of the appellant by the respondent no. 1, since June

1973 without any reasonable cause.

2. The respondent No. 1 had appeared and filed her written statement before the trial court categorically denying the allegation relating to her

marriage to the respondent no.2 and stating that she is legally married wife of the petitioner- appellant solemnized according to Hindu rites and

customs. It has also been stated that out of their wed-lock two children were born. The respondent no. 1 has alleged that the appellant- husband

surreptitiously contracted second marriage with one Tulia Kumharin, daughter of late Janki Kumharin in the year 1977 and both of them started

torturing the respondent no. 1 and was ultimately ousted from matrimonial home along with her children where after she is living in her parents"

house in Taliapur. It has further been stated on her part that the appellant is having three children from his second wife also. Since the respondent

no.1 had been expelled from the matrimonial home and had to maintain her children, she filed the maintenance case being M.P. Case No. 40 of

1978, which was allowed on 24.1.1981 directing the petitioner to pay a sum of Rs. 125, which was subsequently raised to Rs. 500/- which he has

been paying till date. She has further submitted that her daughter has been married and her son is still living with her and she is willing to live with

the petitioner- husband along with her son at the matrimonial house. The respondent no.1 has prayed for dismissal of the suit on the basis of the

aforesaid facts.

3. On the other hand, respondent no. 2, Mansu Kumbhkar, through his written statement strongly contested the case of the petitioner denying all

the allegation levelled against him categorically refuting that he ever married Dandi Kumharin, respondent no.1 and stated that he had no illicit

relationship with her. He has categorically stated that he has never stayed and resided in his house with the respondent no.1 even for a moment nor

she has ever visited his house. Hence, the allegation of adultery made by the petitioner is completely false. It was stated in his part that in fact the

allegation has caused serious damage to the prestige of his family and it is defamatory in nature. Accordingly, he has prayed for dismissal of the

suit.

4. In order to prove his case petitioner has adduced 2 witnesses, A.W.1 as himself and Nivaran Singh as A.W.2.

The respondent no. 1 has also adduced 4 witnesses including herself who are as follows:- O.P.W.1-Nawanikant Dhiber, O.P.W.2-Champa

Kumharin, daughter of Respondent no. 1, O.P.W.3-Pashupati Bouri, O.P.W.4- Dandi Kumharin(respondent no.1). Besides that the certified

copy of the judgment in maintenance case no. 40 of 1978 was exhibited as Ext.1.

5. The petitioner - appellant during his examination and cross examination has seriously contradicted himself. He has stated that Champa Kumharin

is his daughter born from Dandi Kumharin-respondent no.1. He has further stated that in the year 1962 he was married with Tulia Kumharin from

whom he has two sons and one daughter. He has also admitted in para 15 of his cross examination that in the year 1969 he married Dandi

Kumharin according to ""Sangha Form"".

6. It is settled principle that the allegations of adultery, cruelty and desertion without any reasonable cause in such case requires to be established

by the evidence of the person who makes these allegations, but in this case the petitioner- appellant during the course of his examination completely

failed to prove either of the grounds of the adultery, cruelty and desertion as has been taken in the divorce petition.

7. The evidence of A.W.2, Nibaran Singh, who deposed on behalf of the petitioner is material only the extent on the issue relating to the marriage

of the appellant with the respondent no.1 and has not stated anything about adultery, cruelty or desertion by the respondent no. 1.

8. On the other hand, respondent no. 1 examined 4 witnesses in which O.P.W.1, Nawantikant Dhiber clearly supported her case and denied that

she ever married twice. In fact he also asserted that the petitioner- husband himself contracted second marriage and ousted Dandi Kumharin from

matrimonial home. He has also denied any illicit relationship by Dandi Kumharin with anyone. O.P.W.2, Champa Kumharin, daughter of the

petitioner and respondent no.1 is an important witness, who deposed that her mother Dandi Kumharin is the first wife of her father, who ousted her

mother after contracting second marriage and assaulting her. She has also denied the factum of second marriage of her mother, respondent no.1 or

any illicit relationship of her mother with any one else. O.P.W.3, Pasupati Bauri has supported the case of the respondent no.1 and also stated that

the appellant had contracted second marriage and thereafter deserted respondent no.1. He has also refuted the allegation that the respondent no. 1

ever married twice or she was originally married with Mansu Kumbhkar before her marriage. He also denied the suggestion that Dandi Kumharin

had left the matrimonial house on her own. The respondent no. 1 who examined herself as O.P.W.4 has fully supported her case and categorically

submitted that her husband contracted second marriage and thereafter, ousted her along with the children after assaulting her. She has also stated

that she was once again taken to the matrimonial home by her husband but again tortured and finally ousted her from matrimonial house. She

vehemently denied the allegation of living in adultery and stated her readiness to go to her matrimonial home to live with her husband.

9. On the other hand respondent no.2, Mansu Kumbhakar, alleged paramour of respondent no.1 examined himself and at the very outset refuted

the allegation that he knew Dandi Kumharin or had ever seen her. He further stated that he was married to one Pramila Devi in 1962 and he is

blessed with a son. He has further stated that unfounded allegation of the petitioner has tarnished the image of his family and as a matter of fact he

has been implicated only as the petitioner had threatened to implicate him in false case when at the time of marriage of his brother a quarrel had

taken place between him and the petitioner. He has categorically denied any illicit relationship with the respondent no. 1 or having ever married to

her.

10. From perusal of the records and upon going through the judgment of the learned trial court and after hearing the parties, it is abundantly clear

that the appellant- husband has miserably failed to establish any ground of adultery, cruelty and desertion without any reasonable case for

obtaining the dissolution of marriage by a decree of divorce against the respondent no. 1. The trial court has discussed the evidences of the parties

in detail and found that petitioner has seriously contradicted himself by admitting that he himself married with Tulia Devi in 1962 with

whom he has two sons and one daughter. He has found to have admitted that in 1969 he married with respondent no. 1. Since the burden of

establishing the allegation of adultery, cruelty and desertion in marriage without reasonable cause is completely on the person who alleges it the

petitioner- appellant has miserably failed to establish any of these grounds by adducing cogent evidence on his part.

11. On the other hand the witnesses examined on behalf of the respondent no. 1 have clearly denied and discounted the allegation of adultery,

cruelty and desertion in marriage by the respondent no. 1. In fact the daughter of appellant and respondent no. 1, Champa Kumharin has herself

stated that her father- appellant contracted second marriage and thereafter, ousted her as well as her mother after assaulting them. All the O.P.W.s

have categorically denied any illicit relationship by or between respondent no. 1 with any other person. On the other hand, from the evidence of the

petitioner himself it is clear that he was married with one Tulia Devi also and from the evidence of O.P.W.s including the respondent no. 1 it is

also evident that respondent no. 1 was subjected to torture and assault and she was ultimately ousted from matrimonial home. In fact the

respondent no. 1 was awarded maintenance against the petitioner- appellant in M.P. Case No. 40 of 1978 u/s 125 of the C.P.C, which the

petitioner- appellant has been paying thereafter. It is clear from the aforesaid facts that the respondent no. 1 had not voluntarily deserted the

appellant but appellant himself had contracted second marriage and had forced respondent no. 1 out of the matrimonial home by subjecting her to

torture and assault. Even on this count the allegation of desertion against the respondent no.1 is not sustainable. In view of the aforesaid discussion

and upon going through the lower court record and after perusal of the impugned judgment, we are of the considered view that the learned trial

court has rightly dismissed the matrimonial suit of the petitioner- appellant and there is no illegality or factual infirmity in the impugned judgment

which requires any interference by this court. Accordingly, this F.A. is dismissed.