
(2014) 02 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (Civil) No. 21230 of 2013

Padma Charan Panda

APPELLANT

Vs

Bishnupriya Dalei

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Family Courts Act, 1984 — Section 7, 7(1)
Hindu Marriage Act, 1955 — Section 12

Citation : AIR 2014 Ori 100 : (2014) 117 CLT 1012 : (2014) 3 DMC 47 : (2014) 1 ILR 777 : (2014) 1 OLR 698

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—The petitioner has filed this writ petition challenging the order dated 02.09.2013 passed by the Judge, Family Court, Puri in Civil Proceeding No. 129 of 2012 under Annexure-3 refusing to pass a decree in terms of compromise between the parties under Annexure-2 declaring the so called marriage as void thereby rendering the deed of acknowledgment of the said marriage void and inoperative in the eye of law.

2. The petitioner filed the proceeding in the Court of learned Judge, Family Court, Puri u/s 12 of the Hindu Marriage Act registered as Civil Proceeding No. 129 of 2012 against the opposite party seeking relief in the nature of declaration that the registered agreement between the parties dated 15.02.2010 is void and inoperative in the eye of law and that he is not the husband of the opposite party as she claimed to be the legally married wife of the petitioner though neither there has been any solemnization nor consummation of marriage at any point of time between them.

3. The factual background of case in hand is that the petitioner was advised by the father of the opposite party to obtain an agricultural loan for cultivating pudina in a large scale since he was getting adequate benefit through cultivation

on a share basis with the brother of the opposite party. Accordingly, the father of the opposite party proposed the petitioner to get necessary documentation for the loan and suggested that his daughter should join as a partner, so that it will be easy to avail loan from the co-operative Bank. The petitioner on good faith proceeded to the office of the District Sub-Registrar, Puri and signed and presented the document hurriedly for registration. The father of the opposite party had got the said document prepared somewhere without the knowledge of the petitioner, who was kept waiting near the Bank. It was beyond his comprehension that a document purported to be the acknowledgment of marriage with his daughter would be done at the behest of her father. On 01.06.2012, the petitioner came to know that the opposite party is claiming the status of his wife on the strength of said registered agreement dated 15.02.2010 and started negotiating with the father of the opposite party, who took the prominent part in getting the fictitious document registered through his henchmen. Though the father of the opposite party initially agreed on 20.06.2012 to get the agreement cancelled, subsequently played hide and seek in the matter at the instigation of certain mischief mongers of the locality. Therefore, finding no other alternative, the petitioner moved the learned Judge, Family Court, Puri by filing an application u/s 12 of the Hindu Marriage Act seeking for declaration that deed of such acknowledgment of marriage obtained by misrepresentation and fraud should be declared null and void. Being noticed, the opposite party entered appearance. Thereafter, the petitioner and opposite party entered into a compromise and in terms of compromise, filed an application to dispose of the Civil Proceeding case No. 129 of 2012 by passing a decree of compromise on the basis of the agreed terms and conditions which was done due to intervention of relatives and well wishers.

4. The teamed Judge, Family Court, Puri vide impugned order dated 02.09.2013 (Annexure-3) disposed of such application with an observation that though a decree to the effect that the marriage between the parties is void can be passed yet there is no scope for declaring the deed of acknowledgment as void and inoperative in the eye of law and therefore, stated that the Civil proceeding is not maintainable.

5. Mr. S.K. Dash, learned counsel appearing for the petitioner assails the said impugned order dated 02.09.2012 under Annexure-3 on the ground that in terms of the explanation (b) appended to Section 7(1) of the Family Courts Act, 1984, learned Judge, Family Court, Puri has committed gross error apparent on the face of the record by holding that civil proceeding is not maintainable. Apart from the same, it is stated that the observation of the Court that as per Family Courts Act, Court can declare any marriage as null and void and not the document even though the same purports to be one regarding the marriage or marital status of the parties, cannot be countenanced with law inasmuch as every Court is possessed of the jurisdiction to go into incidental and ancillary matters intermingled with the matter in respect of which jurisdiction has been specifically conferred. It is further urged that learned Judge, Family Court, Puri failed to

exercise jurisdiction vested on it and if the impugned order is allowed to stand, the petitioner will be remediless in respect of the matters for which he sought for exercise of jurisdiction by the competent Court. He relied upon the judgment of this Court reported in *Sri Sanjay Kumar Sharma v. Smt. Vidya Sharma* and another >2003 (I) OLR 385 wherein it has been held that Family Court has jurisdiction to declare the deed of settlement between the parties to be void and illegal being tainted with fraud and misrepresentation. Similarly, he has relied upon the judgment reported in *Sindhu Sidharthan Vs. K.K. Sidharthan*, wherein the Division Bench of the Kerala High Court while dealing with Section 7(1) explanation (c) of the Family Courts Act held that dispute is a family dispute within the jurisdiction of Family Court and the family Court dispute relating to item of property of husband or also dispute with regard to documents executed by wife in her capacity as a power of attorney holder after revocation of instrument of power of attorney is valid.

6. Mr. B.P. Dhal, learned counsel for the opposite party states that when parties have entered into a compromise, learned Judge, Family Court, Puri should not have disposed of the Civil Proceeding case No. 129 of 2012 as not maintainable rather he should have adjudicated the same and passed the decree on the ground of compromise.

7. Considering the above mentioned contentions raised by the parties, and the materials available on record, it is to be considered whether learned Judge, Family Court, Puri has jurisdiction to declare the deed of acknowledgment of marriage to be void and illegal being tainted with fraud and misrepresentation.

8. Section 7 of Chapter-III of the Family Courts Act, 1984 states jurisdiction of the Family Court which is extracted below:

7. Jurisdiction - (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation - The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to

the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

In terms of explanation appended to Section 7 of the Family Courts Act, 1984 mentioned above the Court can declare any marriage as null and void and not the document, even though the same purports to be one regarding the marriage or marital status of the parties. In view of the ratio decided in Sri Sanjay Kumar Sharma (supra) and Sindhu Sidharthan {supra}, a suit or proceedings for a declaration as to the validity of marriage in question, or as to the matrimonial status of the parties vis-a-vis the acknowledgment of marriage, entered between the parties, can come within the explanation (b) of Section 7(1) of the Family Courts Act, 1984.

9. Apart from the same, there is another way to decide the question on the ground of "compromise". It is stated at the Bar that the parties have entered into a compromise and the marriage should be declared null and void in terms of compromise. The learned Court below should have applied its mind and should have passed appropriate order and could have decided the matter accordingly, otherwise, the purpose of "compromise" is of no meaning.

10. Let us consider the meaning of the expression "compromise". As per Advanced Law Lexicon Dictionary by P. Ramanatha Aiyar, "compromise" means-

Compromise. (French) An agreement between two or more countries to submit an existing dispute to the jurisdiction of an arbitrator, an arbitral tribunal, or an international Court. (International law) (Black 7th Edn. 1999).

A compromise takes place when there is a question of doubt, and the parties agree not to try it out, but to settle it between themselves, by a give and take agreement, "Per KAY L.J., in Huddersfield Banking Co. v. Lister, >(1895) 2 Ch.

273."

"Compromise", is a mutual promise of two or more parties that are at controversy. (Termes de la Ley)

To adjust by mutual concession; to settle without resort to the law; to compound, (As noun) An "Adjustment of matters in dispute by mutual concessions." "An agreement between the parties to a controversy for a settlement of the same". (Abbott) "A settlement of differences by mutual concessions". "The mutual yielding of opposing claims; the surrender of some right or claimed right in consideration of a like surrender of some counter-claim". (Anderson Law Dict.) "An agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon." (Bouvier)

1. Agreement between two or more persons to settle matters in dispute between them. 2. A debtor's partial payment coupled with the creditor's promise not to claim the rest of the amount due or claimed. (Black, 7th Edn., 1999)

The arrangement of a dispute by concessions on both sides, an adjustment between the parties to a dispute ending in a settlement; a joint promise or agreement made by contending parties to abide by the terms and conditions agreed. [S. 17(2)(vi), Registration Act (16 of 1908)]

"Where the parties to a dispute dispose of it by agreement between themselves, whether legal proceedings have been commenced or not." (Sweet L. Dict.), "An agreement between two or more persons who for preventing or putting an end to a law suit, adjust their differences by mutual consent, in the manner which they agree on and which every one of them prefers" to the risk or danger of losing in the case.

Compromise is the mutual act of the parties to the suit to settle the dispute between them concerned in the suit by agreement. R.N. Bannad and Sons and Another Vs. State Bank of India, Gadag and Another, . [Karnataka Court Fees and Suits Valuation Act (1958), S. 66 Cl. (a) and (b)]

A compromise is always bilateral and means a mutual adjustment. According to New Standard dictionary, a compromise means agreement or adjustment for the settlement of a controversy by mutual concessions, often involving partial surrender. Kunjlal Vs. Nathmal, . [C.P.C. (5 of 1908), O. XXIII, R. 3]

The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. Re Nfu Development Trust Ltd., >(1973) 1 All ER 135, 140 (Ch. D.) [(English) Companies Act, 1948, S. 206(I)(2).]

The apex Court in Union of India (UOI) Vs. Ananto (Dead) and Another, while dealing with the word "Compromise" held:

"Compromise" means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal

modification of demands.

In *Bimal Kumar and Another Vs. Shakuntala Debi and Others*, the Apex Court has held "Compromise" means-

The term "compromise" essentially means settlement of differences by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise which is arrived at by the parties puts an end to the litigative battle. Sometimes the parties feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In certain cases, by intervention of well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretized. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The exalted state of affairs brings in quintessence of sublime solemnity and social stability.

11. Having regard to the judgment of Sanjaya Kumar Sharma and Sindhu Sidharthan (*supra*) and taking into account explanation (b) of Section 7(1) of the Family Courts Act, 1984 this Court holds that the Family Court has jurisdiction to decide the issue with regard to the deed of acknowledgment of marriage, tainted with fraud and misrepresentation as it is an incidental and ancillary matters intermingled with the matters in respect of which jurisdiction has been specifically conferred to declare any marriage as null and void and not the document. More so considering the meaning of the word "compromise" and taking into account the case of *Bimal Kumar* (*supra*) there was no justification to decide the question and reject the application holding that the compromise petition deserves no merit. Once parties have entered into compromise, with eyes wide open by intervention of well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretized, A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. Therefore, the learned Judge, Family Court otherwise also could have given due concern to the application filed for compromise between the parties and decided the issue in terms of compromise.

12. In view of foregoing discussions the order dated 02.09.2013 passed by the learned Judge, Family Court, Puri in C.P. No. 129 of 2013 under Annexure-3 is hereby set aside and the C.P. No. 129 of 2013 is disposed of in terms of compromise pursuant to Annexure-2. Accordingly, learned Judge, Family Court, Puri is directed to draw a decree in terms of the compromise, which shall form part of the Civil Proceeding.

13. The writ application is accordingly allowed. No cost.