

THE HIGH COURT OF MEGHALAYA

R.F.A. No. 1 of 2012

Shri Dilip Kumar, S/o (L) Jitmon Rai, R/o Lapalang Village, Shillong-793006, District East Khasi Hills, Meghalaya.

.... Appellant

Versus

Smti Anita Dewan, W/o Shri Dilip Kumar Dewar, R/o Barapathar (Mawbah), Near T.B. Hospital, Shillong – 793002, District East Khasi Hills, Meghalaya.

.... Respondents

Ms. K Chisa, Advocate, present for the appellant.

Mr B.C. Das, Advocate, present for the respondent

Date of Judgment & Order 27th September, 2013

Hon'ble the Chief Justice
and Hon'ble Mr. Justice T Nandakumar Singh.

JUDGMENT AND ORDER

Oral : Hon'ble the Chief Justice

This appeal preferred under Section 28 of the Hindu Marriage Act, 1955, is directed against the judgment and decree dated 29.11.2010, passed by the Additional Deputy Commissioner/District Judge, Shillong, whereby the said Court has dismissed the petition filed by the appellant under Section 13(Ia)(Ib) of the Hindu Marriage Act, 1955.

2. Heard learned counsel for the parties and perused the record.

3. The brief facts of the case are that the appellant Shri Dilip Kr. Dewan, got married to the respondent Smti Anita Dewan on

27.06.1982. Two daughters were born out the wedlock. The appellant (husband) Shri Dilip Kr. Dewan filed a divorce petition on the ground of cruelty and desertion. It is pleaded that when the petitioner (present appellant) suffered sickness his wife did not look after him and she did not stay with the appellant since 02.06.1997. He further pleaded that not only he was treated with cruelty but also deserted by the respondent without any sufficient cause.

4. The respondent contested the petition before the trial court and pleaded that the petitioner was in the habit of drinking and gambling. He used to physically assault her (respondent). It is also stated by the respondent (wife) that she is living with her two daughters. The petitioner (appellant) started living with one Smti Rita Devi and thereafter with one Smti Bana Sahi, from whom he has two sons, namely, Master Kushal Dewan and Master Sagar Dewan. She denied the allegations made against her and pleaded that it was the petitioner who treated her with cruelty or deserted without any reason.

5. On the basis of the pleadings of the parties, the trial court framed the following issues:

1. Whether there is cause of action for this instant suit?
2. Whether the petitioner was staying separately from the respondent?
3. Whether the petitioner was treated with cruelty by the respondent?
4. Whether the respondent has deserted the petitioner since 02.06.1997?

5. Whether the petitioner has married to some other lady?
6. Whether the respondent is married to Shri B. Pradhan?
7. To what relief/reliefs the parties are entitled to?

6. The parties led their evidences before the trial court. After hearing the parties, the trial court held that the petitioner has failed to prove that he was treated with cruelty by his wife. It is further found that it was the petitioner has started living with one Smti Bana Sahi, through whom he had two sons, namely, Master Kushal Dewan and Master Sagar Dewan.

7. Challenging the aforesaid finding, it is pleaded on behalf of the appellant that the trial court has erred in holding that the petitioner (appellant) failed to prove his case for divorce. However, perusal of the record shows that there is no cross-examination from the side of the petitioner to D.W. 2 Madhu Chetri, D.W. 3 Md. Sabir and D.W. 4 Shri Tinku Thapa on the point of the petitioner's relationship with the two other women and children born out of the wedlock with Smti Bana Sahi.

8. It is alleged on behalf of the appellant that the respondent got married to one Shri B Pradhan. However, this argument is rebutted by the learned counsel for the respondent by stating that Shri B Pradhan is the father of the respondent, and not the husband. There is nothing on record to suggest that the respondent got married to Shri B Pradhan. The entry made in the Electoral Roll showing the name of Shri B Pradhan as husband of the respondent

Smti Anita Dewan appears to have been a clerical mistake, who infact was the father of the respondent.

9. Having considered the submissions of the learned counsel for the parties, and after re-appreciating the evidence on record, we concur that the finding given by the trial court, and do not find force in this appeal, which is liable to be dismissed.

10. For the reasons discussed above, this appeal is dismissed. No order as to costs.

JUDGE
(Hon'ble Mr Justice TNK Singh)

CHIEF JUSTICE

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27.09.13