
(2000) 06 MP CK 0023
In the Madhya Pradesh High Court
Case No : S.A. No. 451 of 1988

Mst. Lolo (dead) through her L.Rs. and Others	APPELLANT
Vs	
Mst. Durghatiya and Others	RESPONDENT

Date of Decision : 20-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 114

Citation : (2001) 2 MPLJ 7

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : Ravish Agrawal, for the Appellant; P.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This appeal u/s 100 of the CPC is directed against the judgment and decree dated 29-10-1988 passed by IInd Additional Judge to the Court of District Judge, Satna in Civil Appeal No. 138-A/87, arising passed by IInd Civil Judge Class-I, Satna, in Civil Suit No. 52-A/82.

The respondents-plaintiffs filed a suit for declaration and permanent injunction in respect of the suit land mentioned in paragraph 1 of the plaint having area 9.17 acres situate in Village Nayagaon, Tahsil Raghuraj Nagar, District Satna. It was alleged in the plaint that the suit property initially belonged to Vanshgopal Singh whose three sons were Radhika Singh, Sunder Singh and Dadau Singh. The respondents claimed right and title to the suit land through Dadau Singh. It was alleged in the plaint that at the time of filing of the suit. Radhika Singh, Sunder Singh and Dadau Singh had died and, therefore, respondent Nos. 1, 2 and 3 were entitled to the suit property.

They claimed that they were in possession of the suit property but the present appellants had got their name mutated on the basis of sale-deed dated

10-9-1980 and they were trying to dispossess them from the suit property and, therefore, they claimed that it be declared that the suit property belonged to them and the appellants be restrained from interfering with their possession. It was further asserted that the sale-deed dated 10-9-1980 executed by Mst. Loli (since deceased) was null and void and she had no right or title to execute the sale-deed aforesaid as she was not legally married wife of Radhika Singh.

All the appellants including Mst. Loli filed a common written statement stating that there was a prior partition between the three brothers and the suit property fell to the share of Radhika Singh. After death of Radhika Singh, the defendant/appellant No. 1, Mst. Loli (since deceased) inherited the suit property and she had full right to transfer the suit land in favour of the appellants. It was also asserted that Mst. Loli was not wife of Mangalva Kachhi but wife of Radhika Singh. She had given birth to five children from the said wedlock. Out of them, three daughters survived. Radhika Singh had got them married in his own community. It was also alleged that for over 30 years, Radhika Singh and Mst. Loli were living as husband and wife and for this reason also, she should be recognised as wife of Radhika Singh because a presumption of validity of marriage on the basis of long co-habitation could be drawn. This presumption was further strengthened by the fact that it was Radhika Singh, who performed the marriage of the three daughters. The appellants and Mst. Loli, the appellant No. 1 (since deceased) took the plea that the marriage of Mst. Loli with Radhika Singh was valid.

The trial Court, after full trial, found that there was partition between Radhika Singh, Dadau Singh and Sunder Singh and the suit property belonged to Radhika Singh. It was also found by the trial Court that Mst. Loli was wife of Radhika Singh. The trial Court dismissed the suit in respect of all the lands mentioned in the plaint except Khasra No. 3853 and 4004. It was, however, declared that the latter pieces of land belonged to the respondents-plaintiffs and the suit was decreed to that extent.

The respondents-plaintiffs filed an appeal against the judgment and decree of the trial Court. The lower appellate Court reversed the decree of the trial Court and decreed the suit of the respondents in its entirety by holding that it was not proved that Mst. Loli was legally married wife of Radhika Singh.

The lower appellate Court did not draw the presumption in favour of the validity of marriage by long co-habitation on the basis of its finding recorded in Paragraph 12 of the Judgment that Mst. Loli had married Radhika Singh during the lifetime of Mangalva Kachhi who was her first husband and there was no customary divorce proved by the appellants and Mst. Loli. The lower appellate Court has time and again relied upon this kind of fact for holding that Mst. Loli was not validly married wife of Radhika Singh and her status was that of concubine.

Mst. Loli and the other appellants filed this appeal against the judgment and

decree of the lower appeal Court. Mst. Loli died during the pendency of this second appeal and her legal representatives were brought on record.

This appeal was admitted by this Court by order dated 17-3-1989 on the following substantial question of law :--

"Whether in the facts and circumstances of the case, the first appellate Court erred in law in finding that Mst. Lollibai was not the legally married wife of Radhika Singh?"

It is not in dispute that Mst. Loli had married Mangalva Kachhi of village Chadai prior to her alleged marriage with Radhika Singh. It was claimed by the respondents-plaintiffs that Mst. Loli had began to live with Radhika Singh during the lifetime of Mangalva Kachhi and, therefore, her marriage was null and void. It was claimed by the appellants in their written statement that Radhika Singh who was Rajput by caste had married Mst. Loli who belonged to Kachhi caste as per custom and thereafter had given birth to five children, out of which three daughters were alive, whose marriages were performed by Radhika Singh during his lifetime.

The main question, therefore, is whether the lower appellate Court could have reversed the finding recorded by the trial Court to the effect that marriage of Mst. Loli was good and valid. Learned counsel for the appellants relied upon the finding recorded by the trial Court in Paragraphs 22, 24 and 27, and argued that the learned trial Judge was right in concluding that the marriage of Mst. Loli with Radhika Singh was a valid marriage. It appears from the judgment of the trial Court that the learned trial Judge emphasised the fact that during the co-habitation with Radhika Singh, Mst. Loli had given birth to five children, out of them, three daughters were got married by Radhika Singh in his own community and this fact was recognised by his own community. It appears that learned trial Judge was also of the view that Mst. Loli had married Radhika Singh after the death of Mangalva Kachhi. This finding is specifically recorded by the learned trial Judge in Paragraph 24 of his judgment.

The aforesaid finding regarding the fact, that Mangalva Kachhi was not alive when Mst. Loli married Radhika Singh, has not been accepted by the lower appellate Court. This is a finding of fact which this Court cannot go into and, therefore, it has to be accepted at this stage that the finding of the lower appellate Court is correct. The finding recorded by the lower appellate Court may be erroneous but it does not appear to be perverse and this Court has no jurisdiction u/s 100 of the CPC to interfere with the finding of fact recorded by the Court below.

Therefore, the only question, that has to be decided now, is that despite the fact Mangalva Kachhi was alive and there was no divorce proved between Mst. Loli and him by the appellants, whether it could be presumed that the marriage between Mst. Loli and Radhika Singh was good and valid by mere fact of living together for a long time.

The Courts have recognised the fact that long co-habitation may give a presumption in favour of validity of marriage provided the society recognised and treated the persons living together as husband and wife. This inference is drawn from Section 114 of the Evidence Act as a consequence of common course of natural events and human conduct. It appears to this Court that long co-habitation has been recognised by the Courts for giving validity to the marriage, for the reason, that after a long time, it is very difficult to prove the necessary ceremony validating the marriage. This happens in the case of the majority of Hindu communities who do not keep any record of performance of a marriage. This phenomenon is common to urban areas. In villages, where poverty, ignorance and illiteracy rule, it is almost impossible to keep record of private marriages. However, it is also well established that the presumption u/s 114 of the Evidence Act is a rebuttable presumption and the Court has full discretion not to draw a presumption under the facts and circumstances of a particular case. The lower appellate Court, having found that it was not proved that Radhika Singh married Mst. Loli after the death of Mangalva Kachhi and further that it was not customary to perform the marriages among the community of Rajputs and that of Kachhis, has refused to draw the inference regarding the marriage between Rajputs and Kachhis. Learned counsel for the appellants, however, argued that this inference could not have been drawn by the lower appellate Court, for the reason, there was no objection taken by the members of the society to which Radhika Singh belonged regarding the validity of marriage. They not only recognised Radhika Singh and Mst. Loli as husband and wife, but also recognised the three daughters born out of the wedlock. The very fact that these three daughters were married in the community of Radhika Singh would go to show that the society had treated the marriage between Radhika Singh and Mst. Loli as good and valid and, therefore, it should also be further presumed that Mangalva Kachhi had validly divorced Mst. Loli during his lifetime.

As a counter to this argument, the learned counsel for the respondents argued that the finding of fact recorded by the lower appellate Court regarding the fact that Mst. Loli married Radhika Singh during the lifetime and the fact of marriage of Mangalva Kachhi cannot be ignored and no such presumption can be drawn in the face of the finding recorded by the lower appellate Court.

Learned counsel for the appellants referred three decisions. The first decision that has been referred to during the course of argument was in the case of *Rewaram Balwant Khati v. Ramratan Balwant Khatai* reported in AIR 1963 Madh Pra 160. In that case, a presumption was drawn when husband and wife were living together for over thirty years and had given birth to three sons for holding that the marriage was good and valid. It was also held that since the parties belonged to the Khati community, there was a valid dissolution of marriage between the former husband and the wife and the form of marriage recognised in community as Natra marriage was also accepted, But, the finding recorded by the learned single Judge is based on the facts of the case itself. In Paragraph 9, it has been held that there is a dissolution of marriage among the Khatis and there

is also remarriage in that community and for this reason, the learned single Judge had drawn the presumption on the basis of long co-habitation and the fact that three sons were born out of that wedlock. This decision was followed by a Division Bench of this Court in the case of Rajaram Vishwakarma Vs. Deepabai, . In this case also, the presumption was drawn u/s 114 of the Evidence Act for holding the validity of marriage on account of long co-habitation. It was also held that marriage with the previous husband of the wife deemed to have stood dissolved on the basis of presumption so drawn. However, there is a rider in the judgment that it must, however, should be proved that the caste to which the parties belonged permitted dissolution of marriage. Attention of this Court has been drawn to a decision of the Supreme Court in the case of AIR 1994 133 (SC) . In that decision, the decision in the case of Gokal Chand v. Parvin Kumari reported in AIR 1952 SC 231 has been referred to. Learned counsel for the appellants has referred to Paragraph 5 of the decision in the case of AIR 1994 133 (SC) . However, in Paragraph 5 itself, their Lordships of the Supreme Court had stated as follows :--

Para 5 : "xxxxx Reliance has been placed on observations made in the judgments at various places and even the statement of Pavayee herself that she had left her husband and come to live with Chinathambi. It appears unnecessary to express any opinion as to whether the relationship between Chinathambi and Pavayee was adulterous and if it was sufficient to destroy the presumption in law as this plea does not appear to have been raised in the written statement nor any issue was framed on it nor arty of the Courts have recorded any finding on it."

It appears that the Supreme Court did not allow the point to be raised. There was no pleading on this count. A reliance has also been placed on the decision in the case of Smt. Nirmala and Others Vs. Smt Rukminibai and Others, . That ruling also relates to the validity of marriage on account of long co-habitation and it has also been held that formality and validity of customs would be presumed to have been performed if long co-habitation is proved.

It is true that Radhika Singh and Mst. Loli lived together and a number of children were born out of the so called wedlock. But, it has not been proved that any kind of marriage was performed either in customary form or in a regular form. The question is whether a woman living with another person continuously for a long time and giving birth to children, by itself, shall prove the fact that the marriage was valid. So far as the question of living together is concerned, a mistress may live with the person in adultery and lead an adulterous life with the consent of her paramour. This fact of living together, by itself, would not be sufficient for proving a valid marriage between the parties. This fact would be less effective in the case where the wife is already married with a previous husband. In order to prove a valid marriage, she must also prove that there was a divorce with her previous husband. There may be a case of drawing presumption in cases where the facts are drowned in the mists of time and either party is not in a position to lead any evidence. The Court is however, entitled to

draw a contrary inference, when the marriage and divorce was performed within the living memory, and refuse to draw presumption of validity of marriage under the given facts and circumstances of the case. The lower appellate Court had precisely done that by recording a finding that Mangalva Kachhl was not validly divorced by Mst. Loli and she had married Radhika Singh during his lifetime. The aforesaid finding is an inference drawn from the proved facts and for this reason, this Court does not find any substantial question of law in this appeal. It is the jurisdiction of the lower appellate Court to draw a presumption of fact or not and this Court shall not interfere with the finding of fact when the Court below recorded a finding of fact after refusing to draw a presumption for the reasons recorded in the judgment.

Consequently, this appeal fails and is hereby dismissed.