
(2007) 01 MP CK 0068
In the Madhya Pradesh High Court

Parmanand and Another

APPELLANT

Vs

Jagrani and Others

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Hindu Marriage Act, 1955 — Section 11, 12, 16, 5

Citation : AIR 2007 MP 242 : (2008) 1 MPJR 264

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this appeal preferred u/s 96 of the CPC the defendants have called in question the sustainability and defensibility of the judgment and decree dated 12-3-1990 passed by the learned Additional District Judge, Kurai in Civil Suit No. 16-A/1988.

The respondents as plaintiffs initiated the aforesaid civil action for declaration of the sale deed executed on 8-2-1988 by the defendant No. 1 in favour of the defendant No. 2 in respect of house No. 35 situated at Ward No. 35, village Malthone as null and void and further for partition of the disputed house. The plaintiffs case was that the plaintiff No. 1 is the widow of the deceased Chinte and plaintiff No. 10 is the daughter begotten from the first wife of Chinte. First wife had deserted Chinte and married other person which prompted Chinte to enter into second marriage. In the said wedlock, as pleaded, the plaintiff No. 2 and the defendant No. 1 were born. The second wife died many years ago and Chinte married plaintiff No. 1, Jagrani. In the said wedlock plaintiffs 3 to 9 were born.

The further case of the plaintiffs is that the suit house was purchased by late Chinte by registered sale deed dated 18-12-1948 and he was in possession of the house till his death after which all the plaintiffs and defendant No. 1 acquired

1/11th share in the said house. No partition had taken place in respect of the said house and other ancestral properties of Chinte who expired nine years back. Despite that the defendant No. 1 had sold the house to defendant No. 2 by sale deed dated 8-2-1988 and hence, the plaintiffs had instituted the suit for the aforesaid reliefs.

The defendants filed a joint written statement controverting the assertions made in the plaint and pleaded that the plaintiff No. 1 is not the wife of late Chinte. Plaintiff No.1 had initially married on Chandua but she had illicit relationship with late Chinte. It is put forth that Chinte had partitioned his property amongst his sons in the year 1971 and the disputed house was allotted to the defendant No. 1. It is contended in the written statement filed by the defendants that the suit house is the self acquired property of Chinte and the plaintiffs have no right, title and interest in the same. It was further stand of the defendant that Chinte had given the old house to the plaintiffs. Chinte had got the names of Bhairon and Kusum recorded in the village Panchayat Malthone. The suit house was given by defendant No.1 on rent of Rs. 50/- per month to Keshar Bai and Santosh Kumar who were in the possession of the same and Santosh had installed a flour mill in the said house and he used to reside in the said house. The said suit house was sold by defendant No. 1 to defendant No. 2 Keshar Bai who is in possession of the same in the capacity as owner of the house. It was further put forth that Chinte had married twice as the first wife had deserted him. Chinte contracted second marriage with Heera Bai and out of the said wedlock plaintiff No. 2 and defendant No. 1 were born. It is pleaded that plaintiff No. 1 is not the legally married wife of deceased Chinte and plaintiffs 3 to 9 are born because of illicit relationship between Chinte and respondent No. 1. The defendants also pleaded that defendant No.2 has perfected his title by adverse possession as he is in possession of the same as title holder.

The learned trial Judge on the basis of the aforesaid pleadings framed seven issues, namely, whether the plaintiff No. 1 is legally married wife of deceased Chinte; whether the disputed house was self acquired property of Chinte; whether Chinte had partitioned his properties between the plaintiffs and defendant No. 1 in the year 1971; whether the disputed house was allotted to defendant No. 1 and he is in possession of the same since then; whether the share in the disputed house of plaintiffs and defendant No. 1 is to the extent of 1/11 and whether the plaintiffs are entitled to get the disputed house partitioned; whether the sale deed of the disputed house executed by the defendant No. 1 in favour of defendant No. 2 is not binding on plaintiffs to the extent of their shares; and what relief and costs can be granted to the plaintiffs.

Learned trial Judge by the impugned judgment on the basis of the evidence brought on record came to hold that the plaintiff No. 1 is not the legally wedded wife of Chinte; the disputed house was the self acquired property of deceased Chinte; Chinte had not partitioned his property in the year 1971; the suit house had not fallen into the share of defendant No. 1; that share of plaintiffs 3 to 9

was 1/18 each and shares of plaintiff No. 10 and defendant No. 1 are 11/36 shares each; the sale deed executed by the defendant No. 1 in favour of defendant No. 2 is not binding on the plaintiffs 3 to 10 to the extent their share in the suit house and accordingly the plaintiffs are entitled to get the suit land partitioned.

In the appeal the defendants-appellants have assailed the judgment on the ground that the learned trial Judge having held that Jagrani was not legally married wife of Chinte and plaintiffs 3 to 9 were illegitimate children of Chinte committed grave error in granting relief in their favour. It is further urged that the Court below committed illegality by holding that the defendant Paramanand has only 11/36 share in the suit house and the sale deed was valid upto that extent only. It is averred that the appellant No. 1 is in exclusive possession in his own right and to the knowledge of the respondents since 1971 and, therefore, he had established his title by adverse possession as it was in the knowledge of all concerned. Criticism has been advanced that learned trial Judge has erred in granting the share to the plaintiffs.

The plaintiffs-respondents have filed cross-objection against the finding recorded that the plaintiff No. 1, Jagrani was not legally married wife of Chinte and further they are legitimate sons having equal shares.

I have heard Mr. Ravish Agrawal, learned senior counsel with Mr. Pranay Verma for the appellants and Mr. Alok Aradhe, learned Counsel for the respondents.

Mr. Agrawal, learned senior Counsel appearing for the appellants has submitted that once a finding has been recorded that there is no valid marriage between Jagrani and Chinte, Jagrani became a kept and, therefore, plaintiffs 3 to 9 could have no interest over the suit property. Learned senior counsel has also submitted that mere living as husband and wife does not confer any matrimonial status and hence, allotment of share by the learned trial Judge is erroneous. It is canvassed by him that in the absence of prevalent custom of such a marriage, there cannot be any presumption that there was any marriage. Learned senior counsel further submitted that when the performance of marriage has not been proved by the customs and divorce has not been proven, the question of validity of the marriage does not arise. In essence, submission of Mr. Agrawal is that there was no valid marriage between Chinte and Jagrani and relationship was illicit in nature and hence, children born of such union are to be treated as illegitimate and they cannot claim any share in the property. To bolster his submissions he has commended me to the decisions rendered in the case of Rajaram Vishwakarma Vs. Deepabai, , Surjit Kaur Vs. Garja Singh and Others, .

Mr. Alok Aradhe, learned Counsel for the respondents, per contra, submitted that cross objection deserves to be allowed and the finding that Jagrani was not legally wedded wife deserves to be dislodged. It is further put forth by him that even if the plaintiff No. 1 is not the legally married wife, yet the plaintiffs 3 to 9 are entitled to the share in the suit house by virtue of Section 16 of the Hindu

Marriage Act, 1955. Learned Counsel has submitted that when man and woman live long as husband and wife, then presumption arises in law that there is marriage existing between two. To buttress his submissions he has placed reliance on the decisions rendered in AIR 1994 133 (SC) , Gurnam Kaur (Smt) and Another Vs. Puran Singh and Others, and Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, .

First I shall proceed to deal with the question whether the finding of the learned trial Judge to the effect that Jagrani was not the legally wedded wife of Chinte is correct. To prove the marriage the plaintiffs have examined Bhairon Prasad PW-3 and Balle, PW-2. The defendants in oppugnation have examined Parmanand DW-1. Bhairon Prasad has feigned ignorance to the suggestion that her mother had married Chandua in Uttar Pradesh. He has also expressed his ignorance whether Chandua was alive or not. Balle PW-2, in cross examination has stated that Jagrani is his wife's sister and jagrani's first marriage had taken place at Jamunia Khera, Lalitpur and Jagrani was thrown out of the house by her husband and, therefore, she stayed with Chinte. The said witnesses was unable to say whether the first husband of Jagrani was alive or not at the time of marriage. The defendant. No. 1 has deposed with regard to initial marital status of Jagrani with Chandua. He has been cross-examined by the plaintiffs in that regard and his statement to the effect that Chandua was still alive has gone unchallenged. From the evidence of Balle the first marriage had taken place with Chandua at Jamunia Khera. Balle is the real brother of Jagrani. Thus, the learned trial Judge has arrived at the conclusion on the basis of the aforesaid evidence that Jagrani had initially married to Chandua and on a scrutiny of the evidence, I do not perceive any error in the same.

It is not disputed that Jagrani had remained with deceased Chinte as his wife for number of years and plaintiffs 3 to 9 were born out of this union. There was no pleading by the plaintiffs that in their caste a woman contracting second marriage is considered legal even if the first husband is alive. There is no material on record to show that there has been dissolution of first marriage. One may notice in certain castes second marriage can be performed during subsistence of first marriage and there are number of modes of dissolution. In this regard I may refer with profit to the decision rendered in the case of Rewaram v. Ramratan 1961 MPLJ 245 wherein it has been held that in Khatri society the prevalent custom is that second marriage by "Natra" can be gone into during the lifetime of the first husband. There are number of modes of dissolution of marriage one of which is that the first husband either takes some monetary benefits or he may even deny the same. After contracting marriage through "Natra" if the wife lives with the man as a wife for a number of years and if her former husband takes no action regarding his rights of the marriage then it is presumed that the "Natra" is legal and children out of this union would be considered as legitimate.

In the case of Radhakishan v. Shankarlal 1982 JIJ 77 it has been held that the

marriage is contracted through "Natra" during the lifetime of first husband and the first husband has compromised after taking monetary compensation then such Natra marriage would be considered legal and valid.

Submission of Mr. Aradhe is that when Chinte and Jagrani had lived for number of years as husband and wife and the relatives recognized them as such, there is presumption of marriage. In the case of AIR 1994 133 (SC) the Apex Court has held that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. In the aforesaid case in paragraph 5 their Lordships have stated thus:

5. In order to overcome the difficulty it was vehemently argued by the learned Counsel for respondent that even if it is assumed that Pavayee was living with Chinathambi since 1920 there being evidence on record to establish that her husband was alive when she came to live with Chinathambi, she was leading an adulterous life and no law recognizes such relationship as valid, consequently the presumption, if any, in favour of a legal marriage stood rebutted. 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 had 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 any of the Courts have recorded any finding on it.

In the case of Gokal Chand v. Parvin Kumari AIR 1952 SC 231 the Apex Court propounded that if a woman lives with a man for number of years, presumption can be drawn for legality of marriage but this presumption is rebuttable and dependent upon facts and circumstances of the case.

In the case at hand, though there is no dispute that Chinte and Jagrani lived together there was no proof that custom prevalent in their society permit second marriage during the lifetime of first husband. It has not been pleaded that on abandonment by the husband the marriage gets dissolved. Quite apart from the above what is luminescent in the present case the first husband of the plaintiff No. 1 is alive and during lifetime of her first husband she started living with Chinte. Nothing has been brought on record to show that any ceremony was performed for holding the marriage. The aforesaid circumstances cannot be overlooked. Merely because Jagrani stayed with Chinte, it cannot be said that she assumed the status of wife of Chinte. In view of the aforesaid, I am of the considered opinion, the learned trial Judge has rightly recorded a finding that Jagrani was not the legally wedded wife of Chinte.

The next aspect that needs to be adverted to is whether illegitimate children would be entitled to any share in the properties of Chinte. Submission of Mr. Ravish Agrawal, learned senior counsel for the appellants is that the learned trial Judge has fallen into error by holding that the property was self acquired though

it was ancestral in nature. Learned trial Judge has taken note of the fact that the plaintiff had not pleaded initially about the fact that the disputed house was purchased by Chinte from the fund of joint family property. As per plaint it was purchased for Rs. 200/- on 18-12-1948. The plaintiff filed an application in the year 1989 that the share of Chinte had been partitioned between Chinte and Heera. Learned trial Judge has not accepted the same. He has dealt with the evidence of Balle and receipts given by village Panchayat dated 26-4-1973 for house tax and receipt dated 28-2-1977 regarding payment of electricity tax vide Ex. P-7. Learned trial Judge also taken note of the fact that Chinte was recorded as owner in the village Panchayat. The receipt which has been granted in favour of Balle is dated 28-5-1983. The Court below has not accepted the fact that Chinte had purchased the property from ancestral source of property and treated it to be as the self acquired property. He has also not accepted the plea that there was a partition in the year 1971 inasmuch as the plea with regard to partition was not established at all. I have carefully perused the evidence brought on record and reasoning ascribed by the learned trial Judge. On a scrutiny of the same, it is clear as day that though a stand was taken that there was partition of agricultural land, there is no mention of the same in the written statement that Chinte had any agricultural land and there was partition of the same in the year 1971. The Court below has also referred to other evidence and came to hold that the property in question was self acquired property and in the absence of any evidence there is no partition in the year 1971 by Chinte, defendant No. 1 had no right to sell the property. This finding has not seriously been challenged before this Court and I also find they are substantiated by adequate evidence and hence, I come to hold that the suit property was self acquired property of Chinte and the same was not partitioned.

The thrust of the matter is in the obtaining factual matrix what would be the right of the plaintiffs Nos.3 to 10. With the aforesaid facet, the rights of legitimate children have insegregable nexus. There is no dispute that Chinte expired in the year 1979. Learned trial Judge has recorded a finding that the marriage that took place between plaintiff No. 1 and Chinte was prior to coming of Hindu Marriage Act, 1955 inasmuch as the plaintiff No. 3, the eldest son of Chinte was 35 years of age at the time of filing of the plaint in the year 1988. The said finding has been based on material brought on record and hence, the same is given the stamp of approval by this Court. Submission of Mr. Aradhe is that even if the children are treated as illegitimate after amendment in Section 16(1) of Hindu Marriage Act, 1955 as amended by Amendment Act No. 68 of 1976 they would be treated as legitimate for succession of the property. In the case of Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, a two Judge Bench of the Apex Court were dealing with the fact situation wherein one Raman Nair who had expired on 9-1-1975 had left behind fourteen children from two wives which led to litigation for the purpose of inheritance. The undisputed facts in the said case were that Raman Nair had contracted second marriage with the appellant therein when his first wife was

alive and appellant Nos. 2 to 6 were from second wife. The question that arose for consideration before the Apex Court was with regard to inheritance and further question that was raised pertained to the constitutional validity of Section 16(1) of the Act. Their Lordship while took note of the unamended provisions contained in Section 16 and the legislative intention for incorporating the said provision and Section 16 which was amended by Act No. 68 of 1976. Their Lordships referred to Notes to the Clauses of the Bill and the Amending Act, 1976 which states that the said clause seeks to substitute Section 16 so as to clarify the intention and to remove the difficulties in interpretation. Thereafter in paragraph 65 of the judgment their Lordships referred to amended Section 16 and came to hold that after its amendment the vice from which unamended Section 16 suffered has been removed. Their Lordships expressed the opinion that the Hindu Marriage Act, 1955 is a beneficent legislation and, therefore, it has to be interpreted in such a manner to advance the object of the legislation. Their Lordships further expressed that the Act intends to bring about social reforms. Conferment of social status of legitimacy on a group of innocent children, who are otherwise treated as bastards, is the prime object of Section 16. Their Lordships gave emphasis on the non-ob-stante clause with which Section 16 begins. In this context it is profitable to reproduce paragraphs 68:

68. Hindu Marriage Act, 1955 is a beneficent legislation and therefore, it has to be interpreted in such a manner as advances the object of the legislation. The Act intends to bring about social reforms. Conferment of social status of legitimacy on a group of innocent children, who are otherwise treated as bastards, is the prime object of Section 16.

After so holding their Lordships proceeded to state further in paragraphs 75, 77 and 78 as under:

75. Section 16 was earlier linked with Sections 11 and 12. On account of the language employed in unamended Section 16 and its linkage with Sections 11 and 12, the provisions had the effect of dividing and classifying the illegitimate children into two groups without there being any nexus between the statutory provisions and the object sought to be achieved thereby. It is to be seen whether this mischief has been removed.

Non-obstante clause is sometimes appended to a section in the beginning with a view to give the enacting part of the Section, in the case of conflict, an overriding effect over the provision or Act mentioned in that clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment.

The words "notwithstanding that a marriage is null and void u/s 11 "employed in Section 16(1) indicate undoubtedly the following:

(a) Section 16(1) stands delinked from Section 11

(b) Provisions of Section 16(1) which intend to confer legitimacy on children born of void marriages will operate with full vigour in spite of Section 11 which nullifies only those marriages which are held after the enforcement of the Act and in the performance of which Section 5 is contravened.

(c) benefit of legitimacy has been conferred upon the children born either before or after the date on which Section 16(1) was amended.

(d) Mischief or the vice which was the basis of unconstitutionality of unamended Section 16 has been effectively removed by amendment.

(e) Section 16(1) now stands on its own strength and operates independently of other sections with the result that it is constitutionally valid as it does not discriminate between illegitimate children similarly circumstanced and classified them as one group for conferment of legitimacy.

The Apex Court treated the provisions contained in unamended Section 16 as constitutional and interpreted Section 16. Thereafter in paragraphs 82 and 83 their Lordships opined thus:

82. In view of the legal fiction contained in Section 16, the illegitimate children, for all practical purposes, including succession to the properties of their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which in its operation, is limited to the properties of the parents.

Obviously, Appellants 2 to 6 were born prior to the date on which amendments were introduced in Section 16(1) and, consequently they would, notwithstanding that the marriage between their parents had taken place at a time when there was a legislative prohibition on the second marriage, be treated as legitimate, and would, therefore, inherit the properties of their father, Raman Nair, u/s 16(3) of the Act.

In view of the aforesaid pronouncement of law there is no scintilla of doubt that the plaintiff Nos. 3 to 9 would be treated as legitimate and inherit the property of their father Chinte.

Once it is so held, the question that arises for consideration is with regard to allotment of shares. Submission of Mr. Aradhe is that the cross-objection was filed for conferral of benefit of legitimate status on the plaintiffs 3 to 9 on the foundation and bedrock that Jagrani was illegally wedded wife of Chinte. In essence, submission of Mr. Aradhe is that allotment of share by the learned trial Judge treating the legitimate children and illegitimate children in two categories is not correct. The said submission, in my considered opinion, has substantial force. In view of the enunciation of law by the Apex Court, they are to be treated as legitimate to inherit the properties of their parents. In that event question of any distinction qua allotment of share does not arise as they would be entitled to equal shares.

In the result, appeal filed by the defendants appellants is dismissed and the cross-objection to the extent that the plaintiffs 3 to 9 would be entitled to equal share with other sons of Chinte is allowed. A decree be drawn up accordingly. In the facts and circumstances of the case parties shall bear their respective costs throughout.