
(2017) 05 JH CK 0047
In the Jharkhand High Court
Case No : 219 of 2012

Sikndra Nawaz Khan

APPELLANT

Vs

The State of Jharkhand & Ors

RESPONDENT

Date of Decision : 10-05-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 498A](#) - Husband or relative of husband of a woman subjecting her to cruelty
[Special Marriage Act, 1954](#), [Section 4](#), [Section 24](#)

Citation : (2017) 05 JH CK 0047

Hon'ble Judges : H. C. Mishra, S.N.Pathak

Bench : DIVISION BENCH

Advocate : Gautam Kumar, Naresh Prasad Thakur

Judgement

1. Heard learned counsel for the parties.
2. The appellant is aggrieved by the the Judgment dated 27.09.2012, passed in MAT Case No. 36 of 2006/S.L. No. 79 of 2009, by Principal Judge (Family Court), Sahibganj whereby the suit preferred by the plaintiff under Section 24 of the Special Marriage Act, 1954 to get decree of declaration of marriage as null and void, has been dismissed.
3. The case of the plaintiff/appellant in brief is that his marriage was solemnised on 27.09.2002 with Indua Devi (defendant/respondent) at Maldah (West Bengal) under the provisions of Special Marriage Act, 1954 and a Marriage Certificate to this was issued by Special Marriage Officer, Maldah which is in possession of defendant/respondent. After their marriage both the parties started living together at village Lalban, P.S. Rajmahal, District - Sahibganj and was consummated. After few days of their marriage, the appellant came to know that respondent was earlier married to one Sri Ram Bilas, resident of village - Chakrafu Ekchari, P.S. Kahalgaon, District - Bhagalpur (Bihar) and out of said wedlock, she has a 13 years son who was studying at Mundli Mission School at

Mundli, P.S. Rajmahal, District - Sahibganj. The appellant further came to know that prior to her second marriage, the appellant had undergone operation for Vasectomy and as such she would not be able to conceive and give birth to the child. It is alleged that in order to claim paternal property of the appellant, the respondent had hatched a conspiracy and succeeded in solemnisation of second marriage with the appellant by playing fraud by concealing previous relationship. This led to strange relationship between the appellant and the respondent and resultantly there is no relationship between both of them and are living separately since long and Matrimonial Suit has been filed for declaring the marriage as null and void.

4. On being noticed, the defendant/respondent appeared and filed her written statement denying the allegations made in the plaint. The respondent further disclosed that at the time of marriage the appellant was doing job as a Government contractor and was also employed in a Truck and earning more than Rs.2 Lac. per year. It is further alleged that the appellant used to earn more than Rs.2,00,000/per annum out of his ancestral properties. The appellant was well aware about first marriage of the respondent with Ram Bilash. He was also well aware about her son Abhishek Kumar since his childhood who was born out of wedlock from her first husband. The respondent was friend of appellant's sister and this family relations developed into love affairs. Respondent had ended marital relation with previous husband and left the house under unavoidable circumstance to marry the appellant. Nothing was secret and appellant was well aware about entire things. It is further alleged that after their marriage, both the parties started living together with her son Abhishek Kumar. In the agreement dated 12.06.2002 executed by the appellant Sushil Kumar Yadav, all the previous matter has been duly disclosed. It is further alleged that there was no conspiracy to grab the properties of the appellant and she was treated by the doctor to reopen Vasectomy. The respondent has lodged an F.I.R. against the appellant as he has married with another lady Sanjy Kumar on 04.12.2006. The appellant is also known as Suhil Kumar Singh and Sushil Kumar.

5. On the basis of pleadings of the parties, following issues have been framed by the trial court. (1) Whether the present suit/ petition is maintainable?

(2) Whether the plaintiff/petitioner has got valid cause of action to sue?

(3) Whether respondent/ defendant Indu Devi is legally married wife of petitioner/ plaintiff?

(4) Whether the plaintiff/ petitioner was fallen in love since the school period?

(5) Whether the petitioner/ plaintiff had executed an agreement dated 12.06.2002 prior to registration of marriage?

(6) Whether the son Abhishek Kumar resided at Sahibganj along with his parents?

(7) Whether the marriage of petitioner/ plaintiff is valid one and prior to marriage, defendant had disclosed wrongly to the plaintiff?

(8) Whether the petitioner/ plaintiff entitled to any relief or reliefs?

6. After hearing counsel for both sides and perusing records, the learned Court below came to a finding that the matrimonial relation of Indu Devi (respondent) with Ram Bilash Singh (1st husband) had been broken down in the year 1998 and the appellant was well aware about it and thereafter, the marriage was performed on 27.09.2002 with consent of the parties. Issue nos. 1 and 2 decided in favour of the plaintiff/ appellant while issue no. 3 and 4 decided in favour of the defendant/respondent. While deciding Issue No. 5, the trial court has held that the agreement dated 12.06.2002 was executed in between the plaintiff/ appellant and the defendant/respondent i.e. prior to performing marriage and both parties had signed it and, thereafter the marriage was performed on 27.09.2002. While deciding Issue No. 6, the trial court has held that plaintiff/ appellant was well aware that Abhisek Kumar was born out from the wedlock of first husband of the defendant/respondent. Said Abhisek Kumar was residing with the plaintiff/ appellant and the defendant/respondent. While deciding Issue No. 7 and 8, the trial court has held that though no divorce had been granted by any court of law but first marriage was broken down in the year 1998 as per customs prevailed in the society and it can be presumed that respondent had no living spouse on 27.09.2002 because her first marriage was broken down in the year 1998. The Issue No. 7 and 8, therefore, decided in favour of the respondent holding her marriage valid in the eye of law. Trial court has further held that from the evidence and documents exhibited on record, it is apparent that both the parties enjoyed marital life. The plaintiff/appellant had also given his name to the son - Abhisek Kumar and as such he cannot deny that he was not aware about said son of defendant/respondent. Trial Court has further observed that there was a strained relationship between the appellant and the respondent after FIR being Rajmahal P.S. Case No. 224/2006 [G.R. No. 474/2006] for the offence under Section 498A of Indian Penal Code was lodged by the defendant/respondent and thereafter instant suit has been filed.

7. Learned counsel for the appellant submits that by adducing oral as well as documentary evidence the appellant has proved that his wife/defendant had concealed the first marriage with Ram Bilash and about her son Abhisek Kumar. Learned counsel further submits that solemnisation of marriage on 27.09.2002 during the lifetime of first husband without having divorce is in violation of Section 4 of the Special Marriage Act, 1954 and the same is null and void in the eye of law. Learned counsel further submits that plaintiff had an intention to grab the properties of the appellant and that is the reason she even did not disclose that she could not give birth to a child as she had already undergone Vasectomy and as such the marriage is null and void and fit for declaration of decree of divorce. Learned counsel further submits that the trial court has erred in recording the finding that the 1st marriage of the defendant/respondent was broken in the year 1998 as per the customs prevailed in the society and has presumed that the defendant/respondent - Indu Devi had no living spouse on 27.09.2002 and therefore held that the marriage of defendant/respondent with

plaintiff/appellant is valid. Learned counsel vehemently argues that the court below has totally erred while deciding Issue nos. 7 and 8 and as such, the impugned Judgment is fit to be quashed and the marriage between the parties to suit may be declared null and void.

8. On the other hand, learned counsel appearing for the defendants/respondents submits that there was a family terms between both the families and appellant was well aware about first marriage of the respondent. Nothing was concealed with the appellant and he was also well aware about son Abhisek Kumar as he himself had admitted him in Middle School, Krishnagar Middle School, Sahibganj in the year 2003. Learned counsel further submits that marriage was duly registered at Maldah (West Bengal) and a certificate to this effect has also been issued. Only because after second marriage of the appellant FIR has been lodged against him by the respondent, the instant case has been filed by him.

9. We have heard learned counsel for the parties and perused the records. I find force in the arguments of learned counsel appearing for the appellant that the issues, particularly Issue Nos. 7 and 8 has been wrongly decided in favour of the defendant/respondent. In this connection it is necessary to quote Section 4 of the Special Marriage Act, 1954. "4. Conditions relating to solemnisation of special marriages. Notwithstanding anything contained in any other law for the time being in force relating to the solemnisation of marriages, a marriage between any two persons may be solemnised under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

(a) neither party has a spouse living;

(b) neither party

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind or"

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the protection of children; or

(iii) has been subject to recurrent attacks of insanity;

(c) the male has completed the age of twentyone years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

(e) where the marriage is solemnised in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends."

From plain reading of proviso to Section 4 of the Special Marriage Act, it is clear that there is apparent violation of this provision at the hands of the defendant/respondent who has married with the plaintiff/appellant during lifetime of her 1st husband. Even if it is presumed that this was well within the knowledge of the

plaintiff/appellant, the defendant/respondent cannot be absolved from the liability of seeking divorce from her 1st husband. Thus, we find that the court below has erred in holding that the defendant/respondent - Indu Devi had no living spouse on 27.09.2002 only on the basis of presumption. There is apparent error in the finding of court below that the marriage of defendant/respondent with plaintiff/appellant is valid. Section 4(a) of the Special Marriage Act, 1954 clearly states that the marriage performed in between the spouse is valid only if at the time of marriage neither party has a spouse living. In the facts and circumstances of the instant case, there is apparent violation of this provision and as such, we are of the opinion that the impugned Judgment is fit to be quashed and the marriage between the parties to suit may be declared null and void. There is settled law that status of a Hindu women marrying a Hindu male with a living spouse, such marriage would be treated to be null and void.

We further find that the court below has also not considered that in the case of Smt. Yamuna Bai Vs. Anant Ram reported in AIR 1988, Page 644 the Hon'ble Supreme Court has laid down that where marriage was performed by a wife who has a living spouse, in that case the second marriage is null and void and it cannot be treated to be a marriage. It has further been held in the said case that the marriage of a women in accordance with Hindu Law with a man having a living spouse is a complete nullity in the eye of law and it is void from very inception and have to be ignored as not existing in law at all.

We further hold that the trial court has erred in law as well as in fact while deciding the issues in favour of the defendant/ respondent in as much as the defendant/ respondent did not take divorce from her first husband and in violation of the provisions of Section 4(a) of the Special Marriage Act, 1954 she married with the plaintiff/appellant. The second marriage of the defendant/ respondentwife has no legal sanctity in the eye of law during the living of spouse. Even if it is presumed that there was an Agreement dated 12.06.2002 executed between the parties, that does not absolve the defendant/ respondent from the conditions enumerated under Section 4(a) of the Special Marriage Act, 1954.

10. In this context it is relevant to mention here that Hon'ble Supreme Court, while dealing the case of Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav reported in (1988) 1 SCC 530 (relevant at Page 534, para 3) has taken the view that a marriage covered by Section 11 is void ipso jure, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by the Hon'ble Court that a formal declaration of nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in Yamunabai case there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void. The similar is the case at hand where the second marriage is ipso jure void and as such, the second marriage has to be ignored as not existing in law at all. Admittedly, on the day of second marriage of

defendant/respondent, the first husband was existing and she had not divorced him.

11. Considering aforesaid facts and circumstances, legal propositions and settled law, we are of the considered opinion that the instant appeal is fit to be allowed and the marriage of defendant/respondent with the plaintiff/appellant is fit to be declared null and void. Consequently, this appeal is allowed and Judgment dated 27.09.2012, passed in MAT Case No. 36 of 2006/S.L. No. 79 of 2009, by Principal Judge (Family Court), Sahibganj is hereby quashed by holding the marriage between the defendant/respondent and plaintiff/appellant as null and void.