

(2000) 04 MP CK 0073
In the Madhya Pradesh High Court
Case No : F.A. No. 118 of 1987

Bhagwat Prasad Shrivastava and others	Vs	APPELLANT
Pranbai Samaru Jaiswal and another		RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2001) 2 MPLJ 504

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : Kishore Shrivastava, for the Appellant; Sanjay Sarate, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

This appeal u/s 96 of the CPC is directed against the judgment and decree dated 14-7-1987 in Civil Suit No. 15-A/84 by District Judge, Raigarh. dismissing the suit of plaintiff/appellants for declaration.

Undisputably the plaintiffs/appellants and Basudeo Prasad Shrivastava are brothers and sisters. Basudeo Prasad Shrivastava was an employee of State Government serving in the Education Department. He was posted as Assistant District Inspector of Schools at Raigarh. Basudeo Prasad died on 13-3-1984.

The plaintiffs filed a suit praying for the relief of declaration that they are entitled to receive the amount payable on account of family benefit fund, gratuity and General Provident Fund, consequent to the death of Basudeo Prasad Shrivastava. The averments in the plaint were that Basudeo Prasad Shrivastava was married with a woman residing at Uttar Pradesh and that they were never divorced. It was also averred by the plaintiffs that the deceased Basudeo Prasad Shrivastava had illicit relationship with defendant/respondent No. 1 Pranbai. It was also averred that Pranbai was married from before and had also a daughter. Since defendant No. 1

Pranbai was not the wife of Basudeo Prasad Shrivastava, she had no right, title or interest in his property and cannot get the pensionary benefits payable by the State Government, on the death of Basudeo Prasad Shrivastava. However, as Pranbai is claiming the amounts of gratuity, G.P.F. etc., on the death of Basudeo Prasad Shrivastava, hence suit for declaration that the plaintiffs are entitled to receive the amount as above.

The defendant No. 1 Pranbai resisted the suit. According to her, Basudeo Prasad Shrivastava was never married to any woman in Uttar Pradesh, as has been averred by the plaintiffs. She also averred that she is the wife of Basudeo Prasad Shrivastava. By way of additional pleadings she averred that in the year 1955 she was married to one Swayambar Prasad. However, since Pranbai and Swayambar Prasad had strained relations, they had divorced each other as per caste custom. It was further averred by defendant No. 1 Pranbai that after the divorce from Swayambar Prasad, she lived in her parents home for about 10 years; while Swayambar Prasad after divorce renounced the world and was not heard of thereafter. Swayambar Prasad thus died a civil death. After 10 years of divorce defendant No. 1 Pranbai married Basudeo Prasad Shrivastava, as per caste custom in the "Churi" form of marriage. It was also averred by defendant No. 1 that she and Basudeo Prasad Shrivastava lived as husband and wife, till the death of Basudeo Prasad Shrivastava. Two daughters and a son were born to Pranbai out of the said wedlock. Therefore, defendant No. 1 and her children are entitled to receive the dues payable by the Government and are entitled to his property on the death of Basudeo Prasad Shrivastava.

Learned trial Court by the impugned judgment held that Basudeo Prasad Shrivastava was not married to any woman in Uttar Pradesh as was pleaded by the plaintiffs/appellants. It was also held that the defendant/respondent No. 1 Pranbai is the wife of Basudeo Prasad Shrivastava and was married to him in "Churi" form of marriage, and two daughters and a son were born to defendant/respondent No. 1 out of the said wedlock. Therefore, the suit of plaintiffs/appellants for declaration that they were entitled to receive the amount of gratuity, G.P.F. etc., was dismissed.

Learned counsel for appellants submitted that it has not been established that the defendant No. 1 Pranbai was married to Basudeo Prasad Shrivastava. It has been submitted in the above regard that Basudeo Prasad Shrivastava was already married and there is no proof that he ever took divorce from his first wife. Therefore, his alleged marriage with Pranbai had no sanctity in the eye of law. It has further been submitted that Pranbai was earlier married and since there was no evidence that she obtained divorce from her first husband Swayambar Prasad, she could not be treated as legally wedded wife of Basudeo Prasad Shrivastava. It has also been submitted that it was incumbent on the defendant No. 1 to have proved her marriage with Basudeo Prasad Shrivastava. She should have therefore pleaded the custom as prevalent in the caste of parties regarding divorce and re-marriage. It has been submitted that neither the custom as above has been properly pleaded

by defendant No. 1; nor, it has been established by her by cogent evidence, that she divorced her husband Swayambar Prasad, and married Basudeo Prasad Shrivass as per alleged caste custom. It has therefore been submitted that defendant No. 1 Pranbai had no authority and right to receive the dues payable on the death of Basudeo Prasad Shrivass. It was therefore contended that the plaintiffs, being the next of kin of deceased Basudeo Prasad Shrivass; were entitled to get a decree of declaration as prayed by them in the suit.

In view of the contentions as above it has to be considered as to whether defendant No. 1 Pranbai was legally married wife of Basudeo Prasad Shrivass? In the above context it has first to be considered as to whether the parties to the marriage i.e., Pranbai or Bhagwat Prasad Shrivass were already married at the time when their alleged marriage took place?

In the above context, I will first proceed to consider as to whether Basudeo Prasad was already married, prior to his alleged marriage with respondent No. 1, Pranbai? In the above reference, it may be noticed that, the averments in para 4 of the plaint are that Basudeo Prasad Shrivass was already married to some woman in Uttar Pradesh. However, the name and particulars of the said woman have not been specifically pleaded. Such vague and general pleadings therefore cannot be accepted.

On the above aspect, plaintiff No. 1 Bhagwat Prasad Shrivass (P.W.1) has stated that Basudeo Prasad Shrivass was married to Raminiya in the year 1948. However, as noticed above, his aforementioned statement is not supported by his pleadings. If the plaintiffs were aware that Basudeo Prasad Shrivass was married to a woman named Raminiya, they could have specifically pleaded so. But, as noticed earlier, the pleadings of the plaintiffs are conspicuously silent on the above aspect.

Moreover, the statement as above of Bhagwat Prasad Shrivass (P.W.1) does not find support from any other evidence and material placed on record. Though, the plaintiffs have examined several witnesses, but none of them state that Basudeo Prasad Shrivass was married to Raminiya. It may be noted in the above connection, that Bihari (P.W. 2) states that his cousin was married to Basudeo Prasad Shrivass about 30-35 years back. However, Bihari (P.W. 2) does not remember even the name of his cousin, with whom he states Basudeo Prasad Shrivass was married. Thus, the above statement of Bihari (P.W. 2) does not support the statement of Bhagwat Prasad Shrivass (P.W. 1) that Basudeo Prasad was married to Raminiya. Moreover, it may be noted that Bhagwat Prasad Shrivass (P.W. 1) does not say that Basudeo Prasad Shrivass was married to the cousin of Bihari.

From the above it is clear that the statements of Bhagwat Prasad Shrivass (P.W. 1) and Bihari (P.W. 2) are not mutually corroborative. They are also not supported by independent evidence. In view of above, their statements are valueless and it is not possible to hold on the basis of oral evidence as above that

Basudeo Prasad Shrivastava was already married at the time of his marriage with respondent No. 1 Pranbai.

It is also pertinent to note that even if the case of plaintiffs as above is accepted that Basudeo Prasad Shrivastava was married to some woman in Uttar Pradesh or Raminiya, as stated by his brother Bhagwat Prasad Shrivastava (P.W.1), then also the plaintiffs cannot succeed in the suit; because in that event, Raminiya would have been entitled the dues payable on the death of Basudeo Prasad Shrivastava. However, Raminiya or the woman to whom Basudeo Prasad Shrivastava was allegedly married, has neither been made a party to the suit nor any reason has been assigned for not doing so.

Now, it has to be considered as to whether defendant No. 1 Pranbai was already married at the time of her alleged marriage with Basudeo Prasad Shrivastava?

It may be noted in the above context that plaintiffs/appellants have not led any positive evidence in that regard. The defendant No. 1 Pranbai in her pleading has admitted that she was married to Swayambar Prasad. However, she has further pleaded that there was a divorce between them as per caste custom. In the above context Pranbai (D.W. 8) has stated that the marriage ties between her and Swayambar Prasad lasted for a period of five years. She has stated that thereafter Swayambar Prasad left her at her parents' home and they divorced as per their caste custom. She also states that thereafter Swayambar Prasad left for an unknown destination and was not heard of for the last 30-35 years. The above statement is supported by the statement of Basantlal (D.W. 7), who has stated that there was divorce between Swayambar Prasad and Pranbai as per caste custom, whereafter Swayambar Prasad renounced the world and left for unknown destination and he was not heard of thereafter.

The statements as above mutually support each other and there is no reason to dis-believe the said witnesses. In view of above, it is clear that though Pranbai was married to Swayambar Prasad about 30-35 years back i.e. in the year 1950 or thereabout, but it appears that after five years of their marriage, there was a divorce between them as per their caste custom. It further appears that Swayambar Prasad, the first husband of defendant No. 1 Pranbai renounced the world and left for an unknown place and was not heard for more than 10 years, when Pranbai allegedly married Basudeo Prasad Shrivastava.

It is therefore clear that Swayambar Prasad would be presumed to be dead in view of section 108 of Evidence Act, because he was not heard of for the last seven years or more by those who would have normally heard of him. It was therefore for the plaintiffs to have proved that he was alive. Moreover, there being cogent evidence that Swayambar Prasad had renounced the world shall be treated to have died a civil death.

Thus, the defendant No. 1 Pranbai has proved that marriage ties between her and Swayambar Prasad stood severed as divorce was obtained by her as per caste custom. Further, since Swayambar Prasad shall be presumed to have died

and renounced the world, the married status between Pranbai and Swayambar Prasad automatically came to an end. Therefore, on that count also there was no impediment on the defendant/respondent No. 1 Pranbai marrying Basudeo Prasad Shrivass.

It has next to be considered as to whether defendant/respondent No. 1. Pranbai has duly proved her marriage with Basudeo Prasad Shrivass?

In the above context the learned counsel for appellants has urged that not only the custom has to be properly pleaded, but it is also to be established by cogent and satisfactory evidence that marriage between Pranbai and Swayambar Prasad took place according to such custom. It may be noticed that defendant/respondent No. 1 has pleaded that after her divorce from Swayambar Prasad she lived in her parental home for about 10 years. She thereafter married Basudeo Prasad Shrivass as per their caste custom in "Churi" form of marriage. She thereafter resided with Basudeo Prasad Shrivass till his death as his wife. Two daughters and a son were born to her out of the said wedlock. It would appear from the above pleadings that marriage as per caste custom of the parties in "Churi" form, has properly been pleaded by defendant No. 1. Pranbai.

Adverting to the evidence led by the defendant No. 1 in the above regard, it is noticed that Pranbai (D.W. 8) has stated that she was married in the year 1966 with Basudeo Prasad Shrivass in "Churi" form of marriage. She has stated that Basudeo Prasad Shrivass in the presence of many persons had put bangles on her hand and thereafter they resided as husband and wife. Children were born out of the said wedlock. She has filed documentary evidence including copy of relevant extract of school register (Ex. D-2), "Khistaundi Khatauni" (Ex. D-3) and voters' list (Ex. D-4) in support of her statement. In Ex. D-2, in the column relating to father's name, the name of Basudeo Prasad Shrivass has been mentioned as father of the children born to Pranbai. The birth certificate (Ex. D-1) also indicates the same fact. The said documents have been duly proved by defendant No. 1.

The defendant No. 1 has also examined Basantlal Gupta (D.W.1), Mahesh Ram (D.W. 4) and Budhrum (D.W. 6) in support of her case. They have stated that marriage between Pranbai and Basudeo Prasad Shrivass took place in "Churi" form of marriage in their presence. Ganga Yadav (D.W. 2) and Akbar Ram (D.W. 5) have stated that they saw Basudeo Prasad Shrivass and Pranbai living as husband and wife for a long period and that children were born out of the said wedlock between them.

Therefore, the above evidence clearly goes to show that the defendant No. 1 Pranbai married Basudeo Prasad Shrivass according to the caste custom in "Churi" form of marriage. It is also proved that they lived together for a long time and were recognised as husband and wife by others. Children were begotten out of the said relationship of Pranbai and Basudeo Prasad Shrivass. Relevant documentary evidence has also been produced to show that Basudeo

Prasad Shrivastava was got recorded as the father of children. Hence, presumption of marriage between Basudeo Prasad and respondent No. 1 Pranbai would arise.

In *Badri Prasad Vs. Dy. Director of Consolidation and Others*, it has been laid down that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed.

Similarly in *Ranganath Parmeshwar Panditrao Mali and another Vs. Eknath Gajanan Kulkarni and another*, , it was observed that in view of the consistent evidence of a man and woman living together for long years as husband and wife and a son having been born to them, legal presumption would arise regarding valid marriage, though such a presumption is rebuttable. Similarly in AIR 1994 133 (SC) it was observed that if a man and woman live together for long years as husband and wife then a legal presumption arises as to the legality of marriage existing between the two, but such a presumption is rebuttable.

In *Rajaram Vishwakarma Vs. Deepabai*, , the Division Bench of this Court has observed that, long cohabitation between a man and woman raises a strong presumption of marriage particularly when children are born and such children are treated by the community as those of the man. It has further been observed that in such a case if the woman had been married previously to another man, the previous marriage can be taken as dissolved provided it is permitted by caste custom. Such presumption is raised when there is positive evidence that the woman has been continuously cohabiting with the particular man.

As noticed earlier, in the instant case also there is cogent evidence led by the defendant No. 1 Pranbai that she was duly married as per caste custom with Basudeo Prasad Shrivastava and that thereafter they lived together as husband and wife and were recognised as such by the society. There is also documentary evidence to show that Basudeo Prasad Shrivastava was shown as the father of child born out of the said wedlock.

Learned counsel for appellants relying upon *Reshamlal Baswan Vs. Balwant Singh Jwala Singh Punjabi and Others*, has tried to urge that there could not be any presumption regarding the children having been born out of the wedlock, unless marriage was shown to have been performed between the parents. However, the argument as above loses its force in view of the aforementioned fact and circumstances as established in the instant case. Needless to reiterate that the marriage between Basudeo Prasad Shrivastava and Pranbai as per caste custom having been proved, and as they were recognised as husband and wife and as Pranbai gave birth to children during the period, while living with Basudeo Prasad as his wife; such children were entitled for the dues payable on the death of Basudeo Prasad Shrivastava.

In view of the circumstances as above, the finding recorded by the trial Court that Pranbai was legally married wife of Basudeo Prasad Shrivastava was fully

justified.

Therefore, the plaintiffs-the brothers of Basudeo Prasad Shrivastava are not entitled to succeed in the suit for declaration that they are entitled to the dues payable on the death of Basudeo Prasad Shrivastava. Their suit was therefore rightly dismissed by the trial Court.

This appeal has no merit and is accordingly dismissed. The appellants shall pay the costs of this appeal to respondent No. 1. counsel's fee Rs. 1,000/- if certified.