

(2014) 03 TP CK 0015
In the Tripura High Court
Case No : R.S.A. 25 of 2005

Shri Dilip Debnath Vs Smti. Gopa Debnath and Shri Arup Debnath (Minor)

Date of Decision : 26-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2014) 03 TP CK 0015

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

Bench : Single Bench

Advocate : D. Chakraborty, Sr. Advocate, Mr. H. Laskar, Ms. S. Gupta and Ms. N. Majumder, Advocate for the Appellant; A.K. Bhowmik, Sr. Advocate, Mr. A. Deb, Mr. S. Ghosh and Ms. B. Pal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This second appeal u/s 100 of the Code of Civil Procedure, 1908 is directed against the appellate decree dated 20.11.2004 passed by learned Addl. District Judge, Court No. 4, Agartala, West Tripura in Title Appeal No. 27 of 2002 where under learned Addl. District Judge dismissed the first appeal filed by the appellant and affirmed the judgment and decree of dismissal dated 27.05.2002 passed by learned Civil Judge, Jr. Division, Court No. 1, Agartala, West Tripura in Title Suit No. 96 of 1994. The Second appeal has been admitted for hearing on the following substantial question of law:-

- 1) Whether the finding of the learned court below that the marriage between the appellant and the respondent No. 1 herein is a legally valid one on the face of statement of the respondent No. 1 herein that there had been no ceremony like ties by seven rounds is sustainable in law?
2. Heard learned Sr. counsel Mr. D. Chakraborty assisted by learned counsel Mr. H. Laskar for the appellant and learned Sr. counsel Mr. A. K. Bhowmik assisted by learned counsel Mr. S. Ghosh for the respondents.
3. The appellant as plaintiff instituted Title Suit No. 96 of 1994 seeking

declaration that the defendant No. 1 is not his wife and defendant No. 2 is not his son and further seeking declaration that the judgment and order dated 23.12.1992 passed by learned Judicial Magistrate 1st Class in Misc. Case No. 10 of 1991, u/s 125 of Cr. P.C. and the Judgment and Order dated 20.11.1993, passed by learned Addl. Sessions Judge, West Tripura, Agartala in Criminal Revision No. 2(1) of 1993 and the judgment and order dated 21.03.1994 passed by the Gauhati High Court, Agartala Bench in Criminal Revision No. 11 of 1994 were not binding upon him (plaintiff).

4. The appellant (hereinafter stated as plaintiff) inter alia, contended that he has married Smt. Mallika Debnath, D/o Dharendra Debnath on 13th December, 1990 and the marriage was solemnized observing all Hindu rites and after marriage they have been living together as husband and wife. It is the case of the plaintiff that in the year 1989, defendant No. 1 had been residing as a tenant in his house with her husband Nalini Sharma alias Dilip Sarkar for a period of about two months and thereafter she left his house. In the year 1991 he received a notice from the Court of Chief Judicial Magistrate, West Tripura, Agartala, in connection with Misc. Case No. 10/1991 instituted by defendant No. 1 u/s 125 of Cr. P.C. claiming maintenance and on receipt of the notice he appeared before the Court. The defendant No. 1 in that case claimed that she was married with the plaintiff in the year 1989 and thereafter they alleged to have lived together and defendant No. 2 was born out of their wedlock on 26.08.1990 at V.M. Hospital, Agartala. It had also been alleged in the petition seeking maintenance that the plaintiff driven out the defendant from the matrimonial home and therefore she took shelter in her parental home. It is contended by the plaintiff that while giving the deposition in the Magisterial Court in connection with the maintenance case, the defendant No. 1 examined herself as D.W. 1 and stated that the marriage between the plaintiff and defendant No. 1 was solemnized at Udaipur Matabari temple and it was not a social marriage but in the temple only. The Magisterial Court however by judgment dated 23.12.1992 allowed the prayer of the petitioner and granted maintenance to the defendant Nos. 1 and 2.

The plaintiff challenged the order granting maintenance by filing Criminal Revision No. 2(1) of 1993 in the Court of Sessions Judge but the Sessions Judge by judgment dated 20.11.1993 affirmed the order passed by the learned Magistrate. Thereafter the plaintiff preferred another revisional application before the High Court which was registered as Criminal Revision No. 11 of 1994 and that was also dismissed by order dated 21.03.1994. It is contended by the plaintiff that no marriage was solemnized between the plaintiff and the defendant No. 1 in the year 1989 at Matabari or elsewhere and the defendant No. 2 was never born out of the wedlock between the plaintiff and defendant No. 1. The defendant with a view to earn money illegally instituted false case u/s 125 of Cr. P.C. and the defendant has failed to prove that there was any marriage solemnized between the plaintiff and the defendant No. 1.

5. The defendants contested the suit by filing written Statement, inter alia,

stating that marriage between the plaintiff and the defendant No. 1 was solemnized in the year 1989 at Udaipur Matabari temple and thereafter they lived and cohabited as husband and wife in their house at Dukli and on 26.08.1990 defendant No. 2 was born at V.M. Hospital, Agartala. Thereafter the plaintiff had forcefully driven out the defendant No. 1 from the matrimonial home and married again Mallika Debnath for the second time. There were witnesses present from the side of the defendant No. 1 and plaintiff at the time of solemnization of the marriage and the marriage was fully consummated.

6. The trial Court considering the pleadings of the parties formulated following 5 (five) issues-

I. Is the suit maintainable in its present form and nature?

II. Are the defendants Nos. 1 and 2 wife and son respectively of the plaintiff?

III. Is the judgment and order dt. 23rd December, 1992 passed by the Judicial Magistrate in Misc. Case No. 10 of 1991 u/s 125 Cr. P.C. binding and operative against the plaintiff?

IV. Are the defendants entitled to maintenance from the plaintiff?

V. To what relief or reliefs the plaintiff is entitled ?

7. In course of trial, the plaintiff examined himself as P.W. 1 and proved 6 (six) items of documents namely the certified copy of the petition filed by defendant No. 1 u/s 125 of Cr. P.C. (Exhibit-1); certified copy of deposition of defendant No. 1 in Misc. Case No. 10/1991 marked as Exhibit-2; certified copy of deposition of plaintiff in Misc. Case No. 10/1991 marked as Exhibit-3; certified copy of judgment passed by Judicial Magistrate 1st Class in Misc. Case No. 10 of 1991 marked as Exhibit-4; certified copy of judgment passed by the Addl. Sessions Judge in Criminal Revision No. 2(1) of 1993 marked Exhibit-5 and certified copy of judgment passed by the High Court dated 21.03.1994 in Criminal Revision No. 11 of 1994 marked as Exhibit-6.

8. The defendant No. 1 examined herself as DW. 1 and also examined two more witnesses namely Jyostna Sarkar as D.W. 2 and Smt. Mitali Sarkar as D.W. 3 and also proved one document i.e. birth certificate in the name of defendant No. 2 marked as Exhibit-A.

9. The trial Court decided the issues against the plaintiff and dismissed the suit.

10. Aggrieved, the plaintiff preferred Title Appeal No. 27 of 2002 in the court of District Judge and learned Addl. District Judge by judgment dated 20.11.2004 dismissed the appeal and hence, the plaintiff preferred this second appeal.

11. Learned Sr. counsel Mr. Chakraborty has submitted that the plaintiff from the very inception has taken a consistent stand that no Hindu marriage was solemnized between the plaintiff and defendant No. 1. The defendant No. 1 in her pleadings simply stated that her marriage was solemnized at Matabari

temple and thereafter she lived and cohabited with the plaintiff. She nowhere stated as to what ceremonies were performed or rituals undergone while the marriage was solemnized. In her evidence before the Magisterial Court she stated that the marriage was solemnized by exchange of garlands at Matabari temple and she admitted that it was not socially performed. In her deposition before the trial Court in the Civil suit she stated that her marriage was solemnized with the plaintiff on 28th Agrahayana seven years ago at Matabari as per Hindu rites in the presence of her elder sister and her sister-in-law as well as the relatives of the plaintiff. In cross examination she stated that no seven steps were taken at the time of marriage. It is contended by Mr. Chakraborty, learned Sr. counsel that from the evidence of the defendant No. 1 it is crystal clear that no Hindu marriage was solemnized between the plaintiff and the defendant No. 1. It is further contended by learned counsel Mr. Chakraborty that regarding paternity of the defendant No. 2, the plaintiff does not like to present any submission. It is the only case of the plaintiff that there was no marriage solemnized between the plaintiff and the defendant No. 1 and the defendant No. 1 cannot claim the status of a wife. It is also contended by Mr. Chakraborty, learned Sr. counsel that according to the defendant No. 1, marriage between her and the plaintiff was solemnized in the year 1989. After she was allegedly driven out from the matrimonial home she instituted no case nor reported anybody. When the plaintiff married Mallika Debnath she did not raise any objection which was quite natural for a married wife to raise. She was only eager to earn money and therefore she instituted a case u/s 125 of Cr. P.C. claiming maintenance. It is, therefore, evident that the defendant No. 1 is only eager to earn money and for that purpose she falsely claimed to be the wife of the plaintiff.

12. Countering the submission of learned counsel Mr. Chakraborty, learned Sr. counsel Mr. Bhowmik has submitted that there are concurrent findings of three courts regarding the marital status of the plaintiff and defendant No. 1. Since the suit has been instituted by the plaintiff, he is to prove that no marriage was solemnized between him and the defendant No. 1. In his deposition practically the plaintiff stated nothing in support of his case. He has simply stated that in the year 1989 defendant No. 1 was a tenant in his house for about 2 (two) months and she lived with Nalini Sharma alias Dilip Sarkar and thereafter left his house. Subsequently she instituted case claiming maintenance. Under such circumstances, the trial Court and the appellate Court rightly held that the plaintiff has failed to prove his case.

13. A Hindu marriage is solemnized performing certain religious acts and rituals of a particular community belonging to Hindu religion. Learned counsel Mr. Chakraborty has submitted that in the eastern India Hindu marriages are solemnized specially performing the rituals of "sampradan" of the bride followed by seven steps by the bride round the groom and then followed by "yagna". There may be some minor differences in respect of the rituals but substantially the three rituals which generally performed in all Hindu marriages in this part of the country. The defendant simply stated that by exchange of garlands and

chanting "mantras" the marriage was solemnized which may be a "gandharva" form of marriage but not recognized as a valid form of marriage now.

14. In support of his contention he has relied on the decision of the Apex Court in the case of Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another,

15. Learned Sr. counsel Mr. Bhowmik on the contrary has submitted that some ceremonies and rituals were performed at Matabari by exchange of garlands and chanting of "mantras". Seven steps by the bride round the groom were not taken as admitted by the defendant No. 1 but that does not mean that no marriage was solemnized. What are the essential ceremonies to be performed for a valid marriage in the community of the plaintiff was to be proved by the plaintiff but the plaintiff adduced no such evidence and hence, the concurrent finding of the trial Court and the appellate Court cannot be disturbed.

16. Burden lies on the plaintiff to prove the issues framed in the suit. Plaintiff only stated that defendant No. 1 with her husband was a tenant in his house for two months in the year 1989 and thereafter left his house. He adduced no evidence in support of his contention that the defendant No. 1 was already married when lived as tenant in his house. Exhibit-A, the birth certificate of defendant No. 2 shows that it was issued showing the plaintiff as the father of defendant No. 2. The plaintiff refused to undergo a DNA test and a presumption shall be drawn against the plaintiff in respect of the paternity of defendant No. 2. If it is presumed that defendant No. 2 was a child born due to cohabitation of the plaintiff and defendant No. 1 some presumption has to be drawn that because of certain relation plaintiff and defendant No. 1 lived together. The defendant No. 1 claims that there was marriage by exchange of garlands and chanting of "mantras" at Tripureswari temple, Udaipur. The plaintiff adduced no evidence as to what were the essential ceremonies for performance of a Hindu marriage in their community and because of non performance of such essential ceremonies it cannot be said that there was any marriage between the plaintiff and the defendant No. 1. In the absence of any such evidence adduced by the plaintiff, the trial Court as well as the first appellate Court rightly arrived at a conclusion that the plaintiff has failed to prove his case.

17. The Supreme Court in the case of Bhaurao Shankar Lokhande (supra) in para 7 & 8 of the judgment has observed thus:-

(7). We may now determine what the essential ceremonies for a valid marriage between the parties are. It is alleged for the respondent that the marriage between appellant no. 1 and Kamlabai was in "gandharva" form, as modified by the custom prevailing among the Maharashtrians. It is noted in Mulla's Hindu Law, 12th Edition, at p. 605:

"The Gandharva marriage is the voluntary union of a youth and a damsel which springs from desire and sensual inclination. It has at times been erroneously described as an euphemism for concubinage. This view is based on a total

misconception of the leading texts of the Smritis. It may be noted that the essential marriage ceremonies are as much a requisite part of this form of marriage as of any other unless it is shown that some modification of those ceremonies has been introduced by custom in any particular community or caste."

(8) At p. 615 is stated:

(1) There are two ceremonies essential to the validity of a marriage, whether the marriage be in the Brahma form or the Asura form, namely-

(1) invocation before the sacred fire, and

(2) saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire.

(2) A marriage may be completed by the performance of ceremonies other than those referred to in subsection (1), where it is allowed by the custom of the caste to which the parties belong.

18. There is no dispute that "saptapadi" by the bridegroom and the bride before the sacred fire is an essential form of marriage. In this part of the country the bride takes seven steps round the groom while performing the marriage and it is followed by "yagna". It is true that normally "sampradan" of the bride is performed as per the religious rites. What is essential ceremony in the community of the plaintiff or the defendant No. 1 is not known to the Court. If the marriage is performed by way of performing the ceremonies applicable to either of the parties, the validity of the marriage cannot be questioned. The plaintiff did not examine any witness from Matabari temple to show that no such marriage ceremony performed by exchange of garlands in the temple. He has also adduced no evidence to prove the ceremonies required in his community or in the community of the defendant No. 1. For not adducing any evidence by the defendant No. 1, the suit cannot be decreed. The plaintiff has to prove his case by adducing proper evidence and plaintiff cannot depend on the evidence of the defendant.

19. In the case of Bhaurao Shankar Lokhande (supra) the Supreme Court relied on the observation made by the author Mullah in Hindu Law as already quoted above, wherein it has been held that a marriage may be completed by the performance of ceremonies other than those referred to in sub section (1), where it is allowed by the custom of the caste to which the parties belong.

20. The plaintiff did not utter a single word that in their caste or community no marriage can be solemnized by exchange of garlands and by chanting of "mantras" in a temple. Under such facts and circumstances, the concurrent findings of the trial Court as well as the appellate Courts cannot be disturbed by this Court in second appeal and hence, the second appeal is liable to be dismissed.

21. Accordingly the second appeal stands dismissed. Send back the L.C. records along with a copy of this judgment.