
(2001) 09 OHC CK 0008
In the Orissa High Court
Case No : Civil Appeal No. 44 of 1996

Namita Patnaik ' Mohanty

APPELLANT

Vs

Dillip Kumar Pattnaik

RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Hindu Marriage Act, 1955 — Section 7

Citation : (2002) 1 DMC 248 : (2001) 2 OLR 514

Hon'ble Judges : P. Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : S. Ch. Sahu, A.B. Mohanty, A.N. Sahu, N.K. Sahu, B.K. Rath and S.N. Satpathy, for the Appellant; P. Kar, A.K. Mohanty and P.K. Mallick, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—This appeal is preferred u/s 19(1) of the Family Courts Act by the unsuccessful defendant wife (appellant in the present appeal) being aggrieved by the judgment dated October 5, 1996 passed by the Judge, Family Court, Cuttack in Civil Proceeding No. 186 of 1991.

2. Dillip Kumar Pattnaik, the plaintiff-husband (respondent in the present appeal), filed Civil Proceeding No. 186 of 1991 praying, inter alia, for a declaration that the document styled as "Bibaha Bandhan Agreement" bearing Registration No. 703 dated 24.11.1986 registered before the Sub-Registrar, Cuttack. is a fraudulent and fabricated one and that he had never married the defendant-wife, Namita Mohanty and the latter is not his married wife as well as for other consequential reliefs.

3. The short facts which are necessary for appreciating the case are as follows :

The plaintiff-husband is an employee of the Postal Department and at the relevant time (1986) was posted at Athagarh. The fathers of both the parties were serving in the Postal Department and belong to the same village. Thus, the

plaintiff-husband and defendant knew each other for quite some time. The plaintiff was also very much acquainted with other family members of the defendant's family, more particularly with Debasis, the brother of the defendant-wife, as both of them were students of the same school being S.K. Academy, Jagatsinghpur. It is alleged in the plaint that on November 24, 1986 while the plaintiff was going to Athagarh, Debasis met him at Badambadi Bus Stand and requested him to meet his father at Cuttack Collectorate on some urgent work. Plaintiff came to Cuttack Collectorate, saw Debasis there and on his request put signatures as a witness in an agreement, which he was told to be executed by his sister, defendant herein, for incurring certain loans. In view of the old friendship, the plaintiff in good faith put signatures on some stamp papers and thereafter went to General Post Office. Later, on the request of Debasis, he came to Cuttack Sub-Registrar's Office where the document was presented for registration and after the same was registered, the plaintiff went to Athagarh. It is further alleged that some of his friends advised him to scrutinise the documents and the plaintiff suspecting some foul play came to Cuttack and on enquiry came to know that Debasis had managed to create an agreement between the plaintiff and his sister, different and got it registered fraudulently by mentioning therein that the plaintiff and defendant married at Jhankad Sarala Temple on Gandharba form on November 16, 1986 and that they were living as husband and wife. It is further alleged in the plaint that the facts recited in the agreement are fraudulent and false. On coming to know about the said facts, the plaintiff executed a registered deed dated December 11, 1986 cancelling the registered deed dated November 24, 1986. On the basis of the aforesaid averments, it was prayed to declare the "Bibaha Bandhana Agreement" dated November 24, 1986 to be a fabricated and fraudulent document and that there was no marriage at all between the parties.

4. After receiving notice of the aforesaid proceedings the defendant appeared and filed written statement, inter alia, repudiating all the allegations made in the plaint. It is stated that parents of both families are known to each other for years.

They belong to the same village and both the appellant and respondent were in love with each other and decided to marry. Further, it is asserted that, the marriage between the defendant and the plaintiff was solemnised according to the caste customs with proper ceremonies and in due form at Sarala Temple. It is further averred that after marriage, the couple led a blissful conjugal married life to the knowledge of the society for good number of days and resided as husband and wife at Samanta Sahi, Cuttack as well as at Athagarh. While the matter stood thus, the father of the respondent demanded dowry like Colour Television, Steel Almirah, Scooter, cash Rs. 10,000/- etc. which the father of the appellant, a poor man as he is, could not comply. Thereafter dissensions cropped up and the appellant was driven out of the family and the respondent was coerced by his parents to disown the agreement and to file the aforesaid suit.

5. It is emphatically asserted by the appellant that after the marriage at Sarala

Temple on November 16, 1986 according to caste customs, both the appellant and the respondent lived as husband and wife. In support of and in addition to such marriage, the aforesaid "Bibaha Bandhana Agreement" was executed and registered by the respondent out of his own Will being present at Sub-Registrar's Office. With the aforesaid pleadings, the appellant prayed that the suit should have been dismissed as the plaintiff is not entitled to any relief.

On the basis of the aforesaid pleadings, the Trial Court framed as many as seven issues. The plaintiff in support of his averments made in the plaint, examined himself as P.W. 1 and one Baikuntha Patnaik as P.W. 2. On the other hand, the defendant examined herself as D.W. 1, her brother Debasis as D.W. 2, and one outsider, who proved the marriage as D.W. 3. On behalf of the plaintiff, seven documents were filed and the defendant exhibited two documents.

The Trial Court on analysis of evidence on record came to a clear and unambiguous finding that the plaintiff has miserably failed to establish that Ext. A, "Bibaha Bandhana Agreement" is a fraudulent and fabricated document. It was further held that the cancellation deed dated December 11, 1986 also does not help the plaintiff. However, the Trial Court disbelieved the assertion that the marriage between the appellant and the respondent was solemnised strictly in consonance with the rites and customs stipulated in Hindu Law. On the basis of such conclusion and on the basis of the observation that it is not proved beyond reasonable doubt that the parties were living as husband and wife, the learned Judge, Family Court allowed the relief in part holding that the "Bibaha Bandhana Agreement" dated November 24, 1986, Ext. A, is not a fraudulent and fabricated document but declared that the defendant is not the legally married wife of the plaintiff.

6. Mr. S. Ch. Sahu, learned Counsel appearing for the appellant, strenuously placed the evidence of different witnesses and submitted that, in fact, the marriage was solemnised between the appellant and the respondent, who were in love for quite some time, on November 16, 1986 at Sarala Temple in consonance with Hindu rites and customs and both parties thereafter stayed as husband and wife to the knowledge of the society. Thus, the belated suit filed by the plaintiff to disown the marriage, after the same was consummated is a camouflage attempt to wriggle out from the obligation of a husband flowing from a valid marriage. Mr. Sahu also placed before us the "Bibaha Bandhana Agreement", Ext. A as well as other documents exhibited in the suit and contended that the plea that Ext. A is a fraudulent and created document cannot be accepted. It is vehemently contended that after the marriage, the plaintiff out of his own sweet Will, without being influenced by any person and bereft of any coercion executed and registered Ext. A acknowledging the factum of marriage and the suit is an after-thought.

7. On the other hand, Mr. P. Kar, learned Counsel appearing for the respondent, contended that as would be evident from the oral evidence of P.W. 1 the respondent had absolutely no knowledge regarding the contents of the

documents. The respondent on being called by Debasis, the brother of the appellant, had only come to the Sub-Registrar's Office and on good faith, signed on certain stamp papers and left the place.

8. After going through the evidence on record, both oral and documentary, we are not inclined to accept the plea taken by the respondent. A perusal of Ext. A, the Bibaha Bandhana Agreement, reveals that non-judicial stamp papers on which the said agreement has been scribed was purchased by Dillip Kumar Pattnaik, the respondent. The signature of the respondent, which has been exhibited as Ex. A/1, finds place on each page of the document. There is clear endorsement made by the Advocate that the parties were his clients and the documents were prepared in his office as per the direction. To add to it, Dillip Kumar Pattnaik has admitted due execution of the document before the District Sub-Registrar, Cuttack as would be evident from the endorsement made by the said officer in the document itself. The thumb impression of Dillip Kumar Pattnaik is also available in the document. Admittedly, Dillip Kumar Pattnaik is a Central Government employee and a qualified person and thus, it can hardly be believed that the document "Bibaha Bandhana Agreement", Ext. A could have been executed and registered before the Sub-Registrar without his knowledge and that too fraudulently. The plea taken by the plaintiff-respondent in the suit that he had absolutely no knowledge regarding execution and registration of the "Bibaha Bandhana Agreement" and that on November 24, 1986 while he was on his way to Athagarh, where he was posted at the relevant time, Debasis the brother of defendant-appellant met him at Cuttack Bus Stand and on being told that his father was waiting for him, came to Cuttack Collectorate to meet his father. There, he was requested to put his signature on certain stamp papers as a witness. This submission of the plaintiff is not at all believable. It is rather surprising that an employee of the Central Government who is working in the Postal Department, without taking leave and without prior intimation, would get down at Cuttack Bus Stand and spend a major part of the day at the Registration Office and that too without knowing the nature of the document which was being signed by him and produced for registration. The plea taken is not only vague, but also appears to be an after-thought and reveals that the plaintiff has not come to Court with clean hands. Thus, agreeing with the conclusion arrived at by the Trial Court, we confirm the finding that the document Ext. A is not a created document nor was executed and registered without the full knowledge of the plaintiff and thus, the plaintiff has miserably failed to establish that Ext. A is a fraudulent and fabricated document.

9. The next vital question which needs for determination in the present appeal is as to whether the marriage between the appellant and the respondent was solemnised in accordance with the Hindu Marriage Act. Section 7 of the Hindu Marriage Act stipulates the ceremonies to be performed for a Hindu marriage which is quoted below :

"7. Ceremonies for a Hindu Marriage-

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

Law is well-settled that a Hindu man and woman who are major, are competent to get married under the Act and all that is insisted upon for the purpose of solemnization of the marriage is, it must be in accordance with the customary rites and ceremonies of either party to the marriage. India with its diversity in customs and rites, has different modes and modalities so far as ceremonies to be performed in a marriage. Thus, it is difficult to stick to any particular nature of ceremony. The ceremonies vary from community to community and from caste to caste.

Though Section 7 emphasises the importance of Saptapadi, it does not insist upon the same. Under the Hindu Law, a marriage may be completed, by performance of ceremonies, those are referred to in the section, so far as they are allowed by custom of the particular caste and community to which the parties belong. The ceremonies are performed in different modes by different communities. In the present case, the plaintiff-husband having admitted the factum of marriage in the registered document, a strong presumption arises with regard to the validity of marriage and performance of all necessary ceremonies approved by the custom of the parties. The respondent-husband cannot be permitted to wriggle out of the admission made by him with regard to the marriage by taking a contrary plea.

10. Mr. Kar, learned Counsel for the respondent, submitted that in the present case there is not only lack of pleading regarding the customs prevalent but also there is no pleading regarding performance of Saptapadi which is an essential ingredient of Hindu Marriage Act. Thus, there is no marriage in the eye of law. It is further urged that assuming but not admitting, that Ext. A is a genuine document, the recitals to the effect of marriage in "Gandharba" form being not in consonance with the requirements of Section 7 of the Hindu Marriage Act, the marriage* cannot be accepted. In support of his submission, Mr. Kar relied upon the decisions reported in Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another, ; Mathra Prashad and Sons Vs. State of Punjab, and AIR 1996 Mad 150, S.C. Shanthi v. P. Venkatesh

11. Mr. Sahu, learned Counsel for the appellant at the other hand submitted that "Saptapadi" is just a customary ceremony. No particular form of "Saptapadi" has been stipulated in the Hindu Marriage Act and the "Gandharba" form of marriage is also one of the accepted principles of marriage in certain communities. It is further vehemently urged that, as marriage has been consummated and the parties were living as husband and wife to the knowledge of the society, ceremonies should be presumed to have been performed.

12. We have heard the learned Counsel for the parties at length and perused the documents relied upon. In the present case, in the registered document, "Bibaha Bandhana Agreement", it is clearly and unambiguously accepted/admitted by the parties that there was marriage between the appellant and the respondent. Further there is also a declaration that after the marriage both the parties stayed together as husband and wife, and that the respondent had accepted the appellant as his wife. Law is well-settled that if the parties perform a kind of marriage and accept it to be a valid marriage and to add to it, in consonance with the said marriage, live as husband and wife together and consummate the marriage, both of them are estopped at a later date from taking the plea that the marriage was not in proper form. In the present case, the fact that the parties have agreed by means of a registered document that in fact marriage has been consummated between them, one of them at a later stage cannot be permitted to take a different plea. The respondent has categorically admitted the marriage in the registered document and his conduct, as would be seen from some of the letters written to the appellant-wife which have been marked as Exts. 4, 5, 6 and 7, would lead to an irresistible conclusion that in fact the appellant and the respondent were married and led a blissful conjugal life for quite some time. The respondent has also agreed and admitted that a marriage was performed. Under such circumstances, the Court will presume that it is a valid marriage and that all the requirements of law and the necessary ceremonies have been performed (See A.L.V.R.S.T. Veerappa Chettiar Vs. S. Michael etc.,)

13. It is well-settled that a right accrued by means of a registered document cannot be taken away by a deed of cancellation. Thus, the deed of cancellation, Ext. 1 has no legal basis and cannot take away the admissions made by the respondent in the agreement Ext. A.

14. Much has been argued by Mr. Kar relying upon the order passed in G.R. Case No. 167 of 1987 (Ext. 5). The said case was initiated on an F.I.R. lodged by the wife u/s 498A of the Indian Penal Code, alleging that the respondent-husband and his father are demanding dowry. The said petition however, was dismissed as the prosecution failed to prove that the respondent was demanding any dowry from the appellant. The District Sub-Registrar, Cuttack was examined as P.W. 6 in the G.R. case and he has stated in Court on solemn affirmation that the respondent presented the document Ext. A, the "Bibaha Bandhana Agreement" before him for registration and the same was registered after the executants admitted the contents of the document. Thus, as has been stated earlier, the respondent-husband having admitted in the registered document that he has duly married the appellant and that both of them are leading a blissful conjugal life as husband and wife, cannot be permitted to turn round and take a different plea at a later stage. It is also not open for the husband to take the plea that the marriage was not solemnised in proper form specially in view of the fact that he himself has categorically admitted in the registered document that he duly married the appellant and there is an extremely strong presumption in favour of the validity of the marriage.

15. In view of the discussions made above, we do not agree with the finding of the Trial Court to the extent that there was no valid marriage between the appellant and the respondent and accordingly set aside the said portion of the judgment and decree.

The appeal is accordingly allowed. Parties to bear their own cost.

P. Ray, J.

I agree.