

IN THE COURT OF THE DISTRICT JUDGE :: TINSUKIA

District: Tinsukia

Present: **Shri C. Das,**
District Judge,
Tinsukia

Title Suit (M) Case No. 69 of 2018

This the 13th day of May' 2022

Smti Mahfi Begum,

D/o Late Anawarul Hoque,

R/o Nabibullah Road, Tinsukia,

P.O., P.S. & Dist. Tinsukia, Assam

..... Petitioner

- Versus -

Sri Apurba Saikia,

S/o Late Nilakanta Saikia,

R/o 'At Organ The Place',

Near IDBI Bank, Devipukhuri Road,

P.O., P.S. & Dist. Tinsukia, Assam

..... Respondent

The suit came up for final hearing on 22.04.2022 in presence of:

Smti M. Patowary, Advocate For the Petitioner

Sri B.K. Sharma, Advocate..... For the Respondent

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

J U D G M E N T

1. This is a petition u/s.13(I)(ia) of the Hindu Marriage Act, 1955, filed by the above-named petitioner/wife, praying for a decree of divorce by dissolving her marriage with the respondent/husband. The petitioner also, prays for granting permanent alimony of Rs.10 lakhs from the respondent/wife with cost of the proceeding.

2. The case of the petitioner, in brief, is that the marriage between the petitioner and the respondent was solemnized on 12.03.2012 before the Marriage Officer, Dibrugarh u/s.13 of Special Marriage Act, 1954. After the marriage, the petitioner and the respondent lived together as husband and wife at the house of the petitioner at Dr. Nabibullah Road, Tinsukia. After one month of their marriage, the respondent started to question about the properties of the petitioner's father, who was expired. The

petitioner even wanted to know from the petitioner as to whether the petitioner had kept her properties in the name of her elder brother; Touhidul Hoque. He even did not hesitate to apply for RTI and from there, he came to know that the petitioner had executed a Power of Attorney in the name of her brother and by applying force, the respondent compelled the petitioner to revoke the Power of Attorney. On 13.4.2013, the respondent had to go to jail after committing a crime against the brother of the petitioner. After coming out from the jail, the respondent became very furious day by day. He forced the petitioner to talk to her brother about property matter and when her share of property was mutated in her name, the respondent made a fabricated document, where instead of petitioner's name, the respondent put his own name.

3. It is stated that on 17.12.2015, the petitioner along with her other siblings, had to execute a Relinquish deed before the Sub-Registrar, Tinsukia regarding their property matter. After that, the respondent did not talk to the petitioner for one month and on 14.01.2016 at about 11.30 P.M. after consuming liquor, the respondent came home and attacked the petitioner and destroyed her two mobile phones. The respondent kicked the petitioner on her chest and stomach brutally and after that, the respondent poured a gallon of kerosene oil upon her and her blanket and bed and went to the kitchen to find out the match box. But the respondent could not find out the match box. Then, the

respondent came into the room with a dao and threw the dao in the bed with a force. When the petitioner tried to flee from there, she slipped on the floor due to kerosene. Somehow, the petitioner managed to come to the veranda and started shouting. But the respondent pressed her mouth and told that he will kill her, if she shouts. The petitioner was given only water to drink that night and when she promised to build a shop for his establishment within six months, then, only the respondent went to sleep at 2 A.M. After that at 6 A.M., she ran away to her mother's place. The respondent shouted from behind. At 12 noon, the petitioner filed an ejahar against the respondent u/s.498(A)/325/307 I.P.C.

4. The petitioner stated that the respondent ruined her life. From that incident, she has been staying separately from the respondent and is living with fear all the time, as the respondent is a man of criminal nature and hence, it is not possible on the part of the petitioner to stay with the respondent anymore. Hence, the petitioner filed the instant petition with the reliefs, as stated above.

5. Notice was duly issued to the respondent. Accordingly, the respondent appeared before the court and filed written statement. The respondent denied all the averments made in the petition, save and except which one specifically admitted therein. It is stated by the respondent that the petitioner started pressurizing the respondent to

covert his religion from Hindu to Islam. On several occasions, she along with her brother and other family members started giving threatening to the respondent that if he denied to convert his religion, then, she with the help of her relatives, would file some criminal cases against the respondent and put him behind the bar. The petitioner even at many occasions started quarreling with the respondent if he wanted to contact his parents and relatives.

6. It is further stated by the respondent that the respondent lost all his business affairs and nowadays, somehow maintaining his day to day expense of food, cloth and shelter and has no source of income and as the petitioner on her own accord and sweet is living separately from the respondent and as such, there is no question of granting her any alimony from him. Hence, the respondent prayed to dismiss the suit with cost.

7. After considering the pleadings of the parties and materials on record, following issues are settled in this case.

I S S U E S

- (I) Whether the respondent had subjected the petitioner to cruelty?
- (II) Whether the petitioner had pressurized the respondent to embrace Islam?

- (III) Whether the petitioner after her marriage with the respondent insisted on staying in the house of her father?
- (IV) Whether the petitioner is entitled to a decree, as prayed for?

8. Thereafter, the petitioner adduced her evidence. She reiterated the same facts, what have been contended in her main petition. She exhibited the marriage certificate as Ext.1. She exhibited the copy of ejahar, filed by her before the O.C., Tinsukia P.S. on 15.01.2016 against the respondent as document No.1 and copy of her statement recorded u/s.164 Cr.P.C. by the Magistrate in connection with Tinsukia P.S. Case No.64/2016 u/s.498(A)/325/307 I.P.C.

9. The petitioner during cross-examination stated that she had court marriage with the respondent and thereafter, Nikah between them took place. Though she wrote in her petition that the respondent forcefully bound her to revoke the special power of attorney of her elder brother; Tohidul Haque, even then, she has not filed any case against the respondent before the police. There were several civil cases in between her and her elder brother; Tohidul Haque regarding their ancestral property, which were settled amicably. The petitioner mentioned in her petition that the respondent mutated his name by submitting fabricated

documents of her property, but she has not submitted any such fabricated documents in the court, nor filed any case against the respondent. The petitioner denied the suggestion that she deposed false evidence by stating that the respondent tried to take away her ancestral property by fabricating documents and putting her false signature.

10. After that, the respondent in support of his case, filed evidence-in-affidavit. He also, reiterated the same facts, what have been contended in his written statement. During cross-examination, the respondent stated that after the marriage, the family members of the petitioner used to cause harassment to him. He denied the suggestion that he poured ten liters of kerosene oil upon the body of the petitioner in order to set her on fire and he could not find out the matchbox, for which he could not set fire on her and instead, he hurled one dao upon the petitioner, but it did not hit her and it hit on the almirah, for which the almirah was broken partially. The respondent further stated that he has no any objection, if the petitioner comes and resides with him at his Jorhat residence. The petitioner filed false case against him.

11. I have heard the learned counsel for the petitioner and the respondent at length and carefully scrutinized the materials available with the record.

12. It appears that the present matrimonial suit filed by the petitioner on the ground of cruelty, meted out to her by

her husband / respondent after marriage. On the other hand, the plea of the respondent is that the petitioner with her family members, used to pressurize him to convert his religion to Islam from Hindu religion. Thus, it means that the petitioner follows Islam religion while the respondent is a Hindu. The marriage between them therefore, inter-religion one. Thus, from the pleadings of the petitioner, it makes it clear that the marriage between herself with the respondent was performed in terms of provisions under Special Marriage Act. If this so, the petitioner cannot filed the suit under Hindu Marriage Act, since it is not applicable to her. There is suitable provision under Special Marriage Act to get divorce by couple who solemnized their marriage under such law. Hence, the suit by the petitioner is not maintainable in present form against the respondent, since their marriage was not solemnized as per Hindu Marriage Act; neither both of them practice Hindu religion together. Therefore, this court is of considered view that the suit of the petitioner is not maintainable u/s 13(I)(ia) of Hindu Marriage Act against the respondent. Even though no issue is framed on this point, but under the law, it is a serious matter as regards to maintainability of present suit of the petitioner against the respondent to seek reliefs. Hence, going into other issues on record to determine them on merit would not serve any purpose. This Court finds that the suit of the petitioner is not maintainable in its present form against the respondent to get any relief.

13. Accordingly, the suit stands dismissed. The parties to bear cost thereof. Prepare a decree accordingly.

14. Given under the hand and seal of this Court on this the 13th day of May' 2022.

Dictated & corrected by:

District Judge
Tinsukia

(C. Das)
District Judge
Tinsukia