
(2010) 08 AHC CK 0139
In the Allahabad High Court

Smt. Raman Pandey	Vs	APPELLANT
Rajesh Kumar Pandey and Others		RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Hindu Marriage Act, 1955 — Section 11, 16

Citation : (2010) 08 AHC CK 0139

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Mohd. Asif Khan, Learned Counsel for the appellant is appearing in the matter probono, after getting the allotment of brief from Legal Aid Committee, to represent Smt. Raman Pandey-the appellant. Shri R.P. Singh appears for the respondent.
2. This intra court special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 arises out of judgment of learned Single Judge dated 5.4.2006 by which the writ petition was allowed with directions to the Principal Chief Conservator (Forest) U.P. Lucknow to consider the case of Shri Rajesh Kumar Pandey-the petitioner-respondent No. 1 for appointment under dying in harness rules, on the death of his father late Shri Jayanti Prasad in harness.
3. Brief facts giving rise to this writ petition are that late Jayanti Prasad was posted as Forester in Ramnagar Range in District Basti. He died in harness on 19.7.2001. After his death Shri Rajesh Kumar Pandey, the petitioner-respondent No. 1 claiming to be son of Shri Jayanti Prasad and Savitri Devi filed an application for appointment on compassionate ground. His application was not decided for a long time. He was, thereafter, informed by the office of the Chief Conservator Forest, U.P. that one Smt. Raman Pandey has claimed to be legally wedded wife of late Shri Jayanti Prasad.

4. The petitioner, thereafter, moved an application before the authorities stating that his mother Smt. Savitri Devi was the legally wedded wife of late Jayanti Prasad. The marriage had taken place in accordance with the Hindu rites and that late Jaynati Prasad had never divorced Smt. Savitri Devi. His second marriage to Smt. Raman Pandey was illegal and void u/s 11 of the Hindu Marriage Act, 1955.

5. It appears that Smt. Raman Pandey had applied to the Sub Divisional Officer for correction of family register and to record her as the legally wedded wife of late Jayanti Prasad on the ground that Smt. Savitri Devi had left Shri Jayanti Prasad since 1981, after which her marriage should be treated to be abandoned and on that basis Smt. Raman Pandey claimed the entire terminal benefits.

6. After exchange of affidavits learned Single Judge came to conclusion that late Jayanti Prasad had never divorced Smt. Savitri Devi. The story of abandonment of the house and living with another woman to be treated as divorce was not accepted. It was held that under the Hindu Marriage Act valid marriage cannot be dissolved except by proceedings of divorce on a decree passed by the competent court. Even if the second woman may be living with the husband for a long time, after the first wife left the house, there is no presumption of divorce from the first wife. The second wife will not get any right from the illegal marriage. Her children, however, will be treated to be legitimate u/s 16 of the Hindu Marriage Act and will get a right in the property. Learned Single Judge also found that in this case the petitioner is son of Smt. Savitri Devi, the legally wedded wife of late Jaynati Prasad and on the basis of nomination made by Shri Jaynati Prasad the entire retiral benefits, pension and gratuity have been given to him. Learned Single Judge after considering the facts and the legal position held as follows:

In my opinion, if Smt. Raman Pandey is not legally wedded wife and the marriage of Smt. Raman Pandey is void. According to the Hindu Marriage Act she cannot claim the benefits to claim an appointment under Dying in Harness because she does not come under the definition of family. The judgment relied upon by the Counsel for the petitioner fully supports the contention of the petitioner.

7. We do not find any factual or legal error in the judgment of the learned Single Judge. There was no pleading or evidence to the effect that late Jayanti Prasad had divorced Smt. Savitri Devi or that their marriage was dissolved by decree of the competent court.

8. Learned Counsel for the petitioner submits that Smt. Raman Pandey has filed a suit and has obtained a declaration that she is legally wedded wife of late Jaynati Prasad and is entitled of his movable and immovable properties including terminal benefits of service and pension as his widow. The certified copy of the judgment of the Civil Judge (SD), Basti in Original Suit No. 588 of 2006 between Smt. Raman Pandey and Smt. Savitri has been produced.

9. A perusal of the judgment would show that after Smt. Raman Pandey, claiming

to be legally wedded wife lost in Writ Petition No. 18297 of 2002 between Rajesh Kumar Pandey son of Savitri Devi and Jayanti Prasad v. State of U.P. and that after she filed special appeal on 26th May, 2006, she filed the civil suit for declaration without disclosing to the trial court that she had contested the matter with Shri Rajesh Kumar Pandey in the High Court in which she had lost and that learned Single Judge has recorded a finding that her marriage with late Jayanti Prasad was not valid and legal. The judgment records that notices were sent to Smt. Savitri both by ordinary and registered post. The registered summons were returned back with endorsement that the defendants has refused to accept the summons and on the basis of it the Court recorded on 6.2.2007 that the service of notices is sufficient and passed an order on 4.8.2007 to proceed ex parte. The Court thereafter considered the evidence led by the petitioner namely copies of order of Tehsildar, khatauni, parivar register, voters list, resident certificate and decreed suit ex parte against Smt. Savitri.

10. The appellant filed the certified copy along with her affidavit and is relying upon it to challenge the judgment of learned Single Judge. Though it is pleaded that Smt. Raman Pandey, the appellant is poor lady and that she has approached the Legal Aid Committee of the court for pursuing the special appeal, we find that she is very clever woman and has played sharp practice on the Court. After contesting the Writ Petition No. 18297 of 2002 and after having lost by the judgment dated 5.4.2006, and filing special appeal, she filed civil suit without disclosing the filing of writ petition of Shri Rajesh Kumar Pandey, and the special appeal by her in the High Court. She appears to have managed to convince the Court to proceed ex parte and to decree the suit in her favour. She also did not deliberately implead Shri Rajesh Kumar Pandey son of Smt. Savitri Devi in the suit.

11. The appellant has not only played fraud on the Court of Civil Judge (SD), Basti by not disclosing the judgment of this Court and filing of special appeal. We may also observe that the Civil Judge without any evidence on record of the divorce between Jayanti Prasad and Savitri accepted the pleading and the evidence and held that the marriage between Jayanti Prasad and Savitri was dissolved and thereafter he had married Smt. Raman Pandey from whom he has two children.

12. Shri R.P. Singh informs the Court that Smt. Raman Pandey has filed yet another writ petition No. 4006 of 2005 claiming compassionate appointment and terminal benefits of late Jayanti Prasad, in which by judgment dated 24.8.2009 learned Single Judge proceeded ex parte against respondent Nos. 4 and 6 on the ground that service was deemed sufficient upon them as summons have not returned back either served or unserved. The Court proceeded ex parte and thereafter relying upon the judgment in Rameshwari Devi v. State of U.P. 2000 (1) ESC 577 (SC) that the children of the second wife should not be illegitimate and would be entitled to receive the benefit disposed of the writ petition on the ground that since the children out of second marriage though void are not illegal,

they would be entitled to terminal benefits. A direction was issued to release the entire retiral dues in favour of minor son Deepak Pandey in the form of fixed deposit in the nationalised bank, until he attains the age of 18 years. We are informed that the judgment of learned Single Judge dated 24.8.2009 has been stayed in special appeal.

13. So far as the legitimacy of the children out of second marriage is concerned, there is no doubt that there was sufficient evidence to establish that the children were born out of wedlock between Late Jaynati Prasad and Smt. Raman Pandey and therefore they will be legitimate and may be entitled to the share in terminal benefits. For that purpose the special appeal filed by Shri Rajesh Kumar Pandey is still pending.

14. We are, therefore, constrained to hold that the judgment of the Civil Judge dated 4.6.2010 in Original Suit No. 588 of 2006 between Smt. Raman Pandey and Smt. Savitri was obtained by playing fraud in as much as Smt. Raman Pandey did not disclose the proceedings and judgment of this Court dated 5.4.2006 in Writ Petition No. 18297 of 2002 and obtained decree ex parte. In view of the findings recorded by the learned Single Judge, which we are upholding, the decree of declaration cannot be sustained. The decree of declaration in Original Suit No. 588 of 2006 dated 4.6.2010 is declared to be void and inoperative. The certified copy of the judgment of Civil Judge (SD) Basti dated 4.6.2010 shall be made part of record.

15. The Registrar General will send a copy of this judgment to be placed in the record of Original Suit No. 588 of 2006 in the Court of Civil Judge (SD), Basti decided on 4.6.2010.

16. The special appeal is dismissed accordingly.