

Ts 94/13
Jainur Ali
vs
Moina Bibi

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIFF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 18th day of Feb, 2020

Title suit: 94/2013

JAYNUR ALI.....Plaintiff

Versus

MOINA BIBI.....Defendant

This suit/ case coming on for final hearing on the 18th day of January, 2020 in the presence of:

Smti. Nirmali Patowary--- Advocate for the Plaintiff

Md. Kader Ali ----- Advocate for the Defendant

And having stood for consideration to this day, the court delivered the following judgment:

Judgment delivered on 18.02.20

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JUDGMENT

This is a suit for declaration and other relief.

1. The plaintiff's case in brief is that before the defendant got married to plaintiff she was already married and due to the death of her former husband she used to stay in her parent's house which is in the same village of plaintiff. Taking the advantage of the plaintiff's caring attitude towards defendant the latter forced plaintiff to marry her. At first he did not agree to the same. But on 15.10.10 defendant forcefull took her to Rangia and got their marriage registered before the kazi. Later on they started living as husband and wife in Guwahati. But even after her marriage she started having affair with another man and on 17.04.11 she eloped with that person to Kolkata. When the defendant did not come back even after plaintiff's several attempt to bring her back he gave her divorce on 7.6.11. He further stated that defendant has recieved the dower amount of Rs 50,000/- from him on 1.3.11. Plaintiff further stated that since the day when defendant eloped with another man he has not been residing with defendant. But he came to know that on 10.02.13 defendant has given birth to a girl child and the name of her father is mentioned as Jainur Ali in the birth record whereas he has not stayed with the defendant after she left him. Hence he prayed for declaration that he is not the father of the child whom the defendant has given birth to.
2. Pursuant to receipt of summons defendant appeared and filed the written statement. She stated that on 15.10.10 the plaintiff willfully took her to Rangia Kaji office for performing Nikah as per Muslim Shariot and the plaintiff kept her in a rented house at Beltola, Guwahati after their marriage. She further stated that at the instigation his family

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member palintiff left her in rented house at Beltola, Guwahati when she was pregnant. Defendant waited for the plaintiff in the said rented house for 15 days and finding no alternative, she left to her parental house and so she filed a maintenance case against the defendant and in the said case, though order was given against the plaintiff but still now the plaintiff has not paid maintenance allowance to the defendant.

3. It is pertinent here to mention here that the issues were not framed in the suit by my learned predecessor. Considering rival contention between the two parties, I have framed the formal issues in this suit:

(i) Whether there is cause of action for the suit?

(ii) Whether the plaintiff is the father of the child whom the defendant has given birth to?

(iii) Whether the plaintiff is entitled to the decree as prayed for?

(vi) To what other relief(s) the parties are entitled ?

4. Plaintiff side has submitted evidence on affidavit of 4 witness and exhibited documents to establish his claim. Defendant side also submitted evidence of 3 Dws and has exhibited documents.

5. I have heard the arguments for both sides.

6. Now let me discuss the case in hand issue wise

Point No. (I):

Whether there is cause of action for the suit and the counter claim?

7. The plaintiff in his plaint stated that after the death of first husband defendant Moina Bibi used to stay in the same villgae of plaintiff. Taking advantage of his caring attitude towards her defendant forced to marry him and on 15.10.10 she forcefully took him to rangia and regustered their marriage before Kaji. But the plaintiff

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had affair with another man and on 17.04.11 she left him and went to kolkaata with another man and so he divorced her on 07.06.11 and already gave her the dower amount on 1.3.11 But he came to know that on 10.02.13 defendant has given birth to a girl child and the name of her father is mentioned as plaintiff whereas he has not stayed with the defendant after she left him. Per contra, defendant denying the averments made by the palintiff stated that while she was in guwahati with the plaintiff and was pregnant the plaintiff left her at the rental house and never taken any information about her. Considering the rival contention between the parties, I find there is cause of action for this suit. This issue is decided in favour of the plaintiff.

Issue No. (II)

Whether the plaintiff is the father of the child whom the defendant has given birth to?

8. Plaintiff in his evidence on affidavit has reiterated the same that he has mentioned in his plaint. To establish his claim he has exhibited the receipt of dower amount by the defendant dated 01.03.11, divorce letter dated 07.06.11 and delivery record of swahid Mukunda Kakati civil hospital. This is a suit filed by plaintiff for declaration that the girl child born to defendant is not his child. Perusal of exhibit 1 only shows that he has paid the dower amount on 01.03.11 which is before the date when the defendant was alleged to have eloped with another man on 17.04.11. Further the perusal of exhibit 2 shows that plaintiff has written a divorce nama in front of three witnesses. But to establish the fact plaintiff has not even called a single witness to the said exhibit 2. Plaintiff has adduced evidence of 4 Pws including him as PW 4. But out of the

said Pws no one is the witness to the exhibit 2. Hence the divorce between the two is not established.

8. It is pertinent here to mention that my learned predecessor had allowed the plaintiff's prayer for DNA test of the child to establish the paternity of it. Accordingly blood sample were also collected and the same were sent to CFSL but due to some fault in the procedure of sending the samples it was further directed for fresh blood sample collection but from next date defendant stopped appearing in the suit. Out of the three Dws only Dw 2 was cross examined. Defendant as Dw 1 and Dw 3 was not cross examined as defendant did not appear. Though defendant has not been able to adduce evidence to establish that the plaintiff is only the father of the child but it is the plaintiff who has to stand on his own leg. On perusal of the evidence of Pws it transpires that none of the Pws have stated that the defendant is of immoral character as alleged by the plaintiff. Further plaintiff in his plaint stated that defendant has forcefully married him. But Pw 1 , Pw 2 and Pw 3 stated that both plaintiff and defendant were in love with each other and got married accordingly. Thus the averment that defendant is of immoral charecter even before her marriage is also not proved. Rather the contradictory is established. Pw 1 though reiterated the plaint in his evidece in chief but during his cross examination he stated that he has no knowledge about the case and that he has come to know everything from the plaintiff. None of the witnesses could prove that defendant left plaintiff and went to Kolkata with another man. Plaintiff could not establish the divorce between him and defendant nor he could establish that he had no access to his wife from 2011 to 2013. Under the said circumstances it cannot be held that plaintiff is not the father of the child born to defendant. Hence the issue is decided against the plaintiff.

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Issue V

whether the plaintiff is entitled to the decree as prayed for?

To what other relief parties are entitled?

Both the issues are related to each other and hence taken together.

9. As it is decided in the foregoing issues that plaintiff could not prove that he is not the father of the child born to defendant hence he is not entitled to the decree as prayed for. Hence the issues are decided against the plaintiff.

Order

In view of the decisions and discussions made above the plaintiff suit is dismissed on contest without cost.

Prepare a decree accordingly.

The suit is disposed of accordingly.

Given under my hand and seal of this court on this 18th day of February, 2020.

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Appendix

Plaintiff's Witness

1. PW 1 – Rasid Ali
2. PW 2 – Asad Ali
3. PW 3 – Khairun Bibi
4. Pw 4 – Jainur Ali

Plaintiff's Exhibits

1. Exhibit 1 – Receipt of dower amount
2. Exhibit 2 – Divorce letter
3. Exhibit 3 – Delivery record of Civil hospital, Nalbari

Defendant's witness

1. DW 1 – Moina Bibi
2. DW 2 – Taizuddin Ahmed
3. DW 3 – Mir Hussain Ali

Defendant's Exhibit:

Nil

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