

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
F.A. No.169 of 2022**

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Prabha Devi, Aged about 37 years, wife of Gopal Sahu,  
Resident of Village Banjar Kisko, P.O. Kisko, P.S. Kisko,  
District Lohardaga. ... .. **Appellant/Plaintiff**

Versus

Gopal Sahu, son of Late Bital Sahu Aged about 43 Years,  
Resident of Village Banjar Kisko, P.O. Kisko, P.S. Kisko,  
District Lohardaga. ... .. **Respondent/Defendant**

**P R E S E N T**

**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

.....

For the Appellant : Mrs. Kismanti Minz, Advocate  
For the Respondent : Mr. Sumit Prakash, Advocate

.....

**C.A.V. on 24.02.2026 Pronounced on 12/03/2026**

**Per Sujit Narayan Prasad, J.**

**Prayer:**

**1.** The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the judgment dated 27.08.2022 [decree signed on 31.08.2022] passed by the learned Principal Judge, Family Court, Lohardaga in Original Suit No.36 of 2018, whereby and whereunder, the suit for restitution of conjugal right under Section 9 of the Hindu Marriage Act, 1955 by the plaintiff/ appellant, has been dismissed on contest.

**Factual Matrix**

**2.** The brief facts of the case is that the marriage of plaintiff was solemnized with defendant on 03.07.1997 before Marriage officer, Lohardaga. After marriage, she went

to her matrimonial house and due to their wedlock two female children were born.

**3.** After birth of two daughters, behaviour of O.P. and her mother-in-law was changed and they started torturing mentally and physically to plaintiff. After that one son and one daughter were also born.

**4.** Thereafter, the defendant and his mother started demanding Rs.5,00,000/-. When said demand was not fulfilled the defendant and her mother in-law stopped talking with family members of plaintiff. They also told that we will solemnize marriage of defendant with other and plaintiff will be live in her maika with her children.

**5.** The plaintiff sent her two daughters to Bachra for study, where her mother-in-law was residing. On 10/12/2015, when demand of dowry was not fulfilled the defendant ousted to plaintiff after abusing and beating her. Then plaintiff went to her maika with two children. The plaintiff went to Bachra, where her mother-in-law was living but defendant went there and also ousted the plaintiff from there. Then plaintiff went to village-Choreya, to her sister's house. After that on 13.12.2015, she went to Kanal Spening Ltd. Company, Tamil Nadu for the purpose of livelihood with Sunita Munda, Soni Loharain, Rajmani Devi and Chavi Devi. When this fact came in knowledge of defendant, he lodged a

Sanha for missing of plaintiff in Chanho P.S. They also published the said fact in newspaper. When the father of plaintiff lodged the case against defendant regarding beating and ousting from the house then defendant sought apology from his father-in-law.

**6.** Within one month of this occurrence, the defendant filed a suit for divorce before family court, Lohardaga on 21.01.2016 and he took away two children with him, who were living in her maika. When the appellant returned from Tamil Nadu, she came to know about this.

**7.** The said divorce suit being M.T.S no.-02/2016 was dismissed by the Family court on 08.03.2018. On 23/08/2016, after returning from Tamilnadu, plaintiff went to her matrimonial house then defendant started abusing and ousted her from the house and since then the plaintiff is living in her maika.

**8.** In the month of May 2018, plaintiff and his family members went to her matrimonial house but defendant started abusing and he has not permitted to enter in the house. The defendant has made allegation against plaintiff of fleeing away with Hemant Sahu, in this regard a Panchayati was called for but defendant did not appear in the said Panchayat.

**9.** Thereafter, the plaintiff filed a case of maintenance

as O.M.C. No.-29/2018 and Complaint Case No.-04/2018, U/s-12 & 17 of D.V. Act.

**10.** During pendency of M.T.S. Case No.-02/2016, several times matter was referred to mediation Center but the mediation failed, so she has filed the instant suit for restitution of conjugal rights.

**11.** It needs to mention herein that in Original Suit upon issuance of the notices, the defendant (the respondent herein) has appeared and filed a written statement denying all the allegations levelled against him by the appellant-wife.

**12.** The defendant appeared in the suit and filed his written statement. The respondent/defendant in his written statement has stated that his marriage was solemnized with plaintiff on 03.07.1997 without any dowry. Due to wedlock of said marriage four children were born. The defendant has never demanded Rs.5,00,000/- as dowry.

**13.** He has further stated that the plaintiff is very careless lady and does not take care of the children. On 11/12/2015, when plaintiff went to matrimonial house of her sister situated at village-Choriya, he found that she was missing. On that defendant lodged a missing report on 17/12/2015 in Chanhoo P.S.

**14.** On 17.01.2016, defendant saw the plaintiff coming out from the house of Hemant Sahu where they started

living as husband and wife.

**15.** He has stated that there is illegal relation of plaintiff with Hemant Sahu. He visited to the house of defendant during the work of agent of Sahara India. The defendant has lodged a case against Hemant Sahu for taking away the plaintiff and that case is pending for trial as S.T. Case No.- 101/2018.

**16.** It has been stated that no panchayati was called by the defendant. The plaintiff has lodged a case for demand of dowry against defendant and his mother and it is pending. Thus, the suit of the plaintiff is fit to be dismissed.

**Submission of behalf of the appellant-wife**

**17.** Mrs. Kismanti Minz, learned counsel appearing for the appellant-wife has taken the following grounds: -

- (i) The judgment passed by the learned Principal Judge, Family Court, Lohardaga is not based on material facts of the case.
- (ii) The learned court below has wrongly decided the issues without appreciating the entire facts of the suit.
- (iii) There are overwhelming evidences on record which prove that the respondent has ousted the appellant from her matrimonial house without any rhyme and reason.
- (iv) Learned Family Court also failed to appreciate that it is

the respondent who has withdrawn himself the from conjugal relationship with the appellant and therefore, the appellant is entitled for restitution with the respondent.

- (v) It has been submitted that the evidence of the appellant who has been examined as P.W.-1 is very much sufficient to show that it is the respondent who ousted her and there is a case under section 498A of the Indian Penal Code against the respondent lodged by the appellant.
- (vi) It has been submitted that the respondent in his evidence has much very admitted that the maintenance has been awarded in favour of his wife and he is not paying any amount and the Divorce suit filed by respondent has been dismissed.
- (vii) The learned Family Court is not correct in deciding that the plaintiff is having no valid cause action of the suit though in the plaint, several paragraphs have been mentioned which, explicitly speaks that there are several causes of action for filing the Restitution Application, as the appellant is admittedly a destitute.

**18.** The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree is suffering from perversity, therefore, needs

interference.

**Submission of behalf of the respondent-husband**

**19.** Mr. Sumit Prakash, learned counsel appearing for the respondent-husband has taken the following grounds: -

- (i) There is no error or perversity in the impugned judgement as the learned Family Judge has considered the entire issue and on the basis of evidence as led by the respondent-husband has passed the order impugned as such same may not be interfered with.
- (ii) The learned counsel has submitted that the appellant-wife went away from matrimonial house without any reason.
- (iii) Learned counsel has also submitted that the appellant-wife has lodged false case of demand of dowry against the respondent-husband and his mother in which they have been acquitted.

**20.** Learned counsel, based upon the aforesaid grounds, has submitted that the learned Family Judge has rightly recorded its finding that the respondent-wife has not able to prove that defendant has ousted the plaintiff from her matrimonial house and defendant has withdrawn himself from the conjugal society of plaintiff without any reasonable cause, hence, the impugned judgment cannot be said to suffer from an error.

**Analysis:**

**21.** We have heard the learned counsel appearing for the parties, gone through the impugned judgment as well as the Trial Court Records, as also the testimonies of the witnesses and evidences available on record.

**22.** The learned Family Judge has formulated altogether six issues, for ready reference the same are being quoted hereinbelow: -

(1)- Whether the instant suit is maintainable in the present from?

(2)- Whether any cause of action arose for the present suit or not?

(3)- Whether the plaintiff Prabha Devi is living an adulterous life with one Hemant Sahu?

(4)- Whether the O.P. has ousted the plaintiff from her matrimonial home without any rhymes and reasons?

(5)-Whether the plaintiff is entitled for the decree of restitution of her conjugal life with the O.P.?

(6)- Whether the plaintiff is entitled for any other relief(s) in the instant suit?

**23.** The learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Original Suit No.36 of 2018.

**24.** This Court, before entering into the legality and propriety of the impugned judgment, in order to appreciate the rival submissions, needs to discuss herein the relevant part of the evidences adduced on behalf of the appellant-

wife.

**25.** During the trial, three witnesses have been examined on behalf of the plaintiff-wife who herself has been examined as PW-1.

**26.** The plaintiff-wife as PW-1 in her evidence on oath has fully supported her case. she has further stated that her marriage was solemnized on 03/07/1997. Due to their wedlock four children were born. The mother-in-law and husband started making pressure to bring Rs. -5,00,000/- from her maika, when demand was not fulfilled, defendant ousted her on 10/12/2015 after abusing and beating. Due to love marriage, the family members (Mother-father) of plaintiff were not supporting her, so she went to Tamil Nadu for work. On 23/08/2016 after returning from Tamil Nadu, she went to her matrimonial house, but defendant again ousted her after abusing and beating. After that she is living in her maika.

In her cross-examination, she has stated that at the time of marriage, a list of articles was prepared and that document was in possession of husband. She cannot say that there is signature of mother and father of defendant.

She cannot say that at present where is said document. She has stated that she has lodged a case U/s-498A of 1.P.C. against husband (Defendant), numbered as

G.R.- 672/2016.

She has stated that it is false to say that there is illegal relation with Hemant Sahu and she went to Tamil Nadu with Hemant Sahu. She has no knowledge that in this regard one S.T. Case No.-101/2018 is pending. She is living separately from her husband since 10.12.2015.

**27.** The P.W.-2 is Ramdhani Bakhla. In his chief-examination, he has supported the case of plaintiff.

In his cross-examination, he has stated that he came back to village from Ranchi about one year ago. Both parties are living separately from last four years. The plaintiff-wife asked me for evidence, so he has come for evidence. He has no knowledge that what case has been lodged by plaintiff.

**28.** The P.W.-3 is Bande Oraon. In his chief-examination, he has supported the case of plaintiff.

In his cross-examination, he has stated that today Prabha Devi has called him for evidence. After preparing the document of evidence, Prabha Devi told him to put signature. He does not know that how much cases have been lodged by Prabha Devi on Gopal Sahu. He has knowledge about this case only. This case has been related to conjugal relation of husband and wife.

**29.** On the other hand, the defendant-husband

(respondent herein) has examined four witnesses including himself.

**30.** The D.W.-1 is defendant Gopal Sahu. In his chief-examination, he has reiterated his written statement.

In his cross-examination, he has stated that house of Hemant Sahu is in front of his house. He cannot produce any document which shows that there is relation in between Prabha Devi and Hemant Sahu. He cannot produce any document that the Prabha Devi went to Tamil Nadu with Hemant Sahu.

On 11.01.2015, Prabha Devi went to the house of his (DW-1) mother situated at Bachra. On 17.01.2015, he had lodged a missing report of Prabha Devi in Chanhoo Police Station.

He has stated that it is false to say that for which date and time, he made allegation against Hemant Sahu, at that time he was doing work at Delhi.

He has further stated that an order of maintenance was passed in favour of his wife but he is not paying any maintenance amount to his wife.

In the year 2016, he had lodged a Divorce suit and that was dismissed.

**31.** The D.W.-2 is Mandil Devi, who is mother of defendant. In her examination-in-chief, she has supported

the case of defendant.

In her cross-examination, she has stated that Prabha Devi is her daughter-in-law. She is retired from colliery. The plaintiff went to Tamil Nadu with Hemant Sahu. She cannot produce any document about it. She lives in Ranchi, Argora with Hemant Sahu. She cannot produce document about it.

She has stated that it is false to say that she and her son Gopal Sahu ousted to plaintiff after beating.

**32.** The D. W.-3 is Khusbu Kumari. She is daughter of plaintiff and defendant. In her chief-examination on affidavit, she has supported the case of defendant.

In her cross-examination, she has stated that Prabha Devi is my mother. She lives with her father. It is false to say that her mother was ousted from her matrimonial house after beating.

She has further stated that she went away with Hemant Sahu. It is false to say that plaintiff went away to Tamil Nadu with Sunita Munda, Soni Lohrain, Rajmani Devi and Chhavi Kumari.

She has further stated that she fled away with Hemant Sahu.

It is false to say that when her mother returned from Tamil Nadu her father had beaten her and demanded dowry.

There is illegal relation in between her mother (Plaintiff) and Hemant Sahu, so she has objection if her mother lives with her father.

**33.** The D. W.-4 is Neha Kumari. She is daughter of plaintiff and defendant. In her chief-examination on affidavit, she has also supported the case of defendant.

In her cross-examination, she has stated that her grandmother has retired from Bachra Colliery in the year-2017. We are four brother and sister. We did not live with our grandmother. We lived in Banjar Kisko.

It is false to say that her mother went to Tamil Nadu for doing work with villagers.

She has further stated that she fled away with Hemant Sahu. She cannot say the date of occurrence which has been mentioned in para-5 of her chief-examination. If her mother will live with her father then she has objection because her mother will kill them. She does not want to keep her mother with her father.

**34.** This Court while appreciating the argument advanced on behalf of the parties on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in

***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as so to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

*“24. The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*

*25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.*

**26.** *In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58]* the Court observed that any order made in conscious violation of pleading and law is a perverse order. *In Moffett v. Gough [(1878) 1 LR 1r 331]* the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. *In Godfrey v. Godfrey [106 NW 814]* the Court defined “perverse” as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. *Oxford Advanced Learner's Dictionary of Current English, 6th Edn.*

“Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. *Longman Dictionary of Contemporary English, International Edn.*

*Perverse.—Deliberately departing from what is normal and reasonable.*

3. *The New Oxford Dictionary of English, 1998 Edn.*

*Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.*

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

*Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.*

5. *Stroud's Judicial Dictionary of Words & Phrases*,  
4th Edn.

*“Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”*

**35.** In the backdrop of the aforesaid factual aspect, it would be apt to discuss the object and scope of decree of restitution. The object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. The leading idea of Section 9 was to preserve the marriage. For ready reference Section 9 of the Hindu Marriage Act is being referred as under:-

9. Restitution of conjugal rights.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. [Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

**36.** From perusal of the aforesaid provision it is evident that if either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, before the court concerned, for restitution of conjugal rights and the court, on being

satisfied of the truth of the statements made in such petition and further taking into consideration the legal ground that why the application should not be granted, may decree restitution of conjugal rights accordingly.

**37.** Further in explanation part of the said provision, it has been prescribed that when a question arises whether there has been “reasonable excuse” for withdrawal from the society, the burden of proving “reasonable excuse” shall be on the person who has withdrawn from the society.

**38.** It needs to refer herein that conjugal rights may be viewed in its proper perspective by keeping in mind the dictionary meaning of the expression "Conjugal" wherein the meaning of 'conjugal' as "of or pertaining to marriage or to husband and wife in their relations to each other" is given (Shorter Oxford English Dictionary, 3rd Edn. Vol. I page 371).

**39.** In the Dictionary of English Law, 1959 Edn. at page 453, Earl Jowitt defines 'conjugal rights' thus:-

"The right which husband and wife have to each other's society and marital intercourse. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce Court, which is brought whenever either the husband or the wife lives separate from the other without any sufficient reason, in which case the court will decree restitution of conjugal rights (Matrimonial Causes Act, 1950, s. 15), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order

for periodical payments by the husband to the wife (s.22).  
 Conjugal rights cannot be enforced by the act of either party,  
 and a husband cannot seize and detain his wife by force  
 (R.V. Jackson [1891] 1 Q.B. 671)"

**40.** In India it may be borne in mind that conjugal rights i.e. right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. Thus, the restitution of conjugal rights is often regarded as a matrimonial remedy. The remedy of restitution of conjugal rights is a positive remedy that requires both parties to the marriage to live together and cohabit.

**41.** Thus, the requirements of the provision of restitution of conjugal rights are the following:-

- (i) The withdrawal by the respondent from the society of the petitioner.
- (ii) The withdrawal is without any reasonable cause or excuse or lawful ground.
- (iii) There should be no other legal ground for refusal of the relief.
- (iv) The court should be satisfied about the truth of the statement made in the petition.

**42.** The Hon'ble Apex Court in the case of **Suman Singh v. Sanjay Singh, (2017) 4 SCC 85** has categorically observed that when there is evidence establishing that it was respondent husband who withdrew from appellant's company without any reasonable cause, appellant is entitled

to decree for restitution of conjugal rights. For ready reference the relevant paragraph is being quoted as under:-

**“24.** In our considered view, as it appears to us from perusal of the evidence that it is the respondent who withdrew from the appellant's company without there being any reasonable cause to do so. Now that we have held on facts that the respondent failed to make out any case of cruelty against the appellant, it is clear to us that it was the respondent who withdrew from the company of the appellant without reasonable cause and not the vice versa.

**25.** In view of the foregoing discussion, the appeals succeed and are allowed. The impugned judgment [Suman Singh v. Sanjay Singh, 2013 SCC OnLine Del 2138 : (2013) 136 DRJ 107] is set aside. As a result, the petition filed by the respondent (husband) under Section 13(1) of the Act seeking dissolution of marriage is dismissed. As a consequence thereof, the marriage between the parties is held to subsist whereas the petition filed by the appellant against the respondent under Section 9 of the Act seeking restitution of conjugal rights is allowed. A decree for restitution of conjugal rights is, accordingly, passed against the respondent.

**26.** We hope and trust that the parties would now realise their duties and obligations against each other as also would realise their joint obligations as mother and father towards their grown up daughters. Both should, therefore, give a quiet burial to their past deeds/acts and bitter experiences and start living together and see that their daughters are well settled in their respective lives. Such reunion, we feel, would be in the interest of all family members in the long run and will bring peace, harmony and happiness. We find that the respondent is working as a “Caretaker” in the Government Department (see Para 4 of his petition). He must, therefore, be the “Caretaker” of his own family that being his first obligation and at the same time attend to his government duties to maintain his family.”

**43.** Thus, on the basis of aforesaid settled position of law, it is evident that the court will grant a decree for restitution of conjugal rights when one spouse has withdrawn from the other's society without reasonable excuse. This means if a husband or wife leaves the marital home or refuses to live with their spouse without a justifiable reason, the other spouse can petition the court for this remedy. The court, if satisfied with the truth of the petition and finding no legal barrier, may order the withdrawing spouse to return and resume cohabitation.

**44.** In the backdrop of the aforesaid settled position of law this Court is now adverting to the factual aspect of the instant case.

**45.** The appellant/wife has examined herself as P.W.-1 and two other witnesses as P.W.-2 & 3. The said PW. -2 and 3 are villagers. The plaintiff (P.W.-1) has supported her pleading in her evidence. The P.W.-2 has supported the case of plaintiff in his chief-examination on affidavit. But in his cross-examination, he has stated that he came back to village from Ranchi about one year ago and the said evidence was recorded on 30/09/2021. It means that this witness has come to village about one year ago from 30/09/2021. Therefore it can be inferred that this witness has come to village probably in the month of September

2020. It is evident from record that the plaintiff/appellant has brought the suit for restitution of conjugal right before the learned Family Court in year 2018, so, obviously the dispute in between the plaintiff/appellant and respondent defendant is prior to 2018 and since the P.W.-2 has come to village in the month of September 2020 and he get knowledge about dispute in between plaintiff and defendant from the plaintiff and he aforesaid evidence itself shows that he is a hearsay witness. Further the P.W.-2 has also stated in his evidence that the plaintiff told to him for evidence, so he has come for evidence and he has no knowledge that what case has been lodged by plaintiff(appellant herein). Thus, from the aforesaid evidence of P.W.-2 it is apparent that he had no knowledge about the present case of plaintiff/appellant and he had deposed as plaintiff told to him.

**46.** The P.W.-3 has also substantiated the case of plaintiff/appellant in his chief-examination on affidavit. In his cross-examination, he has stated that today Prabha Devi has called to him for evidence. After preparing the document of evidence (Affidavit of examination in chief) , Prabha Devi(appellant herein) told him to put signature, and he doesn't know that how much cases have been lodged by Prabha Devi on Gopal Sahu and he has knowledge about

this case only.

**47.** The aforesaid evidence of P.W.-3 is indicative of the fact that he is hearsay witness and he has deposed as he heard from plaintiff. In his cross-examination, he has stated that his house is present on the distance of three Km. from the house of plaintiff Prabha Devi(appellant herein).

**48.** Further it is evident from record that the plaintiff/appellant has not examined to her parents or the family member of her maika. The maika and matrimonial house of plaintiff is in same mohalla but she has not examined any witness of the same locality.

**49.** The plaintiff herself has stated in her evidence that she has lodged a case U/s-498A of I.P.C against the defendant and his family member. But in the said case Id. trial court has acquitted to accused Gopal Sahu (husband and respondent herein) and Mandil Devi (Mother of defendant Gopal Sahu) for the offence U/s-498A/406/34 of I.P.C. and 3/4 of D.P. Act. The aforesaid case was lodged by the plaintiff/appellant of this suit on 21/11/2016 for the occurrence since 2005 to 10/12/2015 and 13/12/2015 to till date means 21/11/2016. But after trial judgment was passed on merit and accused persons were acquitted.

**50.** The plaintiff/appellant has herself accepted that she is living separately with her husband (Defendant) from

10/12/2015. She has also stated that she went to Tamilnadu for livelihood. Therefore, it is apparent that the plaintiff/appellant had lodged false case against the defendant Gopal Sahu and his mother for the offence U/s-498A/406/34 of 1.P.C. and 3/4 of D.P. Act. Further plaintiff/appellant had gone to Tamilnadu without telling anything to her family members after leaving her four minor children.

**51.** It is evident from the testimony of the plaintiff wherein she had further stated that on 23/08/2016, she went to her matrimonial house but defendant ousted to her. But P.W.-2 & 3 have not stated in their evidences that defendant ousted to plaintiff on 23/08/2016. Both witnesses have not stated anything about the occurrence dt.-23/08/2016.

**52.** On the other hand, the daughters of plaintiff/appellant and defendant (DW.-3 & 4) have also stated in their evidences that plaintiff/appellant fled away with Hemant Sahu. They have denied that defendant ousted to plaintiff for demand of Rs.-5,00,000/- after beating to her.

**53.** Further from record it is evident that the registration of criminal case against the husband (Defendant) and mother-in-law of plaintiff/appellant was found false by the court concerned, is also provided a

sufficient ground for the respondent/husband to stay away from the company of his wife (Plaintiff/appellant).

**54.** On the basis of discussion made hereinabove it is considered view of this Court that the plaintiff/appellant has not able to prove that defendant/husband has ousted to plaintiff/appellant from her matrimonial house and defendant/husband has withdrawn himself from the conjugal society of plaintiff/appellant without any reasonable cause.

**55.** It requires to refer herein that the explanation to section 9 of the Hindu Marriage Act comes into play where the aggrieved spouse has established by leading cogent and reliable evidence that the other spouse has withdrawn from the conjugal society without any reason-able cause. It is well settled that in a suit the case of the plaintiff stands on his own strength and he or she cannot take support from the weakness in the case of the opposite party. In the first place, the essential condition under section 9 of the Act 1955 has to be established by the plaintiff before the defendant then it is incumbent upon the defendant to lead evidence in rebuttal. Herein, the incidents of the registration of criminal case against the husband and his family by the appellant wife in which they were acquitted by the Id. Trial court would have provided sufficient justification for the husband

to stay away from the company of his wife/appellant, even where had the wife established a case that her husband has refused to take her in his company.

**56.** It needs to refer herein settled position of law that the test in a civil suit is that of preponderance of probability. The existence of a fact is generally founded on a balance of probabilities and as said by Lord Denning the degree of probability depends on the subject matter. The preponderance of probability is not just a possibility and mere possibility is hardly sufficient to assume that it would have happened. The evidence laid by the wife/appellant through herself and two other witnesses does not indicate a positive component and high degree of probability so as to arrive at a conclusion that on preponderance of probability a finding can be recorded that the husband/respondent withdrawn himself from her society without any reasonable excuse.

**57.** Further it is evident from the impugned judgment that the learned Family Court has appreciated the evidence tendered by both parties at length and arrived at conclusive finding that the wife/appellant has failed to establish that her husband/respondent had withdrawn himself from her society without any reasonable excuse.

**58.** Thus, on the basis of the discussion made hereinabove, this Court, therefore, is of the view that the judgment dated 27.08.2022 [decree signed on 31.08.2022] passed by the learned Principal Judge, Family Court, Lohardaga in Original Suit No.36 of 2018, need no interference.

**59.** Accordingly, the instant appeal stands dismissed.

**60.** Pending interlocutory application, if any, also stands disposed of.

I agree

**(Sujit Narayan Prasad, J.)**

**(Arun Kumar Rai, J.)**

**(Arun Kumar Rai, J.)**

**Date: 12/03/2026**

Birendra / **A.F.R.**

Uploaded on 13.03.2026