

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

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

T.S.(M) No.2/2018.

Sri Binod Khalko,
S/o- Sri Lucas Khalko,
Vill- Bhollakash,
P.S.- Tangla,
Dist-Udalguri, Assam..... Petitioner.

-Vs-

Smti. Biswasi Purti,
W/o- Sri Binod Khalko,
D/o- Sri Nehemia Purti,
Vill.- Barangajuli,
P.S.- Dimakuchi,
Dist-Udalguri, Assam Respondent.

Appearance :

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

For the respondent : Mr. M.P.Rabha, Advocate.

Date of argument : 3.3.2020.

Date of Judgment : 20.3.2020

JUDGMENT

1. This is a petition under section 10 of Divorce Act,1869 as amended in 2001 praying for a decree of divorce by dissolution of marriage.
2. The contention of the petitioner is that he is a permanent resident of village Bhollakash, Mouza- Dakua under Tangla PS in the district of Udalguri,

Assam. He married the O.P. on 12.7.2009 as per Christian rites and customs in the house of O.P. at village Borangajuli under Dimakuchi P.S.

3. It is averred that both the petitioner and O.P. are governed by Christian religion and at the time of solemnisation of marriage and till the filing of this petition both of them remained Christian. So, they are governed by Christian Marriage Act, 1869. After the solemnisation of marriage, the opposite party used to reside in the house of the petitioner at village Bholakash and lived together as husband and wife and as a result of their union a male child was also born to them who was christened as Amit Khalko now age about 8 years.

4. It is also pleaded that their hey days does not last long as marriage discord began between them immediately after one year of their marriage as the O.P., the wife of the petitioner, pressurized him to go to Delhi to work as a domestic helper which the petitioner does not approve as the petitioner is a poor cultivator and he has the responsibility to look after his aged parents, sister and brother. Therefore, when the petitioner declined to accept the proposal of his wife/O.P., she picked up quarrel with the petitioner and his parents and other family members without any rhyme and reason. Some time, the O.P. behaved in such a manner that it became unbearable for the petitioner. Though the petitioner made attempt to persuade her to mend her conduct but due to adamant and arrogant attitude she refused to mend her behaviour which caused mental and physical pressure/cruelty on the petitioner.

5. It is alleged that on 20.1.2011 the wife/O.P. of the petitioner left for her parents' house and did not return. Sincere efforts made by petitioner to resume the conjugal life went in vain. Unable to convince the O.P. to resume the conjugal life, there is no option left for the petitioner except to file the divorce petition on the ground of cruelty and desertion.

6. It is also pleaded that whatever materials brought by wife/O.P. of the petitioner were taken back when she left his house which shows that she has no inclination to lead conjugal life with the petitioner. Therefore, it is

contended that it is a fit case to grant divorce by decree of dissolution of marriage between the petitioner and his wife.

7. The O.P. paid frequent visit to her parents' house but she misbehaved the petitioner and his family members with slang language. Though they tolerated everything expecting that O.P. will reform but she made their life rather miserable. All the sincere efforts of the petitioner resulted in vain. Hence this petition praying for decree of divorce U/S 10 of Divorce Act,1869 and to pass any other order/orders as the court deem fit and proper.

8. Receiving the notice from court, the O.P. entered her appearance in court and submitted her written statement through advocate contending, inter-alia, that there is no cause of action. Petition is not maintainable in the present form and manner. She denied all the statements made in para 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16 and 17 as false, imaginary and concocted one.

9. According to O.P., the real state of affair is that the petitioner filed a false case against her by suppressing the material fact on the basis of false, baseless and concocted story which were rather made with a view to cause harassment, physical and mental, on the O.P.

10. It is averred that O.P. met the petitioner in Delhi where both of them were in private job. Their introduction gradually transformed into love and finally they entered into marriage at a location under Dimakuchi PS of Udalguri district and they started their conjugal life at the residence of the petitioner and after some days petitioner left his house leaving the O.P. in his residence.

11. It is also averred that the petitioner has not taken any care and attention of the O.P. He even did not provide any maintenance which compelled the O.P. to come back to her parents' house. The petitioner treated the O.P. as a domestic worker and deserted her with oblique intention to avoid her and also to avoid daily expenses for maintenance of her as well as her son. It is further alleged that the petitioner has not taken any care for their child

who has been reading in school and not a single penny has been provided to O.P. to fulfill her daily needs. It is alleged that the petitioner instituted the divorce proceeding with the intention to marry another girl, whereas, the O.P. is ever ready and willing to resume her conjugal life with the petitioner. Hence, it is prayed that divorce proceeding be dismissed with cost.

12. Upon the pleadings of both sides the following issues have been framed.

1. Whether the 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 the proceeding, the petitioner in order to substantiate his stand adduced evidence of 4 witnesses namely, petitioner Binod Khalko as PW1, Gosner Khalko as PW2, Bimal Tapno as PW3 and Smti. Philista Purti as PW4. However, the petitioner failed to produce PW3 and PW4 for cross-examination. Therefore, virtually the petitioner adduced evidence of only two witnesses namely, PW1 and PW2. On the other hand, the O.P. also adduced evidence of only two witnesses namely, Smti. Biswasi Purti as DW1 and Smti. Satya Conpan as DW2.

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

15. Now, this court proposed to decide the issues. Since issue No.1 and 2 are interrelated, hence taken up together for decision.

16. I have heard the contents of the learned lawyers appearing for both sides and carefully examine the pleadings and evidence adduced by both sides for arriving at a just decision in the case.

17. The learned counsel for the petitioner by drawing the attention of the court to the pleadings and evidence of the petitioner contended that though the initial part of married life of the petitioner with O.P. was more or less

happy, but after a child was born to them the O.P. left her matrimonial house and misbehaved with the petitioner on slightest pretext making the life of the petitioner miserable which amounts to mental cruelty. All attempts made by petitioner to get the O.P. back to his residence went in vain as the O.P. deserted the house of her husband and maltreated not only the petitioner but also his aged parents and other family members. This fact has been narrated by the petitioner Binod Khalko as PW1 and Gosner Khalko as PW2. The O.P. left the house of the petitioner without any just and reasonable cause. Moreover, as stated by both PW1 and PW2, the O.P. desired to live in Delhi to work as domestic help but the petitioner did not approve such idea as he has the responsibility to maintain his aged parents and brother. Therefore, being infuriated, the O.P. deserted the petitioner which cause mental harassment forcing the petitioner to file the petition for dissolution of marriage.

18. On the other hand, the learned counsel for O.P. disputed the submissions made by learned counsel for the petitioner contending that all the allegations made by the petitioner are false and fabricated. The O.P. never forced the petitioner to go to Delhi and live there. Real fact is that after the marriage the petitioner did not take care of the O.P. and her minor child. He has not spent a single penny for their maintenance rather he intended to marry another girl even though the O.P. is ready and willing to resume her conjugal life, the petitioner did not respond to her desire. Therefore, this is a fit case to dismiss the divorce petition.

19. Having heard the forceful contention of the learned lawyers appearing for both sides, this court is required to examine the condition of Section 10 of the Divorce Act, 1869. To make the point clear, it is apposite to refer **Section 10 Grounds for dissolution of marriage.**

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(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

(i) has committed adultery; or

- (ii) has ceased to be Christian by conversion to another religion; or
- (iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or
- (v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or
- (vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or
- (vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or
- (viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or
- (ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or
- (x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

20. Now, in the context of Section 10 of the Divorce Act, 1869 it is to be seen whether the O.P. treated the petitioner with cruelty or O.P. deserted her husband and, as such, petitioner is entitled to get a decree of divorce by dissolution of marriage.

21. As pointed out by the learned counsel appearing for the petitioner in the pleadings and evidence in court, the parties have admitted that they are governed by Christianity and as such, their rights, liabilities are governed under the Christian Marriage Act, 1872 and the Divorce Act, 1869.

22. In this context, on perusal of the Christian Marriage Act,1872 it appears that both the parties have fulfilled the condition of Section 60(1) of the Christian Marriage Act,1872 as both are major on the date of their marriage and there is also no allegation that at the time of marriage there was wife or husband living though Section 60(3) of the Christian Marriage Act,1872 has not been complied with, but neither party objected on this point.

23. So, as regards the religion propagated by the parties, there is no dispute at all. The basic averment of the petition is that the wife subjected him mental cruelty by showing her adamant attitude towards him and his aged parents and other family members and refused to mend her behaviour which cause mental torture upon him. Moreover, she desires to live in Delhi as a domestic help somewhere else which proposal has not been approved by the petitioner. Therefore, she deserted the petitioner by taking their minor child alongwith her and all attempts made by petitioner does not fetch any fruitful result. However, the O.P. denied the pleadings and evidence of the petitioner by filing written statement and deposing evidence. It is seen that both sides adduced evidence of two witnesses each to substantiate their respective claims and on close scrutiny of the pleadings and evidence of O.P. as DW1 and her supporting witness DW2, particularly their cross-examination reveals that initial days of their marital life was normal but dispute between husband and wife began after the child was born in the year 2010, as her husband went to Delhi for work leaving the O.P. in her matrimonial house. But one month thereafter she went to her parents' house with the baby with due permission of the petitioner because, she had undergone a major surgery. Some time back, petitioner returned from Delhi and went to her parents' house to take her back to her matrimonial house but, the O.P. refused to accompany the petitioner as he used to torture her physically and mentally on slightest pretext and without any rhyme and reason for which she mentally broken down. She denied that the family members of the petitioner namely, Nangjan Purty, Pintus Logen, Philista Purty and brother and mother of the petitioner visited her parents house to bring her back and she also denied that she misbehaved them with abusive language.

24. However, the O.P. in her cross-examination candidly admitted that she married with the petitioner in the year 2009 and since 2010 she has been staying in her parents' home. This admission of the O.P. during her cross-examination, has been corroborated by the evidence of her own witness DW2, who also stated that O.P. has been living in her parents' house and when petitioner visited the house of O.P. to take her back to her matrimonial home she refused to go back on the pretext of mental and physical torture on her by the petitioner and her family members.

25. In this context, after proper appreciation of evidence of both sides, this court noticed that the contention of the petitioner that his wife has deserted him, has been proved as provided in Section 10(ix) and 10(x) of the Divorce Act as the O.P. admitted that she has been living in the house of her parents for about 8 years, and on perusal the divorce petition, it appears that the petition has been presented in court on 19.8.2018. Therefore, it is proved that the O.P. has been living in the house of her parents by deserting the petitioner more than two years immediately preceding the presentation of the petition. On the other hand, it is also alleged by the petitioner that his wife left her matrimonial home without any rhyme and reason and she has not treated him and his family members well. On the other hand, contrary to the allegation of the O.P. that the petitioner has not provided any kind of maintenance to her and her minor child after she left her matrimonial home, the admitted fact in her cross-examination is that when the petitioner visited her house to bring her back to her matrimonial home she refused to accompany the petitioner and this fact has also been confirmed by her own witness DW2. Therefore, this belies her own pleadings in the written statement that she is ever ready and willing to resume her conjugal life. Therefore, the own conduct of the O.P. fortified the contention of the petitioner that she deserted the petitioner by leaving her matrimonial home which is one of the valid ground of divorce as provided in Section 10 (ix) of the Divorce Act, 1869.

26. In view of the foregoing discussions and reasons, this court is of the clear opinion that the O.P. deserted the petitioner for more than two years immediately preceding the presentation of the divorce petition which clearly

satisfy the condition of Section 10(ix) and 10(x) of the Divorce Act, 1869, because, the very conduct of the O.P. constitutes cruelty as it creates reasonable apprehension in the mind of the petitioner that due to her adamant attitude it would be harmful or injurious for the petitioner to live with the O.P. When the sweet relationship between the husband and wife deteriorates and become sour, and all attempts of reconciliation went in vain and O.P. has been living separately from the petitioner for about 8 (eight) years, any attempt to resume the conjugal life will not bear any fruit. Given the evidence on record as discussed above, the relation between the petitioner and O.P. reached the stage of total incompatibility and there is little or no chance of survival of relationship between husband and wife which, in fact, broken irretrievably to the point of return. Therefore, the petitioner is entitled to get the decree as prayed for.

27. It is to be noted that though there was no specific issue framed by my learned predecessor on the point of desertion, nevertheless, the parties have fought the suit knowing the facts of each other very well. So, even if there is no specific issue on the point of dissolution of marriage on ground of desertion by wife, but this will not any way prejudice the interest of the wife as she fought the case all throughout knowing the fact of the case very well. Therefore, this court, as discussed above, comes to unerring findings that the petitioner is entitled to a decree of dissolution of marriage on the ground of desertion by his wife.

28. This court also carefully considered the pleadings of the parties, particularly, the written statement of O.P., wherein, there is no specific prayer for grant of maintenance towards her daily expenses and her child and also any alternate prayer for grant of permanent alimony in the event of granting divorce by decree of dissolution of marriage. Therefore, this court cannot grant such relief without any specific prayer in this regard, which is left entirely to the wife/O.P., who is at liberty to seek such relief by way of a separate petition.

Issue No. 3 :

29. For issue No. 3 no independent discussion is necessary as in view of threadbare discussion made in issue No. 1 & 2 the petitioner is entitled to a decree of divorce by dissolution of marriage. Since no other relief has been sought by the petitioner, therefore, there is no need to deliberate on this point.

ORDER

30. The suit is decreed on contest allowing divorce by dissolution of marriage.

31. Let a decree be prepared accordingly.

32. The judgment is signed sealed and delivered on this 20th day of March 2020 at Udalguri.

District Judge
Udalguri