
(2009) 09 BOM CK 0011

In the Bombay High Court

Case No : Family Court Appeal No. 101 of 2007 and Civil Application No. 219 of 2009

Shubhangi Krishna Patil

APPELLANT

Vs

Rupali Krishnan Bachhe (Patil) and The Headmistress,
Himalaya High School

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 41 Rule 27
Penal Code, 1860 (IPC) — Section 494

Citation : (2010) 1 MhLj 253 : (2011) 7 RCR(Civil) 1687

Hon'ble Judges : R.V. More, J; P.B. Majmudar, J

Bench : Division Bench

Advocate : P.R. Arjunwadkar, instructed by Uday P. Warunjikar, for the Appellant; J.S. Kini, instructed by Suresh Dubey, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—This appeal is directed against the judgment and order dated 22nd May, 2007, passed by the learned Principal Judge, Family Court at Mumbai in Petition No. B83 of 2002. By the aforesaid order, the learned Judge has held that the respondent No. 1 herein is legally wedded wife of Krishnat Bachhe (Patil). By the aforesaid order, the learned Judge also directed the appellant herein not to withdraw any amount from respondent No. 2 wherein deceased Krishnat Bachhe (Patil) was serving.

2. The facts leading to the controversy are as under.

3. Respondent No. 1, Rupali Krishnant Bachhe (Patil) filed a petition before the Family Court at Bandra, Bombay seeking declaration that (i) she is the legally wedded wife of one Krishnant Bachhe (Patil) and (ii) the marriage between appellant and the late Krishnant Bachhe (Patil) is illegal, null and void. Respondent No. 1 also prayed that she is entitled to the property left by the deceased Krishnant Bachhe (Patil). The said petition was opposed by the present

appellant who was respondent No. 1 in the said petition before the Family Court at Bandra. The petition filed by respondent No. 1 was resisted by the present appellant on the ground that she is the legally wedded wife of deceased Krishna Patil . The case projected by respondent No. 1 herein in a nutshell is as under.

4. Respondent No. 1 got married to one Krishnant Bachhe (Patil) as per Hindu Vedic rites and customs on 7th June, 1978. Her maiden name before the marriage was Rupali Vishnu Patil Akkatai. From the said wedlock, a daughter named Megha Rani Patil was born. It is averred in the petition that the said Krishnant Bachhe (Patil) was working as an Assistant Teacher in the school run by respondent No. 2 and that she was completely unaware of the relationship between the appellant and the said Krishnant Bachhe (Patil). According to respondent No. 1, the said Krishnant Bachhe (Patil) expired on 19th July, 2002. It is stated in the petition that respondent No. 1 wrote a letter through her advocate to respondent No. 2 demanding gratuity, pension and other benefits after the death of Krishnant Bachhe (Patil), hereinafter "the deceased". Respondent No. 1 sent a copy of the said letter to the appellant also. On receiving the notice, the appellant sent her reply immediately claiming that she is the legally wedded of the deceased. As stated above, respondent No. 1 filed a petition in the Family Court at Bandra, Mumbai on 24th September, 2002 for seeking the aforesaid declarations. She also sought an injunction to the effect that the appellant may be restraining from selling, transferring, creating third party rights of any nature whatsoever, alienating, encumbering or changing the status quo in respect of flat at Rainbow Apartment, 2nd floor, I.C. Colony, Borivli (West), Mumbai and further that the appellant may be restrained from withdrawing any amounts from respondent No. 2. Respondent No. 1 also sought leave under Order 2 Rule 2 of the CPC to file a substantive suit in respect of the aforesaid flat.

5. The aforesaid petition was resisted by the appellant by filing her written statement. It is the case of the appellant that she got married to Krishna Patil on 13th December, 1982. At that time he was working as an Assistant Teacher in Mount Mary High School where the appellant was also working as a Teacher. At the time of her marriage, Krishna Patil claimed that he was a bachelor. After marriage, on 24th December, 1982, they went to Krishna Patil's native village at Savarde and met all his family members and at that time neither respondent No. 1 nor any family members made any complaint against her marriage with Krishna Patil. It is also the case of the appellant that in 1984 she purchased a flat at Dahisar viz. Flat No. A/403, Shivganga Apartment, 4th floor, Chatrapati Shivaji Road, Dahisar (East), Mumbai 400 068, utilising her mother's fund. Out of the said wedlock, appellant also gave birth to two sons in September, 1983 and November, 1990. It is also the case of the appellant that during the life time of her husband, her mother-in-law, Hansha Hari Patil, her brothers Pandurang Hari Patil and Mansing Hari Patil visited her flat at Dahisar, Mumbai. The appellant also visited Savarde Village along with her husband on number of occasions especially on the occasion of wedding in the family and Diwali. Thereafter in the

year 2001 she purchased a bigger flat at Borivli by selling the flat at Dahisar.

6. It is also the case of the appellant that in 1999 Krishna Patil left her house as he was suffering from AIDS. She searched for him and ultimately she traced him at Virar. She brought him to her residence and nursed him till his death. During his illness, Krishna's relatives also came to see him. On these and such other grounds, the petition filed by respondent No. 1 was resisted by the present appellant.

7. Earlier, the learned trial Judge framed various issues at Exh. 15 arising out of the said pleadings. The learned trial Judge by her order dated 8th October, 2004, negatived all the issues framed and dismissed the petition.

8. Being aggrieved by the aforesaid order, respondent No. 1 filed Family Court Appeal being F.C.A. No. 50 of 2005. A Division Bench of this Court vide order dated 20th December, 2006, remanded the matter to the Family Court with a direction to allow respondent No. 1 to lead further evidence. The said appeal was accordingly disposed of by setting aside the order of the Family Court and the matter was remanded to the Family Court.

9. After remand, parties were given opportunity to lead oral as well as documentary evidence. The appellant also examined herself and produced certain documents. The learned trial Judge after hearing the parties, by his order dated 22nd May, 2007, allowed the petition filed by respondent No. 1 by giving a declaration in favour of respondent No. 1 that she is the legally wedded wife of Krishnat Bachhe (Patil). It is also directed that the present appellant shall not withdraw any amounts from respondent No. 2 claiming to be wife of Krishnat. It is the aforesaid order of the learned trial Judge which is impugned in this appeal at the instance of the appellant who was original respondent No. 1 before the Family Court.

10. Mr. Arjunwadkar, learned Counsel appearing for the appellant, has submitted that the learned trial Judge has completely misread the evidence for coming to the conclusion that respondent No. 1 was the legally wedded wife of Krishnat Bachhe (Patil). He further submitted that looking to the evidence produced on record by respondent No. 1, it is clear that the evidence produced by respondent No. 1 is concocted one and even the photographs produced by respondent No. 1 are tricky. According to the learned Counsel, a mere perusal of the documentary evidence produced on record, it is clearly established that no marriage between respondent No. 1 and deceased Krishna had ever taken place. During the course of arguments, it is argued by the learned Counsel that even otherwise, respondent No. 1 and the deceased were cousins and that in the absence of evidence regarding custom, respondent No. 1 could not have legally married with deceased as they were in prohibited degrees as per the provisions of Hindu Marriage Act. It is submitted that in the absence of proving such custom, the marriage of respondent No. 1 with the deceased cannot be said to be a valid marriage. In the instant case, respondent No. 1 has not proved that any

marriage ceremony had taken place as required by Hindu Marriage Act. Not only that, priest is not examined nor respondent No. 1 has established the fact that any saptapadi was performed.

11. Mr. Kini, learned Counsel appearing for respondent No. 1, on the other hand, submitted that respondent No. 1 being an illiterate village lady would not normally tell lies. Learned Counsel further submitted that a daughter is also born out of the wedlock of respondent No. 1 with deceased Krishnant which is proved by the certificate issued by the Headmaster. He has further submitted that from the evidence on record, the learned trial Judge has rightly passed an order in favour of Respondent No. 1 and granted declaration as prayed for by Respondent No. 1.

12. We have gone through the oral and documentary evidence on record. We have also gone through the photographs produced on record by both sides. We have also heard the learned Counsel appearing for both sides at great length.

13. The principal question which is required to be considered in this appeal is as to whether from the evidence on record it is established that Respondent No. 1 herein had married deceased Krishnant.

14. In order to appreciate the rival contentions, the evidence led by the parties, oral and documentary, is required to be considered.

16. In her evidence at Exh. 23, respondent No. 1 has stated that she married Krishnat on 7th June, 1978 at her in law's house and at that time her brother in law, sister-in-law, parents and her mother were present. In her evidence she also stated that her "mama" and mami" were also present. After her marriage she went to her in-laws house and her husband lived with her for about four to five years and thereafter he went to Kandivli. In her evidence she stated that her husband used to send money to her for her maintenance. He also used to send money to his parents with whom she was living. In her evidence she has also stated that she has got one daughter from the said marriage. She also stated that she came to know about her husband's relationship with the appellant after his death and that she never visited Mumbai. In her cross-examination she has stated that her daughter was born in the year 1990 and that she never stayed with her husband but she has stated that her husband used to visit village during vacations. She stated that she had not gone to Mumbai at the time when her husband died. She has stated that what is stated in para 5 of the petition is not correct. In her cross-examination she stated that she came to know about her husband's death after eight days of his death. At that time she was living with her parents in law. She has also produced Exh. 19 certain photographs which, according to her, were taken at the time of her marriage. She has stated that she got the said photographs scanned in the computer at her village. She denied the suggestion that the said photographs are concocted. In her cross-examination she has also produced the birth certificate of her daughter. She was shown photograph at "A" wherein she stated that she did not know who is in the

photograph and further did not know the place of the photographs. The said photograph is marked X1. She was shown other photographs at X2, X3, X4. She has stated that she did not know who are in the photographs. Appellant her affidavit of evidence at Exh. 32 wherein she has given particulars about her marriage as well as the particulars of flat at Borivli.

17. As pointed out earlier, after remand further evidence was led by the parties. Respondent No. 1 examined one Pandurang Hari Bachhe Patil as witness No. 1. The said witness has stated that he is the brother of deceased Krishnanath Bachhe Patil. He has stated that his brother married first respondent on 7th June, 1978 and that he had personally attended the said marriage. He has stated that the said marriage was an arranged marriage. He has stated that the respondent No. 1 was related to their family even prior to the said marriage and the relationship being cousin. In his affidavit he has stated that after the marriage of his brother with the respondent No. 1, respondent No. 1 continued to reside at the native place in the same village. He has stated that as per his knowledge, respondent No. 1 was staying at Savarde village and that her name is reflected in the electoral roll. The said witness has also stated that he was aware of the fact that his deceased brother is the father of child named Megha Krishna Bachhe Patil through respondent No. 1. The said Megha was born on 6th October, 1990. Her birth certificate is at Exh. A to the said affidavit. He has stated that the said certificate is issued by the Gram Sevak of Gram Panchayat and he was personally aware of the same. In the cross-examination the said witness has stated that the deceased left home for Mumbai immediately after passing S.S.C. Exam. and he was permanently residing at Mumbai. He used to visit the village on the occasion of function in the family and during summer vacation in May and Diwali. In his cross-examination he has admitted that at the time when his brother was sick he visited him and at that time the appellant was present in the house and he met her. The said witness has stated in the cross-examination that he was not present at the time of funeral of his brother. The said witness has denied the suggestion that he had informed the appellant that she should not even inform them if Krishnant expires. The said witness has admitted in his evidence that it is true to say that they were annoyed with the deceased since he got married with the appellant who is a Christian. The said witness also admitted that because of his marriage with a Christian lady, their prestige at village Savarde got lowered and defamed. The said witness, however, denied the suggestion that to save honour in the society and to deprive appellant and her children of their legal monetary dues and share in the property of the deceased and to grab the same a plan was made by creating false story of the marriage of deceased with respondent No. 1. The said witness also denied the suggestion that he is politically active person in the village and with the help of his relative who is working in the Tahsildar's office, documents at Exhibit 56, Exh. 57, Exh. 58, Exh. 17, Exh. 11 and Exh. 19 are fabricated. The said witness has admitted in his cross-examination that the ration card of respondent No. 1 and her daughter is not with them as it is separate. In paragraph 7 of his cross-

examination the said witness has admitted that the appellant had attended the marriage of his daughter and her photograph also appears in the photograph of the marriage.

18. On behalf of respondent No. 1, affidavit of evidence of Witness No. 3, one Babasaheb Hari Bachhe Patil was also placed on record. The said witness is brother of deceased. This witness was also examined to prove the point that his brother had married respondent No. 1 in the year 1978. In his cross-examination he has admitted that one Sarjerao Vishnu Patil is the brother of respondent No. 1. He has denied the suggestion that he is working in Tahsildar's office. The said witness in his cross-examination admitted the fact that he had seen the present appellant earlier when she visited village Shirala in the house of his sister Anusuya. The said witness has denied the suggestion that after the marriage of appellant with his deceased brother, both of them came to village Savarde each year during Diwali and summer vacations and also on the occasion of festivals and ceremonies. The said witness admitted the fact that he was aware that the appellant has delivered two children out of her marriage with the deceased.

19. After remand, respondent No. 1 herein also filed an affidavit of evidence at Exh. 54. She has produced the extract of Register of Births and Deaths showing the birth of her daughter Ms. Megharani on 6th October, 1990. According to her, said certificate was issued to her on 20th January, 2005 which is at Exh. 56. She has also produced the certificate showing entry of her name in the record of rights of the land. She has also produced abstract of electoral roll of the year 1980 wherein her name is shown at Sr. No. 451. According to her, there is a slight mistake in the name that instead of Rupali Patil her name is shown as Rooprani. She has also produced one photograph taken at the time of marriage, another photograph at the time of so-called marriage of a relative as well as photograph of her child. All these documents are produced by her after remand as the same were not produced earlier. She has also produced a certificate issued by the Headmaster of the school where her daughter Megha Rani studied showing the name of the deceased as her father. In her cross-examination, she has stated that she has not informed Talathi at the time of making entry of her name in the 7/12 extract that a dispute is going on as to who is the legally wedded wife of deceased. She denied the suggestion that she has obtained the birth certificate falsely and by giving false information to the Gram Panchayat. In the cross-examination she has also admitted the fact that no photographs were taken at the time of her marriage as there was no such practice and if she made a statement that photographs were taken at the time of marriage, it is a false statement.

20. The appellant herein also tendered her evidence after remand and it is her case that the marriage certificate produced by respondent No. 1 is fabricated and is produced after the death of the deceased. This is what the documentary evidence on record.

21. It is required to be noted that the marriage of the appellant with deceased

Krishna is not in dispute at all. The learned Counsel appearing for respondent No. 1 has fairly submitted that the said marriage is not in dispute. However, according to the learned Counsel for respondent No. 1, if the marriage of respondent No. 1 was earlier in point of time, then the second marriage of deceased with the present appellant would naturally be void. It is required to be noted that the name of the deceased is Krishna and not Krishnat. Keeping the said aspect in mind, the evidence on record is required to be appreciated. Considering the evidence of respondent No. 1, who was the original petitioner before the Family Court, it is clear that she was not aware when her so-called husband died at Mumbai. In fact, she has stated that she came to know this fact after eight days. As per the evidence of respondent No. 1, she was residing at Savarde with her in-laws. If that be so, it is difficult to understand as to why she was not aware about her husband's death.

22. It is required to be noted that even as per the evidence of the brother of deceased at exh. 45, he has clearly admitted in his cross-examination that the appellant attended the marriage of his daughter and her photograph also appear in the photographs of the marriage. From the above, the only inference which can be drawn is that the appellant was the only legally wedded wife of deceased Krishna. As per the oral evidence on record it is established that the deceased used to visit village Savarde. There is nothing on record to suggest that deceased had ever met respondent No. 1 or had sent any money towards her maintenance. As per the evidence, the deceased left for Mumbai immediately after passing his S.S.S. Exam. It is not in dispute that in the service record, the name of the appellant is shown as the wife of Krishna. Not only that, the deceased declared appellant as his nominee for the purpose of collecting the retiral dues.

23. It is required to be noted that respondent No. 1 has not produced any photographs of marriage ceremony, if at all marriage ceremony had taken place. Though in her evidence she has produced one photograph stating that it was taken at the time of marriage ceremony, there is no reason as to why no photographs of actual ceremony are produced on record. No independent witnesses have been examined from the village to prove that actually such marriage had taken place between respondent No. 1 and deceased. The photographs on record do not establish the factum of marriage between Respondent No. 1 and deceased Krishnat. It is required to be noted that at least the relatives of respondent No. 1 should have been examined to prove that they were present at the time of marriage ceremony. Even the mother of respondent No. 1 has not been examined to prove the said fact. There is nothing on record to show that the deceased had written any communication or letter or tried to meet respondent No. 1 at any point of time during all these years. If really out of the said wedlock, the girl Megarani was born, the deceased would have, as a natural father, met her when he visited the village. It is not in dispute that the deceased used to visit the village regularly. There is not a single photograph of the child with the deceased produced on record.

24. It is submitted by the learned Counsel appearing for the appellant that the marriage of the present appellant with Krishna was performed under the Special Marriage Act and as per the form prescribed for performing the marriage under the Special Marriage Act, one has to write as to whether he is bachelor or not and that the husband of the appellant had clearly mentioned in the said form that he is a bachelor. So far as the photographs produced by respondent No. 1 is concerned, no negatives have been produced. Even if a glance is made to the relevant photograph produced by respondent No. 1 wherein she is seen with the deceased, it cannot be said that the said photograph is a genuine photograph at all. In the first place it seems to be absolutely a tricked photograph. It is a scanned computer copy, the original of the same has not been produced. Respondent No. 1 has not even produced her school leaving certificate. No independent witness of village has been examined by respondent No. 1. As stated earlier, the most important witness was the mother of respondent No. 1 who is alive but was not examined for the reasons best known to respondent No. 1. Not only that, there is nothing on record to show that any money was sent by deceased to her for her maintenance.

25. In our view, after the remand by this Court, respondent No. 1 has tried to create false evidence. In the remand order, it is observed by the Division Bench that respondent No. 1 wanted to examine five witnesses as against that, only two witnesses have been examined after remand. Though an application was made to examine neighbours, no such neighbours were examined. The documents in question which are produced have not been proved in accordance with law.

26. It is interesting to note that respondent No. 1 was confronted with the photographs on which appellant has relied, respondent No. 1 could not even identify the deceased Krishna. If he was really her husband, naturally she was expected to identify the same in the photographs. So far as photograph at Exh. 19 is concerned, as we have observed earlier, it is highly doubtful photograph and seems to be a tricky photograph. In this the hand of the deceased is not at all visible. If one look at the photograph at Exh. 61A and photograph at Exh. 19, it is clear that it is part and parcel of same photograph but it is tried to be projected as if both are different photographs. So far as the certificate issued by the Headmaster is concerned, the Headmaster of the school has not been examined nor the said document is proved. Not only that even as per the said certificate, the name of the daughter is shown as Megarani Krishnat and not Krishna. If there is discrepancy in the name, then naturally a doubt is created about the genuineness of the claim put forward by the respondent. It is required to be noted that as per the extract of gazette which is at page 41 of the compilation which is dated 9th October, 1986, the name of deceased is changed from Bachhe Krishna Hari to Patil Krishna Hari. The name of the deceased, therefore, was not Krishnant. It is difficult to understand as to how even in the school leave certificate issued by the Headmaster, the name of the girl is shown as Bachhe Megarani Krishnant. It cannot be disputed that since 1986 the name

of deceased was changed to Bachhe Hari Krishna Patil and at no point of time deceased was ever known as Krishnat. In spite of the same, the certificate given by the Headmaster of the School wherein child Megarani was enrolled after her birth in 1990, the name of her father is shown as Krishnat and not Krishna. Even the birth certificate of the children of the present appellant it clearly mentions the name as Krishna and not Krishnant at any point of time. Even as per the certificate of birth of the second son of the appellant viz. Rohit who was born on 10-11-1990, the name of father is shown as Krishna Hari Patil. This certificate is also produced on record. The marriage certificate is also produced on record at Exh. 25 wherein the name of appellant's husband is shown as Krishna Hari Bachhe which name is subsequently changed to Krishna Hari Patil. The respondent No. 1 has not produced even the ration card to show that she was residing with the family members of the deceased. Even the document at Exh. 22 and other documents, the name of the deceased is shown as Krishna and not Krishnant. Even the so-called marriage certificate produced by respondent No. 1 shows the name accordingly. Even at the bottom of the said certificate is mentioned that it is meant for nonresident Indians. It is, therefore, doubtful as to how marriage certificate is granted by Gram Panchayat and whether Gram Panchayat is authorised to issue such certificate. The Respondent No. 1 has not even examined the person who has issued the marriage certificate to prove such document. It is required to be noted that neither the brother nor sister or mother of respondent No. 1 has been examined by her and it has come in evidence that because of the marriage of the appellant who belongs to Christian community with deceased Krishna that the relatives of her husband were annoyed and one of the brothers in his evidence has clearly admitted this fact. Even in the birth certificate of Megarani wherein she is shown to have been born on 6th October, 1990, the name of father is shown as Krishnat Hari Bachhe and not Krishna. The said certificate at Exh. 56 is issued by Gram Sevak of village Panhala, Dist. Kolhapur. Respondent No. 1 has not pointed out as to why the certificate is issued by the said Gram Panchayat when she was not concerned with the said village in any manner. So far as the revenue record is concerned, it is not in dispute that before entering the name of respondent No. 1, no notice was issued to the appellant and even otherwise entries in the revenue record are only for the fiscal purposes and it cannot be a proof to show the factum of marriage of respondent No. 1 with the deceased.

27. It is interesting to note that in the birth certificate of Megarani, the entry regarding the name is made on the same day when the child is born. According to the learned Counsel for the appellant, normally in the community the naming ceremony takes after 12 days of birth. The said certificate is highly doubtful in nature.

28. Considering the entire evidence on record, it is clear that after remand, respondent No. 1 has tried to create evidence which evidence, in our view, hardly inspires any confidence as the same have not been proved legally. As stated earlier, in a photograph where she is shown with the deceased, the same is

highly doubtful photograph and the negative of the same has not been produced. Not only that respondent No. 1 has not examined any independent witness who might have remaining present at the time of marriage. The mother of respondent No. 1 is also not examined. Considering the totality of evidence, in our view, respondent No. 1 has failed to prove that she had married with Krishna. As pointed out earlier, the name of deceased is Krishna and not Krishnant. Even the brother of deceased, has clearly stated that when he visited Mumbai, appellant was there in the house. Not only that she remained present in the village with the deceased at the time of marriage ceremony of his daughter. Considering the said aspect, if really respondent No. 1 was the wife of deceased Krishna, she would have immediately objected the presence of appellant in the village. There is not a single photograph produced on record showing the deceased with his daughter Megarani. The marriage of respondent No. 1 with the deceased had taken place in 1978. The deceased had left village in the year 1980. The said daughter Megarani was born in 1990 i.e. after 12 years of the so called marriage. Even thereafter there is nothing on record to show that the deceased had ever tried to maintain his so called daughter or paid any maintenance to respondent No. 1. It is not possible for us to believe that respondent No. 1 would not know the death of her husband as according to her she came to know about the same after about one week even though she was residing with her in laws. As stated by respondent No. 1, she had never been to Mumbai at her so called husband's place at any point of time. Considering the entire evidence on record, therefore, it is clear that an attempt is made to defeat the legitimate rights of the appellant and the theory of so called marriage of respondent No. 1 with deceased Krishnant is nothing but a cock and bull story only to defeat the legitimate claim of the appellant. The appellant's name is recorded as a nominee by the deceased husband in service records. It has come in evidence that because of appellant's marriage with deceased, his family members were not happy. Even in the evidence, the brother of deceased has stated that the brother of the deceased knew that the appellant had married deceased Krishnat.

29. Considering the aforesaid aspect of the matter, in our view, the learned trial Judge has completely misread the evidence and has merely given weight age to some photographs which we have discussed are extremely doubtful. Not only that, the negatives of the photographs are not produced. A close look at the two photographs produced by respondent No. 1 clearly shows that they are scanned copies of the computer copy and the originals have not been produced. From the evidence on record, it is clear that respondent No. 1 has failed to prove that she was legally wedded wife of Krishna Patil. Even the so called priest who has performed the marriage of respondent No. 1 with deceased has not been examined nor any particulars of the said priest have been given nor any independent witnesses have been examined to prove any ceremony of marriage like Saptapadi etc.

30. Mr. Arjunwadkar, learned Counsel appearing for the appellant, has drawn our attention to a decision of this Court in the case of Paryanibai Raghoji Dhendge v.

Bajirao Deorao Marathe 1961 64 Bom LR 86 wherein it has been held that entries in registers of births, deaths and marriages, cannot be an evidence by itself that the entries relate to or prove the births or deaths or marriages of the persons concerned. Evidence must be produced to connect the entries with the persons whose births or deaths or marriages have to be established.

31. Learned Counsel for the appellant has placed reliance on the decision of the Supreme Court in the case of Surjit Kaur Vs. Garja Singh and Others, wherein it has been held that mere living as husband and wife does not confer status of husband and wife. Without pleading any custom prevalent in the area and performance of ceremonies, mere statement that gur was distributed after marriage and the couple lived as husband and wife are not sufficient to establish a marriage.

32. Learned Counsel for the appellant has further relied upon a decision of the Supreme Court in the case of Bhaurao Shankar Lokhande and Another Vs. State of Maharashtra and Another, wherein it is held that for application u/s 494 of the Indian Penal Code, marriage must come within solemnized marriage. Solemnize means to celebrate the marriage with proper ceremonies and in due form. Mere going through certain ceremonies with intention of marriage will not make the ceremonies prescribed by law or approved by custom. Relying on the same, it is submitted by the learned Counsel for the appellant that respondent No. 1 has failed to prove that any ceremony was performed at the time when she married to the deceased.

33. Learned Counsel for the appellant relied on another judgment of the Calcutta High Court in the case of Joyita Saha v. Rajesh Kumar Pandey AIR 2000 Cal 109 wherein it is held that solemnised means to celebrate marriage with proper ceremonies and in due form. It is held that without evidence on record showing that ceremonies like Saptapadi and also Kanyadan were not performed, photographs of alleged marriage were not admissible in evidence as their negatives were not produced on record and, therefore, the marriage cannot be said to be solemnised according to Hindu rites.

34. Learned Counsel for the appellant has placed reliance on the judgment of the Supreme Court in the case of Vidyadhari and Others Vs. Sukhrana Bai and Others, wherein it has been held that a legally wedded wife is not automatically entitled to succession certificate to the exclusion of second de facto wife and her children, when the deceased had made nomination in favour of second wife to receive terminal benefits of his employment. In the said case to balance the equities, succession certificate was granted in favour of second wife instead of first wife subject to rider that first wife would get one fifth share of terminal benefits through second wife.

35. Learned Counsel for the respondent has submitted that if respondent No. 1 and the deceased had stayed and got a daughter out of the said wedlock, the Court can certainly presume that there was a valid marriage between the two. It

is no doubt true that in a given case if the husband and wife have stayed for a long time and when there is a child or children born out of the said wedlock, the Court may presume the factum about validity of marriage. However, in the present case, after going through the evidence on record, it is not possible for us to come to the conclusion that respondent No. 1 had ever married with deceased Krishna. There is not a single document produced by respondent No. 1 wherein the name of her so called husband is shown as Krishna. Even in her evidence, respondent No. 1 has clearly admitted that if she had made any statement that the photograph was taken at the time of her marriage, it is a false statement. It is not possible to place reliance on the scanned computer photograph placed on record and even at a glance of the photograph, one may get an impression that it is a tricky photograph. It was the duty of the respondent to prove the same in an appropriate manner.

36. It is required to be noted that respondent No. 1 belonged to village is Kalundre and her socalled husband i.e. Deceased Krishnat was hailing from village Savarde. Under these circumstances, the birth certificate issued by Gram Panchayat, Borpada regarding the birth of daughter of respondent No. 1 is highly doubtful as respondent No. 1 has not pointed out as to why the entry was made about the birth at Gram Panchayat Borpada. The said certificate does not give information as to who gave the information and even, as stated earlier, the name of the child normally would not be given on the very day of birth.

37. Learned Counsel for the first respondent submitted an application for examining the documents such as certificate of the Headmaster, abstract of the birth register etc. The learned Counsel for the appellant has objected the same. In our view, this matter is pending since long , we cannot accede such prayer now at such a belated stage as this Court had earlier remanded the matter asking the first respondent to prove the said documents. The respondent No. 1 has preferred the said Civil Application being C.A. No. 219 of 2009 for a direction to the authorities to produce the records relating to the items mentioned against their names under the provisions of Order 41 Rule 27 of the Civil Procedure Code. In our view, at such a belated stage when the matter is heard for final hearing, no ground is made out for bringing additional evidence on record. The said Civil Application is accordingly rejected.

38. Considering the aforesaid aspects, in our view, respondent No. 1 has failed to prove her case that she is legally wedded wife of deceased Krishna Patil. Because of this legal battle, the appellant has not received her just and lawful dues and claims which she is even otherwise entitled to as the wife of deceased Krishna Patil as well as on the basis of the nomination given by her deceased husband. As pointed out earlier, the deceased left his village in 1980 and thereafter married the appellant and two children were born out of the said wedlock. The appellant and the deceased Krishna Patil were staying throughout in Mumbai and at no point of time respondent No. 1 has even tried to contact her so called husband during the period when he was residing at Mumbai and started making

demand after the death of her so called husband. Considering the evidence, in our view, respondent No. 1 has failed to prove that she was married to deceased Krishna Patil before the marriage of the appellant with the said deceased. Considering the said aspect, the order of the trial Judge is not sustainable as the trial Judge has not considered the evidence in its proper perspective. The order of the learned trial Judge is therefore required to be quashed and set aside and accordingly the same is set aside. The petition filed by respondent No. 1 before the Family Court stands dismissed.

39. The appeal is accordingly allowed. The petition filed by respondent No. 1 before the Family Court stands dismissed. No order as to costs.