

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 411/2026
CNR: RJHC021133832025 | URN: CMA / 885U / 2026

-----Appellant

Versus

-----Respondent

For Appellant(s)	:	Mr. Sudhir Yadav, Mr. Mangal Singh Saini and Mr. Rajesh Kumar Yadav
For Respondent(s)	:	Mr. Avinash Fenin

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE RAVI CHIRANIA

Judgment

08/10/2026

Reportable

1. Appellant and respondent belong to the "Meena Community". Both entered into marriage on 12.06.2017, but thereafter, during their companionship of three years, serious ideological differences arose between the parties, which gradually intensified, resulting in considerable discord and estrangement between them. Since the matrimonial issues became irreconcilable, both parties consciously and willingly decided to dissolve their marriage by mutual consent. A written document dated 15.09.2024, came to be executed between parties in conformity with their decision to dissolve the marriage by mutual consent, and based on the said document of mutual agreement, a certificate dated 22.09.2024, has been

issued by the *Hadoti Adivasi Meena Samajik Sudhar Sangh*, certifying dissolution of their marriage by mutual consent.

2. Thereafter, appellant instituted a Civil Suit No.57/2024 (CIS No.1142/2024) on 01.10.2024 before the learned Family Court No.1, Kota, seeking a decree of dissolution of their marriage on the basis of mutual agreement, executed between them, evidencing dissolution of marriage by mutual consent. Respondent, in his reply to the suit, did not oppose the prayer of the appellant, and later on set *ex parte*. However, the learned Family Court, vide judgment dated 03.09.2025, dismissed the civil suit, fundamentally for the reason that the parties have not pleaded in their respective pleadings about the prevailing customs, rituals and usages in the "Meena community", and it has not been established that the dissolution of their marriage was done in accordance with the customs and usages of "Meena community".

3. Hence, assailing the judgment dated 03.09.2025, the instant statutory appeal under Section 19 of the Family Courts Act, 1984, has been filed.

4. We have heard learned counsel for both the parties and perused the record of the Family Court, so also the judgment impugned.

5. Learned counsel appearing on behalf of the respective parties jointly submit that although both parties belong to the "Meena Community", which is a Scheduled Tribe, but for the purpose of solemnization of marriage as well as its dissolution, the parties resorted to the procedure governing Hindus, as envisaged

under the Hindu Marriage Act, 1955 (for short "the Act of 1955"). Learned counsels for both the parties further submit that since the parties are following the Hindu religion and have abided themselves to the procedure for solemnization of marriage as envisaged under the Act of 1955, as much as their marriage was performed following *Saptapadi*, i.e., taking seven steps in front of the sacred fire, and other ancillary rituals and traditions of Hindus, have also been followed, hence, the bar envisaged under Section 2(2) of the Act of 1955, does not apply to them and there is no bar for issuing a decree of dissolution of their marriage by mutual consent in exercise of jurisdiction under Section 13-B of the Act of 1955.

6. Hence, a joint prayer and submission of both the parties is that, treating the civil suit for dissolution of marriage, as a joint petition under Section 13-B, a decree of dissolution of their marriage dated 12.06.2017, by mutual consent under Section 13-B of the Act of 1955 be passed.

7. Having gone through the pleadings of the parties and the respective evidence, including the statements made by appellant and the affidavit sworn in by respondent, following admitted and undisputed facts have come on record:-

- (i) That the marriage between parties was solemnized as per Hindu rites and customs, following the procedure of *Saptapadi*;
- (ii) That parties are following Hindu religion, Hindu rites, customs and traditions;
- (iii) That no child born to the parties out of their marital relationship;

(iv) That both parties have been living separately since 2021 onwards, i.e., for nearly more than five years from today, without there being any cohabitation between them during this period; and

(v) That both parties are consensus, without having any collusion, to get dissolved their marriage by mutual consent.

8. Section 2(2) envisaged under the Act of 1955 is *pari materia* to Section 2(2) of the Hindu Succession Act, 1956, and, for ready reference, Section 2(2) of the Act of 1955, is being reproduced hereunder:-

"Section 2 Application of Act:-

(1)

(2) *Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs....."*

9. Hon'ble Supreme Court, in case of **Labishwar Manjhi v. Pran Manjhi [(2000) 8 SCC 587]**, interpreted Section 2(2) of the Hindu Succession Act, 1956, and observed that when the evidence discloses that parties belonging to the *Santhal* tribe were following the customs of Hindus and not of *Santhals*, the provisions of the Hindu Succession Act, 1956 would apply to inheritance of the property. For ready reference, the relevant portion of the judgment from Paragraph No. 6 is being reproduced hereunder:-

"6....The finding of the words is that they are following the customs of the Hindus and not the Santhal customs. In view of such a clear finding it is not possible to hold that sub-section (2) of Section 2 of the Hindu Succession Act excludes the present parties from the application of the said Act. Sub-section (2) only excludes members of any Scheduled Tribe admittedly as per finding recorded in the present case though the parties originally belong to the Santhal Scheduled Tribes they are Hinduised and they are following the Hindu traditions. Hence we have

no hesitation to hold that sub-section (2) will not apply to exclude the parties from application of the Hindu Succession Act...."

(emphasis supplied)

10. Following the *ratio decidendi* as expounded by the Hon'ble Supreme Court in case of **Labishwar Manjhi** (*Supra*), the High Court of Delhi, in case of **Satprakash Meena v. Alka Meena [(2021) SCC OnLine Del 3645]**, in a substantially similar set of circumstances, dissolved the marriage between the parties, belonging to Meena caste, following the provisions of the Hindu Marriage Act, 1955 particularly Section 13-B of the Act of 1955, with the observation that Section 2(2) of the Act of 1955 is meant to protect the customary practices of the recognized tribe and not to exclude the Scheduled Tribe from the applicability of the Hindu Marriage Act, once they follow the Hindu religion and traditions. For ready reference, the relevant portion of the judgment, i.e., Paragraph No. 47, is being reproduced hereunder:-

"47. The word 'Hindu' is not defined in any of the statutes. It is in view of the fact that there is no definition of Hindu, that the Supreme Court has held in *Labishwar Manjhi* (*supra*) that if members of Tribes are Hinduised, the provisions of the HMA, 1955 would be applicable. The manner in which the marriage has been conducted in the present case and the customs being followed by the parties show that as in the case of Hindus, the marriage is conducted in front of the fire. The Hindu customary marriage involves the ceremony of Saptapadi which has also been performed in the present case. The various other ceremonies, as is clear from the marriage invitation are also as per Hindu customs. If members of a tribe voluntarily choose to follow Hindu customs, traditions and rites they cannot be kept out of the purview of the provisions of the HMA, 1955. Codified statutes and laws provide for various protections to parties against any unregulated practices from being adopted. In this day and age, relegating parties to customary Courts when they themselves admit that they are following Hindu customs and traditions would be antithetical to the purpose behind enacting a statute like the HMA, 1955. The provisions of exclusion for example under Section 2(2) are meant to protect customary practices of recognised Tribes. However, if parties follow Hindu customs and rites, for the purpose of marriage, this Court is inclined to follow the judgment of the Supreme Court in *Labishwar Manjhi* (*supra*) to hold that the parties are Hinduised and hence the HMA, 1955 would be applicable. Moreover, nothing has been placed before the Court to show that the Meena community Tribe has a specialised Court with proper

procedures to deal with these issues. In these facts, if the Court has to choose between relegating parties to customary Courts which may or may not provide for proper procedures and safeguards as against codified statutes envisioning adequate safeguards and procedures, this Court is inclined to lean in favour of an interpretation in favour of the latter, especially in view of the binding precedent of the Supreme Court in Labishwar Manjhi (supra) which considered an identical exclusion under the HSA, 1956."

(emphasis supplied)

11. In an another case of **Chittapuli v. Union Government [(2021) SCC OnLine AP 1039]**, learned Single Judge of the High Court of Andhra Pradesh, following the judgment of Hon'ble Supreme Court delivered in case of **Labishwar Manjhi (Supra)**, in Para Nos.9 & 10, held and observed as under:-

"9. In the light of the above, members of a tribe notified under Section 342 of the Constitution of India can still seek the benefit of Hindu Succession Act, 1956, or the Act of 1955, when they are Hinduised and are following Hindu traditions.

10. Section 2(2) of the Act is a measure of protection and not a measure of exclusion. In a case where the Act is sought to be applied to a member of a notified tribe, it would be open to such a member to object to any such proceeding on the ground that he/she is a member of a notified Schedule Tribe and as such, he/she is entitled to the benefit of Section 2(2) of the Act. But, when a member of such a notified tribe voluntarily submits himself or herself to the jurisdiction of the Court under the Act, on the ground that he/she are Hindus who are Hinduised and follow Hindu customs and practices, such member cannot be prohibited or barred, at the threshold, from invoking such a provision."

12. Although the *ratio decidendi*, as referred hereinabove, has been followed by several other High Courts, but instead of multiplying the judgments on the issue, we find that the proposition of law has been settled that the provision of exclusion contemplated under Section 2(2) of the Act of 1955, is meant to protect the customary practices of recognized tribes. However, if the parties are following Hindu traditions and customs and are substantially Hinduised, they cannot be relegated to customary courts, that too when they themselves admit that they are following Hindu rites, customs and traditions.

13. Coming back to the facts obtaining in the present case between parties, it is explicit from the pleadings as well as by the respective evidence and the document of mutual agreement entered into between parties, that the parties are following Hindu rites, customs and traditions for the purpose of solemnization of marriage, and their marriage was solemnized following *Saptapadi* (taking seven steps in front of the sacred fire). It is not the case of either party that they ever followed any different custom, ritual or usage other than those applicable to Hindus. Meaning thereby, it is the admitted case of both parties that they are following Hindu rites, customs and traditions, more particularly so far as solemnization of marriage and dissolution thereof are concerned.

14. In view of the above, we find that the marriage between the parties can be permitted to be dissolved by mutual consent under the provisions of Section 13-B of the Hindu Marriage Act, 1955.

15. In the present case, indisputably, since the parties are living separately for more than five years, and admit that there is neither possibility of reconciliation, nor there is any collusion.

16. As far as the ingredients of Section 13-B, sub-sections (1) and (2) are concerned, both stand fulfilled to grant a decree of divorce by mutual consent. In the given peculiar facts, the cooling-off period of six months deserves to be waived off, following the judgment of the Hon'ble Supreme Court, delivered in case of **Amardeep Singh v. Harveen Kaur [(2017) 8 SCC 746]**, wherein Section 13-B(2) has been held to be directory in nature rather than mandatory.

17. Learned counsel for both the parties agree that, apart from the present proceedings, no other legal proceedings, either civil or criminal, are pending between parties. The issue of permanent alimony has also been resolved finally and no dues remain between the parties, inasmuch as both parties have settled their lives individually.

18. Accordingly, as a final result, we hereby set aside the impugned judgment dated 03.09.2025, and the marriage dated 12.06.2017, solemnized between the parties as per Hindu rites and ceremonies, is dissolved by passing a decree of dissolution of marriage, by mutual consent under Section 13-B of the Hindu Marriage Act, 1955.

19. The present civil miscellaneous appeal stands allowed.

20. Registry is directed to draw a decree accordingly.

21. Pending application(s), if any, also stand(s) disposed of.

22. Record of the Family Court be sent back.

(RAVI CHIRANIA),J

(SUDESH BANSAL),J