

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 5773/2019

Samudra Singh S/o Late Shri Ratan Singh, aged about 68 Years,
Resident of 3/635, Near Agrasen School, Golpura Road, Subhash
Nagar-2, Bharatpur Rajasthan

----Appellant

Versus

Smt. Uma Devi W/o Shri Samudra Singh, aged about 68 Years,
Resident Of 3/635 (Wrongly Mentioned As 265), Near Agrasen
School, Golpura Road, Subhash Nagar-2, Bharatpur, Rajasthan

----Respondent

For Appellant(s)	:	Mr. Mohit Khandelwal
For Respondent(s)	:	Mr. Kartik Soti for Mr. Anshul Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

09/02/2026

1. Under challenge is the final judgment dated 18.10.2019 passed in Civil Miscellaneous Case No.249/2014 passed by Family Court, Bharatpur, dismissing the divorce petition of appellant-husband, filed under Section 13 of Hindu Marriage Act, 1955.
2. We have heard counsel for both parties at length and carefully gone through the record.
3. At the outset, we have noticed that both parties have crossed the age of 75 years, and their marriage was solemnized about 58 years ago, on 29.06.1967, as per Hindu rites and ceremonies, but appellant wants to pursue for dissolution of his marriage even after attaining such advanced age.

4. Appellant-husband filed a divorce petition on 26.05.2014, stating *inter alia* that he retired as Principal of Government Higher Secondary School in August 2010 (in the pleading dated 31.08.2013) and after his retirement, he had to face disrepute and humiliation from his wife on account of lodging of an FIR No.142/2014 for offences under Sections 498A, 406, 323/34 of IPC. He alleged that in this FIR, after investigation, police submitted negative final report. He also stated that prior to this FIR, he was called twice at Police Station Kotwali. In addition, husband averred that his wife is inclined to transfer the immovable property in the name of the eldest son, Virendra Singh, whereas he wants to divide this property between his sons equally. He averred that his wife is indeed under the influence of eldest son and residing happily with him, but she does not care for him and does not even arrange two times meal for him. Some other allegations, that his wife instills apprehension against him to have relations with other women, were also levelled.

5. Divorce petition was replied by wife on 25.03.2015, stating *inter alia* that both of them are residing in the same house under the same roof but her husband is cynical and has been in habit of distributing and squandering the family property, hence in order to check him, she and her eldest son made a protest so he filed this divorce petition under advice and influence of his younger brother. She alleged that since her husband, under influence of his brother and sister-in-law (*Bhabhi*), ditched her by calling a women, namely- Vimlesh, in his room and remained locked inside with her, hence, in such circumstances, when she opposed, she was pushed and thrown out of room and therefore, under such circumstances,

she was forced to lodge the FIR No.142/2014. It was contended by wife in the reply that husband has gone mad and erstwhile as well, he has been suffering from mental disorder time to time and at one point of time he had jumped into a well under influence of such fit, however, somehow his life was saved. In respect of transferring the property in favour of her eldest son Virendra Singh, she stated that the property was purchased by her and the same was registered in her name only and the allegation is false. The other allegations of cruelty levelled by husband were also denied and a prayer was made to reject the divorce petition.

6. Learned Family Court, after framing issues and recording evidence of both parties, reached to the conclusion that the husband has not levelled any allegation of cruelty against his wife for the period prior to year 2013. Family Court noted that in the statement of husband (AW-1), he admits that prior to the year 2013, there was no dispute between him and his wife. It means, admittedly there is no allegation of cruelty by wife during the period i.e. after marriage on 29.06.1967 upto 2013. The dispute arose only thereafter when his wife sought to transfer the property to eldest son Virendra Singh, against wish of her husband and then divorce petition was filed by husband on 26.05.2014. In respect of lodging FIR No.142/2014, Family Court noted that it is true that after investigation therein, police submitted negative report but the allegation made in the FIR that husband locked himself inside room with another woman Vimlesh, was not found untrue. Further, the other allegations against the husband for having relations with another women and giving money and property to them, were also considered by the Family Court and

were not found in favour of husband. Finally, Family Court found that when the parties have reached such an advanced age of their life and the marriage, solemnized way back in the year 1967 has survived without dispute/quarrel upto 2013, it is not just and proper to grant a decree of dissolution of marriage in favour of husband, on the basis of such nature of allegations, hence, the divorce petition was dismissed by judgment dated 18.10.2019.

7. The contention of counsel for appellant is that wife miserably failed to prove every allegation levelled by her against the husband more particularly, regarding husband's extra marital relations with other women, and false FIR was lodged by wife, wherein after investigation, indisputably negative final report has been submitted by the police, hence, such acts of wife itself constitute a cruelty towards husband which are sufficient to grant decree of divorce.

8. *Per contra*, counsel for wife submits that the impugned judgment is well-reasoned and after extensive discussion of factual matrix and all allegations of husband, Family Court rightly dismissed his divorce petition, and impugned judgment does not suffer any infirmity, hence, deserves to be affirmed.

9. Having gone through the pleadings of both the parties, their respective evidences and the fact findings of the Family Court, we find that the Family Court has recorded fact findings after analytical discussion of the evidences adduced by the parties. Each and every allegation of cruelty, which has been alleged by the husband was independently considered by the Family Court and after a detailed discussion, decree of divorce, on the basis of such allegations, was declined. The allegation of wife, levelled by

her against husband that he has relations with other women, was also considered and it was observed by the Family Court some money was credited by husband to females, and he has to file cases against them for recovery of money. In respect of lodging of FIR by wife, it was observed that though negative final report has been submitted therein and protest thereagainst has also been dismissed, yet the incident that one lady namely Vimlesh was locked in the room with husband was not found untrue and merely the act of lodging FIR, does not constitute cruelty for granting a decree of divorce.

10. After giving our thoughtful consideration to the fact findings recorded by the Family Court and to the evidences of parties as also the contention of counsel for appellant, we are of the considered opinion that in the backdrop of facts where husband has not averred any allegation of cruelty against wife prior to year 2013, the divorce petition appears to be filed by him just on account of some dispute between him and his wife in respect of division of the property between their two sons. Appellant himself admits in divorce petition so also in his statements that dispute arose, when his wife wanted to transfer one immovable property land which was purchased by him in the name of his wife, in favour of the eldest son Virendra Singh alone, against his wish, whereas, he was willing to divide this land between his two sons. It appears that husband had some anguish towards his eldest son, because he was in support of his mother, it means wife of the appellant, and eldest son were not in support of the appellant. The other allegations against husband have come up virtually during

the course of the present litigation and cropped up in the statements of parties

11. It is well-settled that for considering the cruelty of one spouse towards other, the Court should review the married life as a whole in order to see when the conduct of spouse amounts to cruelty, deteriorated to an incident that due to such acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with other party any longer. Ordinarily, trivial irritation, quarrels and normal wear and tear of a married life, which ordinarily happens in day to day life in all families, do not constitute a ground of cruelty to pass a decree of divorce. In our opinion, when before filing a divorce petition parties had already spent their married life together for a long period of more than about 46 years, without any complaint, an inference can be drawn that their mental level of tolerance and understanding must have increased over years and with increase of their respective age. The things, which may disturb the spouse in the initial phase of their married life, might become easier or habitual at the later stage with the aptitude of tolerance and understand.

Admittedly, parties had three children, two sons and one daughter, who have also attained majority and got married. Even if we presume that some family issues, pertaining to property dispute or mismatch of understanding, among the family members would have been cropped up, but same may not be accepted as sufficient to break the marriage of an old couple, who have admittedly enjoyed and lived their married life together from 1967 to 2013, without any complaint against each other. Dissolving marriage at this stage may disturb not only wife but members of

entire family. The dignity, honor and reputation of every family member in society may come in endanger, therefore, we find that Family Court has not erred in denying to pass a decree of divorce in favour of husband on the alleged ground of cruelty. Now, after filing of divorce petition, near about 12 years or more have elapsed and both parties have admittedly crossed the age of 75 years, therefore, at this stage it is not just and proper to dissolve the marriage on the alleged ground.

12. It is not at all the case of appellant that the marriage between parties remained unworkable or has turned emotionally dead or has irretrievably broken down. Even in such nature of cases, the Hon'ble Supreme Court declined to dissolve the marriage of parties when they have reached to an advanced age. In this respect, we would like to rely on a recent judgment of Hon'ble Supreme Court in case of **Dr. Nirmal Singh Panesar versus Paramjit Kaur Panesar @ Ajinder Kaur** reported in **[(2025) 3 SCC 790]** wherein the Hon'ble Supreme Court declined to dissolve the marriage, taking into consideration the fact that husband had attained the age of about 89 years and wife attained the age of about 82 years. The Hon'ble Supreme Court opined and held in Para No.20, which reads as under for ready reference:-

"20. So far as the facts of the present case are concerned, as stated earlier, the appellant husband is aged about 89 years and the respondent wife is aged about 82 years. The respondent all throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the appellant husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she does not want to die with the stigma of being a "divorcee" woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent's own

sentiment. Under the circumstances, considering and respecting the sentiments of the respondent wife, the Court is of the opinion that exercising the discretion in favour of the appellant under Article 142 by dissolving the marriage between the parties on the ground that the marriage has irretrievably broken down, would not be doing "complete justice" to the parties, would rather be doing injustice to the respondent. In that view of the matter, we are not inclined to accept the submission of the appellant to dissolve the marriage on the ground of irretrievable breakdown of marriage."

(underlining supplied)

13. As a result, we are not inclined to interfere with the impugned judgment dated 18.10.2019. Hence, instant appeal is hereby dismissed.

14. Stay application and other pending application(s), if any, stand disposed of.

15. Record of Family Court be sent back forthwith.

(ANIL KUMAR UPMAN),J

(SUDESH BANSAL),J