

(2016) 06 CHH CK 0015
In the Chhattisgarh High Court
Case No : Second Appeal No. 156 of 2016

Smt. Pushpa Bai	Vs	APPELLANT
Gaukaran		RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Hindu Marriage Act, 1955 — Section 11

Citation : (2016) 4 CivilLJ 32

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr. Malay Kumar Bhaduri, Advocate, for the Appellant; Mr. Sameer Behar, PL, for the State/Respondent No. 7

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—Heard on admission.

2. The plaintiff's suit brought by plaintiff Smt. Pushpa Bai stating inter alia that she has a share in the property left by her husband Heera Ram Sonkar was dismissed by the trial Court holding that her marriage with Heera Ram Sonkar was null and void under Section 11 of the Hindu Marriage Act, 1955. The said judgment and decree was affirmed by the first appellate Court in appeal preferred by the appellant plaintiff. The Second appeal has been preferred by the appellant plaintiff against the judgment of the first appellate Court.

3. Mr. Malay Kumar Bhaduri, learned counsel for the appellant, would submit that the judgment of the civil court holding that the plaintiff's marriage with Heera Ram Sonkar was null and void in view of Section 11 of the Hindu Marriage Act, 1955 is unsustainable in law and raised substantial question of law as there is no formal declaration made by the competent court at the instance of husband or wife as the case may be and unless there is declaration by the competent court on application filed by husband or wife under Section 11 of the Act of 1955, the findings recorded by the two Courts below are unsustainable in law.

4. In the matter of M.M. Malhotra v. Union of India and others 2006(1) M.P.L.J. (SC) 1, Their Lordships of the Supreme Court in no uncertain terms have held that marriages covered by Section 11 of the Hindu Marriage Act, 1955 are void from the very inception and have to be ignored as not existing in law at all however, formal declaration through decree of nullity need not be obtained. Paragraph 10 of the report states as follows: -

10. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all, if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose."

5. In view of the aforesaid proposition of law clearly held by Their Lordships of the Supreme Court, it cannot be held that in absence of formal declaration from the competent Court, the civil court was incompetent to hold that marriage of the appellant plaintiff was void under Section 11 of the Act of 1955.

6. In the result, I do not find any substantial question involved in this appeal in view of the concurrent finding recorded by the two Courts below which are based on evidence. Consequently, the appeal deserves to be and is hereby dismissed in limine. No order as to costs.