

**CAUSE TITLE**

**TITLE SUIT (DIVORCE) NO.8/2016.**

Petitioner        :      'X'

Respondent       :      'Y'

**Advocates :**

For the Petitioner    : Mr. M.M. Neog, Advocate.

For the Respondent : Mr. Arup Bora, 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.8/ 2016.**

'X' ... Petitioner.

-VS-

'Y' ... Respondent.

Date of Argument : 03.05.2021.

Date of Judgment : 18.05.2021.

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

1) This suit is initiated by a Petition u/s 13 (1) (i-b) of the Hindu Marriage Act, 1955 ( hereinafter referred to the Act for short ) with prayer for a decree of divorce.

2) 'X' is referred to as the Petitioner and 'Y' is referred to as the Respondent. The marriage between both the parties was solemnised according to the Hindu rites on 23.11.2005 in 'Kali Mandir' at Naharlagun, and thereafter they embarked on their

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conjugal life at Laluk. 'X' is a Govt. employee at Arunachal Pradesh and 'Y' is an employee in R.K. Mission Hospital, and both the parties have been residing separately to attend their duties. The Petitioner's last residence was at Laluk within the jurisdiction of this court and the Respondent was also staying with the Petitioner. It is submitted that a few days after their marriage, to his utter dismay 'X' noticed marks of surgical stitches on the Respondent's abdomen. When he confronted 'Y' about the stitches, 'Y' was reluctant to come up with the truth. In the month of June, 2006, the Respondent took ill and she was suffering from acute stomach ache and the Petitioner took 'Y' for consultation with Dr. Gobin Saikia. The Petitioner, then, learnt that 'Y' was unable to bear a child as her ovaries could not be traced. The medical investigation reports came as blow to the Petitioner 'X'.

3) The Petitioner was annoyed by the Respondent's deception and he felt defrauded because she concealed about removal of her ovaries. He was antagonised by Y's act. Then, 'X' filed a petition with prayer for decree of divorce, which was registered as Title Suit (Divorce) No.26/2006, which was disposed on contest, and the suit was dismissed holding that 'X' was not entitled to a decree of divorce.

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4) The Petitioner prays for decree of divorce as his marriage was irretrievably broken down and there is no scope for restoration of conjugal rites. The Respondent 'Y' contested the proceeding and filed written statement contending *inter alia* that this suit is not maintainable as the earlier suit of similar nature was already dismissed by this court, and it is thereby debarred by *res judicata* u/s 11 of the Code of Civil Procedure ( CPC for short ). Against the Judgment and order of this court in Title Suit (Divorce) No.26/2006, the Petitioner preferred an Appeal before the Hon'ble Gauhati High Court, which was registered as Matrimonial Appeal No.12/2011, and the Appeal was again dismissed vide Judgment and order dtd. 03.11.2015.

*5) He, who seeks justice must come with clean hands.*

6) It is reiterated by the Respondent that the fact about the Appeal was concealed by the Petitioner when she came to this court with prayer for divorce. It is submitted that the instant petition is not supported by an affidavit, of non-collusion, non-cohabitation as mandated under "Rules 9, 10 and 11 of the Hindu Marriage Rules, 1988" framed by the Hon'ble Gauhati High Court in exercise of the powers conferred u/s 14, 21 of the Rules. It is

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contended that the Petition is also liable to be dismissed. The Respondent has vehemently denied that on visiting Dr. Gobin Saikia due to stomach ache, the Petitioner learnt about an early operation undergone by the Respondent. Vide earlier Judgment and order in Title Suit (Divorce) No.26/2006, this court has already dismissed a seemingly similar petition with same allegations. The Respondent has denied that she concealed her ailments and cheated the Petitioner. She has denied of verbally abusing the Petitioner while she was confronted regarding her earlier surgical operation. It is averred that as this court is not competent to decide the matter, which has already decided by the same court in Title Suit (Divorce) No.26/2006, and thereafter upheld in Matrimonial Appeal No.12/2011, the Respondent has prayed to dismiss the petition with compensatory cost of Rs.3,000/- u/s 35(A) CPC.

7) To substantiate his stance, the Petitioner adduced his evidence and exhibited several documents. The Respondent did not adduce any evidence, but cross-examined the Petitioner in extenso.

**ISSUES :**

On the backdrop of the rival contentions, the following issues were framed :

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- i) Whether there is any cause of action for the suit?
- ii) Whether the Petitioner was subjected to cruelty by the Respondent?
- iii) Whether the Petitioner is entitled to get decree of divorce as prayed for ?
- iv) What other relief / reliefs the parties are entitled to ?

**ISSUE NO.1.**

*Whether there is any cause of action for the suit ?*

8) The evidence and the pleadings of the Petitioner depicts that after his marriage, he noticed four surgical stitches on his wife's tummy. When he confronted her, she chose to stay mum. On 19.06.2016, his wife complained of stomach ache, and they went for ultrasound and finally, he learnt that his wife is incapable to give birth to a child. He was aggrieved on being cheated by his wife and he filed the earlier divorce case being Title Suit (Divorce) No.26/2006. I have perused the copy of the Judgment and order filed by the Petitioner marked as Ext.3. Judicial notice can also be taken of the Judgment and order. Moreover, no documents regarding the Respondent's infertility or removal of uterus was submitted by the Petitioner. It is also apt to mention at this juncture that the plaint was amended and through the amended petition, the

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the fact of the affidavit executed by both the parties regarding a mutual agreement between both the parties for dissolution of their marriage was included in the plaint. This affidavit is marked as Ext.2. The affidavit was sworn in, in presence of the Sub Divisional Magistrate at North Lakhimpur. The Petitioner has sought divorce u/s 13(i-b) of the Hindu Marriage Act, but in his petition, it is mentioned that the last residence of both the parties was Laluk. The Respondent 'Y' was staying with him in his house at Laluk. The earlier Title Suit was filed in the year, 2006. The Title Suit (Divorce) No.26/2006 was dismissed on 21.12.2010. Thus, the evidence is clear that there was no desertion by the Respondent till the year, 2006 as she was residing with her husband. Therefore, no cause of action arose in the year, 2006. Moreover, this case is barred by *res judicata* as T.S. (Divorce) No.26/2006 was based on same cause of action and between the same parties and was conclusively decided vide Judgment and order dtd. 21.12.2010. There is no hint of cruelty by the Respondent. The allegation of concealment of removal of uterus was also not proved by the Petitioner. Ext.2 depicts that both the parties agreed for a mutual separation as they are not compatible. The only difference between the allegations of the previous case and the instant case is that no allegation of adultery has been brought forward by the Petitioner in the instant

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case. In the earlier case, Title Suit (D) No. 26/2006, the Petitioner has alleged that the Respondent indulged in adultery while in the instant case, there is no allegation of adultery. In this manner, the Petitioner tried to project that this suit is not barred by *res judicata* because although this suit is between the same parties, the issue in the suit is directly or substantially different from the issue in the former suit. In my opinion, in the instant suit, the issue is an analogous issue which arises from the issue, which was in question in the earlier suit. This issue has branched out from the issue of the earlier suit. In the earlier suit, it was alleged that the Respondent had an adulterous relationship with her brother in law and she gave birth to a son sired by her brother in law.

9) In both the suits, Title Suit (D) No.26/2006 and in instant suit, the Petitioner has prayed for divorce because he discovered after his marriage that his wife had undergone an operation for removal of uterus. It is also alleged in both the suits that the Respondent concealed about her surgery and when the Petitioner confronted her about her surgical stitches, she chose to remain mum. The Petitioner discovered about the Respondent's surgery when he received the ultrasound report after visiting

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Dr. Gobin Saikia. I would like to reiterate that the Respondent did not desert the Petitioner. They had to stay in separate places to attend their duties.

10) In view of my foregoing discussions, it is, thereby, held that there is no cause of action and the suit is not maintainable and is barred by *res judicata*.

**ISSUE NO.2**

*Whether the Petitioner was subjected to cruelty by the Respondent ?*

11) The evidence of the Petitioner as PW.1 does not at all support the fact that he was subjected to cruelty by the Respondent.

**ISSUE NOS.3 AND 4**

*Whether the Petitioner is entitled to a decree of divorce as prayed for ?*

*What other relief or reliefs the parties are entitled to ?*

12) I would like to reiterate that the Petitioner has prayed for a decree of divorce u/s 13(i-b) of the Hindu Marriage Act. It has already been held in my foregoing discussions that there is no cause of action. The evidence and the pleadings of the

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Petitioner do not prove that the Respondent deserted him. Even on the touchstone of preponderance of probability, the Issue No.3 is decided in negative. The Petitioner is not entitled to any decree of divorce as prayed for.

13) After perusal of the evidence and the pleadings, it is held that the parties are not entitled to any relief and this suit is dismissed on contest with costs.

Judgment is signed, sealed and delivered in the open Court on the 18<sup>th</sup> day of May, 2021.

( 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 Satyabrata Kshattri, Stenographer.