

**CAUSE TITLE****TITLE SUIT (DIVORCE) No.40/2018.**

Petitioner : Smt Miju Changmai Dutta.  
D/o Hem Chandra Changmai.  
Vill. Jalbhari Gaon.  
P.O. & P.S. Ghilamara.  
Dist. Lakhimpur, Assam.

Respondent : Sri Atul Dutta.  
S/o Sri Sisuram Dutta.  
Vill. Kamargaon.  
P.O. & P.S. Dhakuakhana.  
Dist. Lakhimpur, Assam.

**Advocates :**

For the Petitioner : Mr. Homen Das, Advocate.

For the Respondent : Mr. Ganesh Roy, Advocate.

**IN THE COURT OF DISTRICT JUDGE: LAKHIMPUR:  
AT NORTH LAKHIMPUR.**

Present : Smt S.P. Khaund, (MA Economics, LLB),  
District Judge,  
Lakhimpur, North Lakhimpur.

**TITLE SUIT (DIVORCE) NO.40/2018.**

Smt Miju Changmai Dutta ..... Petitioner.

-Vs-

Sri Atul Dutta ..... Respondent.

Date of Argument : 06.11.2020.

Date of Judgment : 10.12.2020.

**J U D G M E N T**

1) This suit for divorce has arisen out of a Petition submitted by the Petitioner, Smt Miju Changmai Dutta under Sec.13(1) (i-a) (i-b) of the Hindu Marriage Act, 1955 ( the Act for short ), for dissolution of marriage between herself and Respondent, Sri Atul Dutta, by a Decree of Divorce.

2) The case of the Petitioner, in brief, is that on 8<sup>th</sup> day of Jeth, 2008 as per the Assamese Calender, the Respondent married her according to the Hindu rites, and thereafter, both the parties were staying together as man and wife in Guwahati. In the year 2011, the Respondent met with a road accident and lost his right leg. After the accident, the Respondent started to stay in his permanent residence at Dhakuakhana. They are blessed with a girl. It is alleged that after the birth of their daughter, the

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Respondent started to subject the victim to physical as well as mental cruelty. The Respondent was suspicious of the Petitioner's moral character. He drove her out along with their child from her matrimonial home, and finding no alternative shelter, she was compelled to take shelter in her parental home. However, she used to come back to her matrimonial home with a hope to save her marriage. The Respondent not only verbally abused her at home, he also hurled abuses in presence of strangers. In the Assamese month of 'Sout', 2016, the Respondent assaulted the Petitioner relentlessly. The Respondent used abusive words on her, chased her armed with a 'dao' and then drove her out from her matrimonial home. Since then the petitioner has been taking shelter in her parental home along with her daughter and the Respondent neglected to maintain them. Under the premises, the Petitioner prays for a decree of divorce for dissolution of her marriage with the Respondent.

3) Notice was duly received by the Respondent. The Respondent appeared and filed Written Statement.

4) The Respondent, Sri Atul Dutta filed written statement contending inter alia that the Respondent is physically handicapped. The Respondent has no objection if their marriage is dissolved by a decree of divorce. The Respondent denied that the minor daughter is under the care and custody of the Petitioner and has filed a petition before the Court under Section 7 of the Guardians & Wards Act for custody of their minor daughter.

5) To substantiate her stance, the petitioner adduced her evidence through affidavit.

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6) **ISSUES** :

- i) Whether there is any cause of action for this suit ?
- ii) Whether the suit is maintainable in its present form?
- iii) Whether the Respondent Sri Atul Dutta since after solemnization of his marriage with the Petitioner Smti. Miju Changmai Dutta treated his wife the Petitioner with cruelty?
- iv) To what relief or reliefs, if any, the parties are entitled to?

7) Heard the learned counsel for the Petitioner.

8) All the issues No.1, 2, 3 and 4 are taken up together for the sake of brevity.

9) The Petitioner in her evidence-in-chief testified that on 8<sup>th</sup> day of Jeth, 2008 as per the Assamese Calender, the Respondent married her according to Hindu rites and ceremonies, and thereafter, both the parties had been staying together as man and wife in Guwahati. In the year 2011, the Respondent met with a road accident and lost his right leg and is at present handicapped. They are blessed with a girl child. It is alleged that after the birth of their daughter, the Respondent started to subject the victim to physical as well as mental cruelty. The Respondent also started to torture the Petitioner suspecting her of having illicit relationship with each and every person that she talks. As the Petitioner was driven out by the Respondent, she was compelled to take shelter in her parental home. The Respondent used to quarrel with the Petitioner and verbally abuse her. The Respondent not only verbally abused her at home, but also in presence of strangers. Though the Respondent used to assault Petitioner, she used to tolerate. In this way, the cruelty upon the petitioner continued. The Respondent also suspected her of having an extra marital affair with his

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neighbour. In the Assamese month of 'Sout', 2016, the Respondent assaulted the Petitioner relentlessly. The Respondent used abusive words and chased her armed with a 'dao' and then drove her out from her matrimonial home. Since then the petitioner has been taking shelter in her parental home along with her daughter and the Respondent neglected to maintain her and her daughter. Under the premises, the Petitioner prays for a decree of divorce for dissolution of her marriage with the Respondent.

10) On perusal of the evidence-in-chief through affidavit submitted by the Petitioner, it appears that she has supported all the allegations levelled by her against the Respondent as to the unbecoming behaviour of her husband/ Respondent, and ultimate desertion by the Respondent. The Respondent did not come forward to cross-examine the Petitioner nor had he stood the test of cross-examination.

11) It has been held in the case of *Vidyadhar vs Manik Rao and another*, AIR 1999 SC 1441 that, **“where a party to the suit does not appear into the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is incorrect.”**

12) Reverting back to this case, it is held that the Respondent failed to rebut the Petitioner's case.

13) Accordingly, the Petitioner is found entitled to a Decree of Divorce on the ground of cruelty and desertion.

14) Consequent to my discussion and decision as indicated here-

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in-before, decree of divorce is granted on dissolution of marriage between the parties and accordingly, the marriage solemnized between the Petitioner and the Respondent is, hereby, dissolved, by a decree of divorce. As there is no prayer for maintenance or permanent alimony by the Petitioner, no order for permanent alimony or maintenance is passed.

15) Prepare a Decree, accordingly.

Judgment is signed, sealed and delivered in the open Court on the 10<sup>th</sup> day of December, 2020.

( S.P. Khaund )  
District Judge,  
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

( S.P. Khaund )  
District Judge,  
Lakhimpur, North Lakhimpur.

Transcribed and typed by :  
Sri Montu Kherkatary, Stenographer.