

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE No.2
SONITPUR :: TEZPUR

TITLE SUIT (MATRIMONIAL) No. 58 OF 2009

Smt Sheela Das
W/O Sri Bijoya Bora
R/O Lalmati, PS: Tezpur
Dist: Sonitpur, Assam Petitioner

-versus-

Sri Bijoy Bora
S/o Sri Jagat Bora
R/O Kamarchuburi
PS: Tezpur
Dist: Sonitpur, Assam Respondent

Advocate for the Petitioner : Sri Biraj Nath
Advocate of the Respondent : Sri A.K.Mahanta

Date of Argument : 11.2.2015, 24.4.15
Date of Judgment : 25.5.2015

J U D G M E N T

1. This is an application under section 13 filed by the petitioner, Smt Sheela Das praying for a decree of Divorce from the Respondent, Sri Bijoy Bora.

2. The case of the petitioner in a nutshell, is that, her marriage with the Respondent was solemnised on 3.6.2001 as per Hindu rites and customs at Tezpur and thereafter the same was registered under the provision of Special Marriage Act on 3.8.2001. It has been stated that both started their conjugal life at Ushanagar, Tezpur and lived together as husband and wife for about eight years. The Petitioner has stated that it was after a love affair with the Respondent that they had entered into marriage. The Respondent at the time

of marriage was aware that the petitioner was a divorcee. The petitioner has stated that she is an employee of Govt of India and at the time of filing of the instant petition, she was working as Superintendent in the Office of National Survey Organisation, under the Ministry of Statistics and Programme Implementation, Tezpur.

3. The petitioner has stated that just after marriage, the Respondent on 28.11.2001 voluntarily donated part of his liver to the petitioner's sister-in-law namely, Dr. Joyeeta Biswas at Apollo Hospital, Delhi. For the said act of the Respondent he received rupees three lakhs from the husband of the sister-in-law and later because of the said act the respondent expected that he ought to be treated extraordinarily by the petitioner and his family members.

4. However, after about one month of the marriage, the Respondent frequently consumed liquor, started quarrelling with the petitioner and rebuked her for being a divorcee. It is the contention of the petitioner that the Respondent was a businessman at the relevant time and he used to spend all his earning on himself and on several occasions he had received money from the petitioner in the name of utilising the same for his business. Giving instance of having taken money from the petitioner, it has stated that the Respondent received 50,000/- from the petitioner in the month of January 2007. The petitioner has further stated that the Respondent resorted to insult her and lowering her dignity as a service holder by speculating and alleging that the petitioner had illicit relationship with the colleagues.

5. Alleging that the Respondent resorted to physical cruelty in March 2002, June 2006 and October 2008 and used derogative language against the family members, the petitioner has stated that in the month of August 2004, they had to vacate the rented premises in Ushanagar and shift to Chandmari, Tezpur because of the constant quarrel of the Respondent and the objection thereto of the landlord. It has been stated that as per the desire of the respondent, the petitioner shifted in the rented premises of her father in

August 2005. In the midst of the strained relationship, stated the petitioner, she went to Anand, Gujrat in the month of December 2006, for in-vitro-fertilization process pursuant to which she became pregnant. The petitioner has alleged that during her pregnancy in the month of September 2007 before about 10/15 days of her delivery, the Respondent kicked the chair on which she had intended to sit and the petitioner had fell down on the floor resulting in bodily pain. It has been stated that on 25.9.2007 the petitioner gave birth to twin babies at Baptist Christian Hospital, Tezpur. The petitioner has stated that the twin babies had been under her care and protection from the date of their birth and it was the petitioner who had borne all the expenses of hospital during her delivery.

6. It has been further alleged that because of the cruelty of the Respondent, the petitioner was compelled to live separately and in her parents' house since August 2008.

7. The Petitioner has further stated that on 25.5.2009, she was forced to lodge an FIR against the Respondent before the All Woman Police Station, Panbazar, Guwahati for the alleged assault and attempt to commit rape by the Respondent.

8. The Respondent filed her written statement on 16.9.2009, denying the allegations levelled against him by the Petitioner. It has been stated by the Respondent that the petitioner always maintained superiority complex and was a woman of quarrelsome nature and that was the reason why she could not maintain her relationship with her earlier husband. The Respondent stated that the change of rental accommodation was because of the ill behaviour of the petitioner with the neighbours and not because of the Respondent. It has been stated by the Respondent that after 5/6 month of her marriage, when his sister-in-law became very sick, it was upon insistence by all the family member of the petitioner that he donated a part of liver. The Respondent has denied receiving Rs. 3,00,000/- from the elder brother of the petitioner. It has

been further stated that it was because of donation of some part of the liver that the Respondent became physically weak and unable to run his business because of which his business completely failed. The Respondent has stated that the family members of the petitioner had assured him that they would maintain the petitioner throughout his life, but after about 6/7 month of the donation, the Respondent was driven out by the petitioner and family member and he took shelter in his parents' house. It has been stated that he had no personal income and he was also not capable of earning by doing any hard work due to lack of one part of his liver. It has been stated that the instant petition has been deliberately filed by the petitioner only to avoid the expenditure which would be incurred for maintaining the respondent.

9. The following issues were framed for adjudication:

1. Is there any cause of action for the suit?
2. Whether the petition for divorce is maintainable in the present form?
3. Whether the Respondent treated the petitioner with cruelty?
4. Whether the petitioner is entitled to decree of divorce, as prayed for?
5. To what relief/reliefs, if any, the parties are entitled?

10. On the above issues, plaintiff/petitioner examined herself as PW 1 and three other witnesses. The Defendant examined himself. This Court has heard the Ld Counsels for both the parties. The Issues are decided as under:

DECISION AND REASONS THEREOF :-

11. **Issue No. 1:-**

This issue relates to cause of action for the suit. Plaintiff/Petitioner has filed the suit seeking divorce from the Respondent u/s 13 of the Hindu Marriage Act and throughout the petition has pleaded cruelty as the ground. The

Respondent has denied the allegations levelled against him in the plaint/petition. The facts pleaded by the plaintiff/petitioner and denied by the defendant shows the existence of cause of action for institution of the suit by the plaintiff/petitioner. This issue is answered accordingly in favour of the plaintiff/petitioner.

12. **Issue No. 2:-**

This issue relates to maintainability of the suit in the present form. No legal bar either of law of limitation or any other law in force exists, which creates any bar with regard to the maintainability of the suit in the form in which it has been presented. The petitioner has paid proper court fees. As such, it is held that the suit is maintainable in its present form. Learned counsel for the Respondent, during the course of argument submitted that since the petitioner has failed to mention the sub clause of Section 13 of the Hindu Marriage Act under which the instant petition has been filed, hence this instant petition ought to be dismissed. It is settled principle of law that non-quoting and wrong-quoting of particular section of law ought not to be held against the petitioner. On reading the entire petition it is apparent that the petitioner has sought a decree of divorce on the ground of cruelty. Hence, the submission advanced on behalf of the Respondent is not sustainable. The issue is decided in favour of the petitioner.

13. **Issue No. 3 :-**

This issue relates to the ground of cruelty, on the basis of which the petitioner has sought the relief of divorce. This Court therefore proceeds to analyse whether the petitioner has made out a case for grant of relief on the ground of cruelty.

14. The Petitioner while reiterating the averments made in the petition and as narrated hereinabove, further stated in her evidence that upon her complaint against the Respondent GR Case No 952/2009 correspondent Tezpur PS Case No 406/09 was registered and the same is being tried in the Court of the Addl. Sessions, Tezpur. PW 1 placed on record copies of Marriage

Certificate No. 76/01 dated 3.8.2001 issued by the Marriage Officer, Sonitpur, Tezpur, Birth Certificate of her children, Discharge Note of Baptist Christian Hospital, Tezpur and Copy of complaint dated 21.5.2009 recorded as GDE No. 643 dated 21.5.2009, All Woman Police Station, Guwahati.

15. PW 1, in cross examination stated that at the time of filing the divorce petition in the month of June, 2009, she was residing at her father's house separately from the defendant. PW 1 stated that she had been residing separately since 2008. PW 1 stated that earlier she was married to Sri Birinchi Das and thereafter divorce on mutual consent was granted in the year 1995. PW 1 stated that at the time of first marriage she was a Grade III employee in National Sample Survey Organisation, Government of India and she was promoted to the post of Superintendent in the office of the National Sample Survey on 9.1.2009. PW 1 stated that they started their marital life in a rented house and not in the father's house, the defendant did not have a steady income but he had a generator and truck business, and that she was discharging the duties towards her family and bearing the day to day expenses. PW 1 denied that she had taken a dominant role amongst the spouse, since she had a steady income and she tried to dominate the defendant. PW 1 stated that the defendant cooperated with her in the process of in vitro fertilisation. PW 1 stated that she had not gone to reside in her father's house till the birth of her children and after the delivery she went to reside in her father's house for care and nursing. PW 1 denied the suggestion that since she gave birth to her children in the year 2007 it is to be construed that the defendant did not inflict cruelty on her before that period. PW 1 further denied that after taking advantage of the defendant by having to donate his liver and using him to give birth to her children, she mistreated the defendant and filed this case falsely; that the respondent did not inflict physical and mental cruelty upon her. PW 1 further denied the suggestion that since the defendant cooperated with her to have a child by IVF, the defendant did not insult her by naming her as infertile. PW 1 stated that she was rebuked by the respondent not giving birth to children in a normal manner.

PW 1 stated that her gross salary as on date was about Rs.32,000/- per month. PW 1 denied that apart from normal wear and tear in their marriage, no act of cruelty was inflicted by the defendant upon her; denied that after the donation of liver by the defendant , since the defendant became weak and dependent on her and since her purpose of bearing a child from the defendant was over, she threw the defendant out of the house and falsely filed the instant case; that since till the date of filing of the Title Suit , both of them were leading a conjugal life, and hence the suit was not maintainable. PW 1 stated that till July 2009 the defendant was staying in her father's rented house in the ground floor of the same building. PW 1 stated that she had not filed the original of Certificate No 76/01 as the same was not in her possession and hence only Xerox copy was filed.

16. PW 2, Dr. Mohan Chandra Das, father of the petitioner filed his evidence on affidavit supporting the allegations made by the petitioner against the Respondent. PW 2 stated that his daughter, the petitioner suffered cruelty at the hands of the Respondent and the Respondent also resorted to assault on him and his elder daughter. PW 2 stated that all efforts of reconciliation between his daughter and the Respondent failed and it was in the interest of her physical and mental health of her daughter that the instant petition ought to be allowed.

17. In cross-examination, PW 2 stated that had not filed any complaint with the police and it was his daughter who had lodged a complaint. PW 2 stated that both the petitioner and the respondent lived his as tenants since the year 2005 and he used to take rent from them at the rate of Rs. 2000-2500/- per month since the said portion of the house was meant to be let out. PW 2 stated that the respondent co-operated at the time of in-vitro fertilization but he did not contribute financially. PW 2 denied that his daughter did not desire to live with the respondent as she used the respondent for donating liver and for having children.

18. PW 3, Sri Krishna Sankar Hazarika filed his evidence-on-affidavit in support of the case of the petitioner.

19. In cross-examination, PW 3 stated that he had not himself seen the dependant inflict physical cruelty on the petitioner. PW 3 stated that he being a neighbour, he had many a time gone to save the petitioner from the physical excesses of the dependant but he could not say the exact dates on which he had so gone.

20. PW 4, Smt Renuka Mahanta, Staff of the Office of the Deputy Commissioner, Tezpur appeared in this court on receipt of summon along with Original Marriage Certificate No. 76/01 dated 3.8.2001. PW 4 proved the Marriage Certificate as Ext 1.

21. The Respondent, as DW 1 filed his evidence on affidavit on 28.11.14, stating that the allegations made in the divorce petition does not constitute cruelty within the meaning of Section 13 Subsection 1 (ia) of the Hindu Marriage Act. The respondent stated that by living with the respondent for long seven years and giving birth to children on 25.9.2007, the petitioner had condoned the alleged lapses, if any, on the part of the respondent. It has been stated that the alleged incidents in isolation were trivial in nature and would amount to normal wear and tear of married life. DW 1 stated that after donating a part of his liver the respondent had become physically weak and the petitioner was forced to maintain him and started considering him to be a liability. DW 1 stated that since he had extended his full cooperation in the IVF process under no stretch of imagination, can the allegation of cruelty be sustained. DW 1 stated that after becoming a mother the respondent lost all interest in him and ultimately made plans to throw him out of the house. DW 1 stated that on 27.5.2009 the petitioner lodged a criminal complaint against him in Tezpur PS and Session Case 206/09 u/s 376/511/498A IPC was pending trial. DW 1 stated that thirteen days thereafter the instant application was filed on 9.6.2009 and in July 2009 he was thrown out from the house.

22. DW 1 stated that in the year 2001, he had left his parents home to live with the petitioner, but in the year 2009 he was compelled to return to the shelter of his parents. DW 1 stated that the petitioner had used him to donate a part of his liver and to become a mother and thereafter filed the instant case to get rid of him. DW 1 further stated that there was no scope for him go back to the petitioners' house and it was the petitioner who would have to come and reside with him in his parents' house. DW 1 stated that he being the natural guardian and father of the twin children was entitled to their custody. It has been further stated that the petitioner's arrogance of changing husband, throwing out one after another, like an old pair of shoe should never be encouraged.

23. In cross examination DW 1 stated that he had not resided together as husband and wife with the petitioner since August, 2008. DW 1 stated they had failed to lead a happy conjugal life from within few days of their marriage and after their children were born, their relationship deteriorated. DW 1 stated that children were born on 25.9.2007 and since August 2008 he had not visited his children and he could not say under whose care his children were. DW 1 stated that he had not filed any medical certificate to show that he was not fit to do any hard work, after liver donation. DW 1 stated that the instant case was filed after 2 years of the birth of their children. DW 1 stated that after the filing of the instant case, he never visited the house of petitioner and he did not make an effort to reconcile the matter and lead a happy conjugal life with the petitioner. DW 1 stated that he did not have generator set and truck business, as on date as he was doing business of real estate. DW 1 stated that he was not in touch with his wife, not even over telephone. DW 1 denied that his wife was entitled to decree of divorce on the ground of cruelty.

24. Under section 13 (1) (i-a) of the Hindu Marriage Act, 1955, marriage can be dissolved by a decree of divorce on a petition presented either by the

husband or the wife on the ground that the other party has, after solemnisation of the marriage, treated the petitioner with cruelty. Cruelty may be physical or mental. The Hon'ble Supreme Court in Samar Ghosh –vs- Jaya Ghosh reported in 2007 (4) SCC 511 set out illustrative cases where inferences of mental cruelty can be drawn. The Hon'ble Court held that no uniform standard can be ever laid down for guidance, however some instances were laid down by the Hon'ble Court. The Hon'ble Court stated that mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time may lead to mental cruelty.

25. In the case of Sujata U Patil vs Uday M Patil reported in (2006) 13 SCC 272, the Hon'ble Supreme Court held that *"The word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty"*

26. In the instant case, it is seen that the petitioner wife has alleged cruel behaviour by the respondent from the year of their marriage itself. The respondent/husband admitted in cross examination that they had failed to lead a happy conjugal life, within few months of their marriage itself. However, inspite of the same, it is seen that the husband, donated a part of his liver to his sister-in-law in the year 2001 itself and later supported the petitioner in IVF process in the year 2007. It is the latter that the Ld Counsel for the respondent brought into play in support of his submission that the respondent was "used" by his wife to, first influence him to donate a part of his liver and then by using him to bear a child, only to be thrown out of the house, later. Though the submission seems impressive at the first glance but nevertheless in the ultimate analysis the same seems far stretched, in as much as, glaring time gap exists in between both the acts (the first being in the year of marriage : 2001 and the latter in the year 2007).

27. On the contrary, the evidence on record, shows that there was continuous quarrel between the petitioner and the respondent. Apart from the petitioner and her father, PW 3, their neighbour too has deposed with regard to the same. PW 3 though admitted that he did not, per se, witness the physical assault but he could not be demolished on the point that he had many a times gone to appease the parties. In fact the Respondent in his written statement has category labelled the petitioner to be a women of quarrelsome nature. The quarrel between the parties was to such an extent that they had to leave the rented accommodation. Hence, the submission that their quarrel ought to be considered a normal wear and tear of marriage, cannot be accepted. Apparently the latter has led to mental agony to the petitioner.

28. Another factor which is apparent is that the Respondent after having donated a part of his liver, was expecting to be looked after by others, forever thereafter. The respondent has sought to make out a case to the effect that he was influenced by others to part with a part of his liver, which in the long

run made him incapacitated rendering him incapable of earning. From the evidence on record, it is seen that the respondent could not sustain his business activity. The day to day cost, the medical expence for IVF and that of rearing the children was throughout being borne by the petitioner. Non-contribution of the respondent in supporting the petitioner, either before or after the birth of their children, too is a factor towards mental cruelty. The respondent, in no uncertain terms has shown his helplessness in not contributing and rendering support, leaving it to the petitioner who is an employee in Government of India to fend for all, in the pretext of having become incapacitated, inspite of the fact that he is a qualified Automobile Engineer. The said conduct persisted throughout and this is also seen to be a factor for deterioration of relationship. The latter can be construed to be proof of deliberate course of conduct (in not being gainfully employed) on the part of the respondent, intended to shift the burden of maintaining the family on the petitioner and since the said conduct persisted, cruelty can be inferred from it.

29. Though there are allegations of physical assault by the respondent but it is mental cruelty rather than physical which has clearly been established by the petitioner. The petitioner stated that she was rebuked by the respondent, in the name of being infertile. In the overall analysis of the materials on record, the latter does not seem improbable, in as much as, in his written statement the respondent has categorically stated thus, "*the petitioner's habit of changing husband's like pair of old shoes, ought not to be encouraged*". The fact that the respondent could impute the same in respect of the petitioner, inspite of the fact that the petitioner and the respondent entered into wedlock after having an affair, is reflective of the extent to which the relationship of the parties have deteriorated.

30. In the instant case, the petitioner has been successful in laying down the sustained and unjustifiable conduct of the Respondent amounting to mental cruelty and deterioration of relationship to such an extent that the

Petitioner, found it extremely difficult to live with the respondent and the matrimonial bond was ruptured beyond repair because of the mental cruelty caused by the husband.

31. Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose a host of factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their offsprings. In the instant case, the Respondent admitted that no effort for reconciliation has been made since August, 2008 and that he has never even visited his children or tried to share his responsibilities as a father. It is on record that either of them have not contacted each other since the past seven years. As has been held, irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955, but where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others, necessitating severance of marital tie; a marriage which is dead for all purposes cannot be revived by a Court verdict, if the parties are not willing; this is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by Court. The Hon'ble Supreme Court in a catena of judgments, including that of V. Bhagat vs D Bhagat (Mrs) reported in 1994 (1) SCC 337 held that while scrutinising the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted, the circumstance of irretrievable breakdown of marriage, can certainly be borne in mind.

32. In the ultimate analysis, this Court holds that the petitioner has been able to establish that the respondent/husband, by his conduct, has caused mental cruelty upon the petitioner/wife and the marriage between them has irretrievably broken down.

Hence, this Issue is decided in favour of the petitioner.

33. **Issue No. 4:**

In view of the discussion and decision in respect of Issue No.3, this issue is decided in favour of the petitioner and the petitioner is held entitled to a decree of divorce.

34. **Issue No. 5:**

Having decided the Issue No.3 in favour of the petitioner, it is held that along with the relief of decree of divorce, the petitioner is, consequently, entitled for a direction for cancellation of the Marriage Certificate No. 76/01 dated 3.8.2001. The plea advanced by the Id Counsel for the respondent to the effect that the instant petition having been filed under the Hindu Marriage Act, this Court does not have the power to issue such direction, is held to be hyper-technical and not sustainable. Admittedly, first there was social marriage and then the same was registered and certificate issued. The form in which it was issued is irrelevant, in the light of the fact that both the petitioner and the respondent are governed by the Hindu Marriage Act and for all intents and purposes they were husband and wife from the date of their social marriage and not from the date of registration of marriage.

35. With regard to the claim of permanent alimony claimed by the Respondent husband from the petitioner wife, this Court is of the considered view that materials on record show that inspite of being a married women, the petitioner has been bearing the entire expense of rearing their two children, without any contribution from the respondent. Only because the petitioner wife is a Central Government employee with a permanent job, it cannot be construed that the respondent husband did not have any responsibility towards his family. There being nothing on record to establish that the respondent husband is incapacitated to earn (as already elaborately dealt with

by this Court in Misc (J) Case No. 131/2009, this Court is of the considered view that the Respondent is not entitled to any amount towards alimony. Again, it being on record that the petitioner has a steady income, whereas the respondent has deliberately chosen not to earn or as stated later, is earning through real estate business, direction of payment of alimony by the Respondent too, in the considered view of this Court, would be an exercise in futility. Hence, this Court, in the peculiar facts and circumstances of this case, refrains from awarding any amount to the petitioner towards permanent alimony.

The Issue is decided accordingly.

ORDER

The suit is allowed on contest.

The marriage between the petitioner and the respondent is dissolved by a decree of divorce.

Issue precept to the Marriage Officer for cancellation of the Marriage Certificate No. 76/01 dated 3.8.2001

Prepare a decree accordingly.

Given under my hand and seal of this Court, on this 25th day of May, 2015 at Tezpur.

Additional District Judge No.2
Sonitpur, Tezpur