

IN THE COURT OF THE DISTRICT JUDGE, ::::::::::::::::::::UDALGURI.

Present : Sri C.B. Gogoi.
District Judge,
Udalguri.

T.S.(M) No.18/2016.

Sri Ajay Bhattacharjee,
S/o- Late Arun Bhattacharjee,
Vill- Tangla (Babupara),
P.S.- Tangla,
Dist-Udalguri, Assam..... Petitioner.

-Vs-

Smti. Maya Bhattacharjee,
W/o- Sri Ajay Bhattacharjee,
C/o- Sri Tapan Kumar Banerjee,
R/o- 1 No Cotton Road,
P.O. & P.S.- Tezpur,
Dist-Sonitpur, Assam Respondent.

Appearance :

For the petitioner : Mr. M. Deka, Advocate.

For the respondent : Mr. M.C. Narzary, Advocate.

Date of argument : 4.3.2020.

Date of Judgment : 4.3.2020

JUDGMENT

1. This is a petition under section 13(1)(i-a) of the Hindu Marriage Act, 1955 praying for a decree of divorce by dissolution of marriage.

2. It is pleaded that the petitioner is a permanent resident of village Tangla (Babupara) under Dakua Mouza, Tangla PS in the district of Udalguri BTAD Assam. The marriage of the petitioner was solemnised with the OP in the month of July 2006 in the residence of OP at No. 1 Cotton Road under

Tezpur PS in the district of Sonitpur Assam as per Hindu religious rites, customs and ceremonies prevailing in the society.

3. At the time of marriage, both the parties are governed by Hindu religious rites and customs and they continued to be Hindu till the date of filing the present petition. So they are governed by Hindu Marriage Act, 1955.

4. After the solemnisation of the marriage, the OP came to the matrimonial house of the petitioner and lived with him together as husband and wife. It is contented that the marital life was happy hardly for one month thereafter marital discord begun.

5. It is further pleaded that the petitioner is a person of amiable nature having high regard in the society. But immediately after one month of marriage the OP forced the petitioner to live separately leaving aside his own widowed mother and other family members and she even proposed the petitioner to live with her in her parental house by disposing off his parental properties. When the petitioner is not obliged to such unjustified proposal of the 2nd party she begun quarrelling with him as well as with his old widowed mother without any rhyme and reason. Even though the petitioner tried his level best convince and reconcile with the OP but of no avail.

6. Contrary to the good gesture of the petitioner the OP shown her adamant attitude and used to make frequent visit to her parents house without the knowledge of the petitioner and stayed there for two-three months consecutively without consent of his old mother. When the petitioner questioned such conduct of the OP she became offended and conducted herself unbecoming of a wife and she hurl abusive and filthy language towards the family members of the petitioner. Though the petitioner made every attempts to persuade his wife, but all his effort went in vain. Now, the petitioner has been living a dull life without the love and compression of his wife. It is alleged that in the month of May 2012 the OP had given a false complaint to Mahila Samiti at Tangla stating that she do not like to lead

marital life with the petitioner contending that at the time of marriage her consent was not taken by family members of both sides.

7. It is further contented that after his marriage the petitioner has not been able to enjoy his marital life peacefully as the opposite party frequently caused disturbance to his marital life by showing anger and using slang language and she has not treated him well as her husband. The unwarranted and unbearable conduct of the OP destroyed the very basis of his marital life which the petitioner never think of even for a moment in the wildest of his dreams. As the opposite party is desperate, adamant, rude and she used vulgar language which caused unbearable mental torture on the petitioner and there is no chance of reconciliation as the petitioner frequently pursue the path of collusion instead of reconciliation. Therefore, the petitioner has filed the petition seeking decree of divorce and other relief as may be granted under the law.

8. Receiving the notice from court the OP appeared in court and filed her written statement through the learned counsel denying all the allegations made by the petitioner.

9. The real fact according to the OP is that the petitioner presented the divorce petition by suppressing the material fact on the basis of some fabricated and concocted grounds.

10. The OP admitted the fact that her marriage was solemnised with the petitioner on 12-7-06 at her parental house at No. 1 Cotton Road, Tezpur PO and PS Tezpur, district Sonitpur as per Hindu religious rites and customs. It is further pleaded that as a matter of love and affection, numbers of articles and goods namely wooden furniture etc were given to her by her near and dear relatives as a gift and after marriage she used to reside at the marital house of her husband at Tangla Town (Babupara).

11. It is the contention of the OP that her marital life was peaceful for about 2 years but trouble begun in her life as the mother of the petitioner

gave ill advice to petitioner and his other brother. Initially, petitioner carried out business at Tangla Town but at the ill advice of his mother he shifted his business to other place and sought divorce from her without any reason.

12. It is also the pleaded case of the OP that the family members of the petitioner press the petitioner to marry another girl branding that the OP is unable to bear child in her womb. In spite of such torturous conduct against her by the petitioner and his family members, the OP continued her marital life with the petitioner bearing all the humiliation silently expecting hey days in future by taking care of all the family members of the petitioner. But contrary to her expectation, in the month of January 2009 her husband along with his mother and brother shifted to Guwahati leaving the OP alone in Tangla. Though initially the petitioner visited the OP very often but gradually he severed connection with the OP thereby depriving her from a happy conjugal life. The OP made several attempts even at the intervention of her well-wishers and family members to resume the conjugal life but all her efforts went in vain. Rather against her expectation and to her surprise, her husband filled the present divorce petition against her without any just and cogent reason. All the allegation made by him in the divorce petition are wild and imaginary without any substance so she prays to dismiss the divorce petition.

13. Upon the pleadings of both sides the following issue are framed.

1. Whether the respondent/OP treated the petitioner with cruelty?
2. Whether the petitioner is entitled to get a decree of divorce as prayed for?
3. To what relief/reliefs the parties are entitled to?

14. In the course of proceeding, in order to substantiate his stand the petitioner has adduced evidence of 4 PWs namely, Sri Ajay Bhattacharjee the petitioner himself as PW-1, Sri Alok Bhattacharjee one of his brother as PW-2, Bibekananda Acharjee as PW-3 and Nogen Bayan as PW-4. On the other hand to support her stand, the OP examined her as DW-1.

Discussion, decisions and reasons thereof in issue No. 1 & 2:

15. I have heard the contents of the learned lawyers appearing for both the sides. Now let this court decide the issues.

16. Since issue no 1 and 2 are interconnected hence taken up together for decisions.

17. On careful perusal of the pleadings of the petitioner as well as the written statement of the opposite party what transpires before this Court is that both parties have admitted that they are governed by Hindu Law and their marriage was solemnised on 12-07-06 as per Hindu rites and customs prevailing in the society in the paternal house of the OP at No. 1 Cotton Road Tezpur. After the marriage they started their conjugal life at the residence of the petitioner at Tangla town. The petitioner pleaded that his marital life was happy only for period of one month and thereafter his marital life stated to be unhappy. On the other hand, the OP pleaded that her marital life was happy for about 2 years.

18. On further dissection of the pleadings, this court found that the petitioner failed to establish any such occasion with credible consistent and worthy evidence that as a wife; the OP subjected her husband any such mental and physical cruelty making his life unbearable or to continue his marital life with the OP. The petitioner has pleaded only one occasion in which the OP allegedly lodged a complaint with the Mahila Samiti in Tangla. Apart from that, the petitioner failed to prove any such fact which goes to establish the fact that the opposite party conducted herself unbecoming of a wife. There is no such evidence to show that the OP pick up quarrel with the petitioner and other family members and loose her tamper or not taken care of her husband or other family members or she has deprived the petitioner from the comfort of the family life.

19. Section 13 of Hindu Marriage Act clearly set forth the grounds on which a party can seek divorce. Less than fulfilling the condition laid down in

the section 13 a decree of divorce by dissolution of marriage cannot be granted.

20. In the present case petitioner sought divorce only on one ground i.e. u/s 13(1)(i-a).

21. The mere allegation of cruelty as enumerated U/S 13(1)(i-a) is not sufficient but it has to be established with credible, consistent and trustworthy evidence. Though in his evidence PW-1 the present petitioner made certain allegation against the OP that she frequently visited her parents house without consent of his family members but in his cross examination the petitioner PW-1, failed to specify any particular occasion on which the OP quarrel with him and his family members. Mere making general and sweeping allegation is not sufficient. In the marital life of husband and wife ordinary friction or some understanding sometimes used to happen and this is not uncommon in marital life. The other prosecution witnesses namely PW 2, 3 and 4 also failed to specify/substantiate such specific date/dates on which the opposite party subjected cruelty to the petitioner and his other family members. In their cross examination they made general allegations only.

22. There is no convincing evidence to convince that mind of the court to believe that the OP behave herself in such a manner that after the marriage she transform the life of the petitioner into hell and put his life to a no point of return. Ordinary wear and tear cannot be treated as cruelty sufficient to grant decree of divorce by dissolution of marriage.

23. On the other hand the opposite party also adduced evidence denying the allegation of the petitioner and during the cross examination of OP, as DW-1 she in no uncertain terms stated that she made a complaint in Mahila Smaiti against her husband in the year 2012 as her marriage was arranged by her parents without taking her consent. But after 2012 she did not make any complaints against any one either against her husband or against his other family members. She even denied the suggestion of the learned counsel for the petitioner that she initiate quarrel with her husband or any of his family

members on trivial matters or subjected them cruelty in any manner and form.

24. After thesis and antithesis of the pleadings and evidence of both sides what transpires before this court that presently the petitioner and his mother and brother have been living in Guwahati separately leaving aside the opposite party alone in the original marital house of the petitioner at Tangla Town. As it appears, in spite of allegations made by the petitioner, the opposite party has been living in the original house of the petitioner all throughout which shows her dedication love and sincerity towards her marital house. She appears to have been discharging her marital responsibility as a true wife. But contrary to this, it was the petitioner and his other family members who leave her alone in their original house at Tangla Town which rather amounts to mental cruelty to the opposite party contrary to the allegations made against her.

25. So, after considering all the attending facts as discussed above this court do not find that OP has subjected any such cruelty to the petitioner and his family members requiring this court to grant decree of divorce against the petitioner by dissolution of marriage as sought for.

26. In view of the discussion made both the issues are answered accordingly.

Decision in issue No. 3 :

27. Since the decision in issue No. 3 is dependent on issue No. 1 & 2 no independent discussion on issue No. 3 is warranted in view of the decision arrived at issue No. 1 & 2. When both issue No. 1 & 2 are decided in negative so the petitioner is clearly not entitled to any relief as sought for.

ORDER

28. In view of the foregoing discussion and reasons, the petition U/S 13(1)(i-a) is dismissed as of having no merit.

29. The judgment is signed sealed and delivered on this 4th day of March 2020 at Udalguri.

District Judge
Udalguri