
(1979) 01 GAU CK 0002
In the Gauhati High Court

R.K. Angousana Singh and Others

APPELLANT

Vs

Laisram Ningol Ningthemcha Ongbi Leinambi Devi and Others

RESPONDENT

Date of Decision : 10-01-1979

Acts Referred:

Citation : AIR 1979 Guw 52

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Baharul Islam, J.—These two appeals arise out of a common judgment passed by the District Judge, Manipur, in two appeals, which again arose out of the same suit. I shall, therefore, dispose of both the appeals by this common judgment.

2. Shri Nodiachand Singh, learned Counsel appearing for the appellants in both the appeals, urges before me only one point, which is common in both the appeals. The point urged is that the Courts below committed an error in holding that the marriage between plaintiff No. 1 and Gopalsana Singh was valid when the previous husband, Nipamacha Singh, of plaintiff No, 1 is alive and no divorce has been proved.

3. In order to appreciate the point urged the following material facts only need be stated:

The plaintiffs filed the suit for declaration of their title to a share of the property and for partition. According to them, the suit property originally belonged to one RuleK. Chandrahas Singh, who died before 1942 leaving behind 3 sons, defendant No. 1, defendant No. 2 and RuleK. Gopalsana Singh, since deceased, and 7 wives. Gopalsana Singh died leaving his widow, plaintiff No. 1 and 3 sons, plaintiffs Nos. 2, 3 and 4. As their title to the suit property was disowned by defendants Nos. 1 and 2 and their possession of their shares of the property was disturbed by defendants Nos. 1 and 2, they filed the suit for title and for partition by metes and bounds. There is no dispute that the property under dispute

belonged to Tombi Devi. The basis of the claim of the plaintiffs was stated in paragraph 1 of the plaint that the above-mentioned RuleK. Chandrahas Singh, was the father of defendants Nos. 1 and 2 and grandfather of plaintiffs Nos. 2 to 4. The third son was Gopalsana Singh, who died leaving the plaintiffs 2 to 4 and his widow plaintiff No. 1.

4. Defendants Nos. 1 and 2 contested the suit by filing a written statement. In paragraphs 2 and 5 in their written statement, they have simply denied "that the plaintiffs are the heirs of late R.K. Gopalsana Singh". In other words, they have denied the plaintiff No. 1 was the widow of Gopalsana Singh and plaintiffs Nos. 2 to 4 were the sons of plaintiff No. 1 by Gopalsana Singh.

5. On the basis of the contentions of the parties on the above-mentioned points, the trial Court framed the following amongst other, issue, which only is material:

Whether the plaintiffs are the heirs of late Gopalsana Singh?

In view of the argument made before me by the learned Counsel appearing for the appellants, the issue may be reframed as follows:

Whether plaintiff No. 1 was the widow and plaintiffs Nos. 2 to 4 were the sons, of late Gopalsana Singh?

Both the parties led evidence on the point, On a consideration of the evidence on record, they have concurrently found that plaintiff No. 1 was the widow and plaintiffs 2 to 4 were her sons by late Gopalsana Singh, This is a finding of fact.

6. The learned Counsel for the appellants however submits that there is evidence on record to show that plaintiff No. 1 had been married to one Nipamacha Singh before her marriage with Gopalsana Singh; there is also evidence on record, the learned Counsel for the appellants submits, that Nipamacha Singh is still alive; that the defendants have not proved that plaintiff No. 1 has been divorced by Nipamacha Singh before her alleged marriage with Gopalsana Singh. That being the position, the submission continues, the marriage of plaintiff No. 1 with Gopalsana was void as marriage by a woman of a man during the subsistence of her marriage with an earlier husband, is not permissible under the Hindu Law and plaintiffs Nos. 2 to 4 shall be held to be illegitimate children of the aforesaid alleged marriage and as such the plaintiffs cannot inherit the property claimed by them. The submission of the learned Counsel is that the Courts below are wrong in drawing the inference that there had been a divorce of plaintiff No. 1 by Nipamacha, aforesaid, before the marriage of plaintiff No. 1 and Gopalsana Singh. Both the Courts below have concurrently found on the basis of the evidence on record that there was a valid marriage between plaintiff No. 1 and Gopalsana Singh in accordance with the custom prevalent amongst the Manipuri Hindus. It has been found that plaintiff No. 1 eloped with Gopalsana and after elopment there has been a marriage by Keinakatpa (by exchange of garland) which is an acceptable form of marriage among the Hindus in Manipur. The learned Courts below have also found that both the plaintiff No. 1 and Gopalsana

were living as husband and wife for more than 20 years and the members of the family treated them as husband and wife. Therefore they drew the inference that there had been divorce of plaintiff No. 1 before her aforesaid marriage with Gopalsana,

7. I need not examine whether the aforesaid inference of divorce is valid or not. Suffice it to say that in a civil suit, the parties are bound by their pleadings. It was the plaintiffs' case in the plaint that plaintiff No. 1 was the wife and plaintiffs Nos. 2 to 4 were the sons of late Gopalsana. That case was merely denied by the defendants in their written statement. It was not their case in their written statement that the plaintiff No. 1 had been married to one Nipamacha Singh, that Nipamacha Singh was alive and that Nipamacha Singh had not divorced the plaintiff No. 1. Only during trial the defendants directed cross-examination of the plaintiffs and their witness to prove that plaintiff No. 1 had been married to Nipamacha Singh and that Nipamacha Singh is alive and that her marriage with Gopalsana was during the subsistence of her marriage with Nipamacha. This is a new case sought to be made by the defendants during trial, and ought not to have been allowed by the trial Court. A party is entitled to lead evidence only to prove a case set out in his pleading, and cannot be allowed to lead evidence to make out a new case not pleaded. Once the plaintiffs have proved, as concurrently found by both the Courts below, that the plaintiff No. 1 was married to Gopalsana and that plaintiffs Nos. 2 to 4 were born out of that wed-lock, there was an end of the matter. The plaintiffs have discharged their burden and proved their case.

8. This appeal has no force. It is dismissed with costs.