
(2007) 11 OHC CK 0018

In the Orissa High Court

Dibakar Behera and Another

APPELLANT

Vs

Padmabati Behera and Another

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 488

Citation : AIR 2008 Ori 92 : (2007) CLT 445 Supp : (2007) 2 OLR 649 Supp

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This is a defendants' appeal against the judgment and decree of learned District Judge, Koraput in MAT Appeal No. 1 of 2004 confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Koraput in O.S. No. 19 of 2002.

2. The present respondents, as plaintiffs, filed the above noted suit asking for maintenance of Rs. 5,000/- from the present appellant No. 1 on the ground that they are the wife and daughter of appellant No. 1 and that appellant No. 1 neglected to maintain them and treated them with cruelty. Defendant No. 1 in his written statement denied any relationship with the plaintiffs and further pleaded that the present appellant No. 2 is his legally married wife whom he married in the year 1977. He thus denied his liability to pay maintenance to the plaintiff-respondents. Learned trial Court framed six issues, accepted evidence from the parties and on consideration of the same held that the plaintiff No. 1 is not the legally married wife of defendant No. 1 and therefore, she is not entitled to maintenance. The Court further held that the plaintiff No. 2 is the illegitimate child of defendant No. 1 and awarded maintenance of Rs. 2,000/- per month in favour of plaintiff No. 2. Defendants filed appeal against that judgment, but learned appellate Court confirmed the trial Court's judgment and decree. Therefore, the present appeal has been preferred.

3. The following substantial question of law was formulated for consideration in this appeal.

Whether the learned Courts below were legally justified in relying on the contents of birth register, Ext. 1, when admittedly the information to the registering authority regarding the paternity of the child had been supplied by the mother-respondent No. 1 and not by the father-appellant No. 1?

4. Mr. Ganeswar Rath, learned Counsel appearing for the appellants submitted that even though the birth register, Ext. 1 was marked as an exhibit without objection, yet the contents of this document cannot raise any presumption that the appellant No. 1 is the father of respondent No. 2 because the document was prepared basing on the information supplied by the mother, respondent No. 1, who is a highly interested person. He submitted that learned Courts below committed legal error in utilizing the contents of this Ext. 1 in reaching the conclusion that appellant No. 1 is the father of respondent No. 2. In support of his contention, Mr. Rath relied on the cases of *Thakur Prasad v. Mt. Godavari Devi* 1951 (52) Cri LJ 684, *B. Mahadeva Rao Vs. Yesoda Bai*, , *Sanatan Behera v. Anjali Behera* and Anr. 2002 (Supp) OLR 676, *Life Insurance Corporation of India Vs. Narmada Agarwalla and Others*, .

5. Mr. P.K. Rath, learned Counsel for the respondents, on the other hand, states that the birth certificate, Ext. 1 was marked as exhibit without objection and therefore, the entire contents of the document were admissible and the learned Courts below did not commit any error in relying on the contents of this document. In support of this contention, he relied on the cases of *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another*, , *Smt. Dayamathi Bai Vs. Sri K.M. Shaffi*, , *Bhagyarathi Das and Another Vs. Agadhu Charan Das, and Budhi Mahal and Ors. v. Gangadhar Das and Ors.* 46 (1978) CLT 287. Mr. Rath further argued that the Courts below did not blindly rely on the contents of Ext. 1, but also considered the oral and other documentary evidence to decide the paternity of respondent No. 2. He submits that when the concurrent findings of the Courts below are based on evidence and prudent reasoning, it is not open to the Court of Second Appeal to upset such finding.

6. Admittedly, the birth certificate, Ext. 1, was marked as exhibit without any objection. Now the plea of the appellants is that the contents of this document should not have been relied when the appellant No. 1 had not given the information to the Registrar of Birth and Death. In the case of *Thakur Prasad* (supra) the question at issue was whether certain man is the father of certain child. The mother of the child gave a statement on oath asserting the paternity. Since she was highly interested and no independent corroboration in any form was available, the Patna High Court held that uncorroborated testimony of the interested mother was not sufficient to prove that the opposite party was the father of the child. In the case of *S. Mahadeva Rao* (supra) the extract from the birth register was produced to prove the paternity of the child. The information

recorded in the birth register was supplied by the mother. In that situation, the Madras High Court held that such extract from the birth register will not raise a presumption of paternity of the opposite party in a proceeding u/s 488, Cr. P.C. as there was no admission or supporting evidence regarding the truth of the contents of that extract. It was also observed that where the entry in the birth register was made on the unilateral statement of any interested party, such entry cannot create a presumption of paternity of the person named as father and that burden in such case would be that of the mother to prove her exclusive relationship with the opposite party and the correctness of the entry in the birth register. The said principle was reiterated by the learned single Judge of this Court in the case of Sanatan Behera (supra). It is argued by the learned Counsel for the respondents that the above noted legal ratio will not apply to the present case because Ext. 1 was marked as exhibit without objection of the appellants, which pre-supposes that the appellant No. 1 admitted the contents of this document. In the case of Life Insurance Corporation of India v. Narmada Agarwalla (supra), the Insurance Company repudiated the claim on the ground that the deceased was suffering from diabetes since 15 years, but had not disclosed the said disease while taking the policy and in support of this plea they introduced the hospital documents containing the history of ailments. Learned single Judge of this Court considering the facts and surrounding circumstances, held that the hospital documents marked as exhibits cannot raise a presumption of truth of the contents contained thereunder and that the truth is to be ascertained from evidence. In the case of R.V.E. Venkatachala Gounder (supra), the document was admitted as evidence and marked as exhibit without objection. The Apex Court observed that failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of the document. Similarly, in the case of Smt. Dayamathi Bai (supra) the Apex Court observed that omission to raise objection on admissibility of a document becomes fatal because by such failure, it can be presumed that the opposite party is not serious about the mode of proof. In the case of Budhi Mahal (supra), this Court while considering the evidentiary values of a document marked without objection, observed that since the document was admitted without objection, it is not possible to discard the same. It is also observed that the mode of proof being a question of procedure, may be waived and if this is done, there can be no subsequent objection and that when a document is admitted without objection, it would follow that the entire contents of the document are admitted. Similar view was expressed by this Court in the case of Bhagyarathi Das (supra) wherein it was said that when a document is admitted in evidence without objection, the contents of the documents are held to be proved.

7. A close reading of the above noted judicial pronouncements would show that whenever a document is marked as exhibit without objection, it will be presumed that a party having right of objection has waived formal proof of the document and in such situation, the entire contents of the document would be admissible in evidence. However, by such admission of document, the truth and correctness of

the contents by it self would not be established and there must be some evidence to support the contents of such document.

8. In the present case, there was evidence of plaintiff No. 1 to the effect that she had physical relationship with defendant No. 1 and that out of their union, plaintiff No. 2 was born. In this regard, she produced the birth certificate, Ext. 1 wherein plaintiff No. 2 has been described as daughter of plaintiff No. 1 & D. Behera, plaintiff No. 1 admitted that she supplied information to the registering authority. Since defendant No. 1 had not supplied the information and the document was prepared on the information of the mother, its contents cannot be presumed as absolute proof of paternity. But fact remains that there was oral evidence of plaintiff No. 1 and her witness in support of physical relationship between the plaintiff No. 1 and defendant No. 1 and there was indirect admission of defendant No. 1 in this regard in paragraph 11 of the written statement. There were also High School Certificate, conduct certificate and other certificates of plaintiff No. 2 wherein defendant No. 1 has been described as father of plaintiff No. 2. Some of these documents owe their origin to times when the present litigation was not contemplated. These oral and documentary evidence lend assurance about the truth and correctness of the contents of Ext. 1. Considering all these oral and documentary evidence along with Ext. 1, the Courts below concurrently held that though plaintiff No. 1 was not the legally married wife of defendant No. 1, yet she and defendant No. 1 had sexual relationship and plaintiff No. 2 was born out of such union. So, such finding of fact was never based on solitary document, Ext. 1 rather, it was based on the analysis of so many documents and oral evidence of the parties. The answer to the substantial question of law thus goes against the plaintiff.

9. No perversity in the approach of the learned Courts below or error of record is also apparent any where in the impugned judgments. Further more, the concurrent finding on the factual issue cannot be disturbed by this Second Appellate Court. So, the impugned judgment and decree are confirmed and the appeal is dismissed on contest with cost.