

(2018) 01 TP CK 0010
In the Tripura High Court
Case No : 08 of 2014

Smti. Renu Rani Roy & Anr

APPELLANT

Vs

Smti. Gita @ Anjali Roy & Ors

RESPONDENT

Date of Decision : 16-01-2018

Acts Referred:

[Hindu Marriage Act, 1955](#), [Section 7](#) -
Ceremonies for a Hindu marriage

[Family Courts Act, 1984](#), [Section 19\(1\)](#) -
Appeal

Citation : (2018) 01 TP CK 0010

Hon'ble Judges : T. Vaiphei, S. Talapatra

Bench : Division Bench

Advocate : N.C. Pal, A.C. Bhowmik, D.C. Roy, P. Chakraborty

Final Decision : Dismissed

Judgement

1. This is an appeal under Section 19(1) of the Family Courts Act arising from the judgment dated 22.05.2014 delivered in Title Suit (Matrimonial)

305 of 2009 by the Judge, Family Court, Agartala, West Tripura.

2. The appellant filed the matrimonial suit for declaration with consequential relief. The dispute as projected by the plaintiff in the suit is that she was

married by one Ashok Kumar Roy, since deceased and in the wedlock a female child (the respondent No.2) was born. The plaintiff No.1 has

asserted that she used to stay with said Ashok Kumar Roy, since deceased. Even though she was subject to assault by Ashok Kumar Roy, she

had been tolerated the cruelty considering the future of her daughter. Thereafter, a male child was also born in the wedlock. The plaintiff, the

appellant herein has asserted that she was sent to Bangladesh along with her two children by Ashok Kumar Roy saying that he would leave for

Kolkata to attend three months" training there. But the plaintiff No.1 was not brought back from Bangladesh. Later on, she came to learn that

during her absence that Ashok Kumar Roy contracted another marriage with his maid servant, namely Gita alias Anjali Roy, the defendant No.1.

They were living together. When she came back from Bangladesh the plaintiff No.1 had become the target of physical and mental harassment of

both the defendant No.1 and her purported husband namely Ashok Kumar Roy. The son of the plaintiff died due to inadequate medical care.

Much later, the plaintiff No.1 approached the court for maintenance.

3. The said suit for maintenance being T.S. 183 of 2007 could not be drawn to its logical end inasmuch as during pendency of the said suit, Ashok

Kumar died on 07.06.2008. After death of Ashok Roy, the defendant No.1 and other approached the ONGC where Ashok Roy was employed

to receive the service benefits on account of Ashok Roy concealing the real fact that the defendant No.1 is not the legally married wife and the

defendants No.2 and 4 are the illegitimate daughters of late Ashok Kumar @ Ashok Roy by the defendant No.2. Hence the appellant filed the suit

to establish her status and right over the estate of Sri Ashok Kumar Roy as the legally married wife.

4. The defendants No.1, 3 and 4 contested the suit by filing the written statement. The defendants No.1, 3 and 4 totally denied the claim of the

appellant and stated that Ashok Kumar Roy, since deceased never married the plaintiff No.1 and from such marriage there were no children. In

the written statement those defendants have categorically stated that by suppressing the material facts the plaintiffs have instituted T.S. 73 of 2008,

but the said suit was withdrawn on 02.12.2009. As such the present suit of the plaintiff is not maintainable as no leave was taken from the court for

filing a fresh suit on the same subject matter. The defendants No.1, 3 and 4 have stated that the defendant No.2 is the nominee in the Service

Book of said Ashok Kumar Roy @ Ashok Roy and as such she is entitled to receive the service benefits for death of Ashok Kumar Roy. The

Sub- Divisional Magistrate, Bishalgarh had also issued the survival certificate in favour of the defendants No.1-4. So none else but the defendants

No.1-4 could only claim the right over the estate of said Ashok Kumar Roy.

5. On the face of such rival contentions the following issues were framed by the

Family Court, Agartala, West Tripura:

- (i) Whether the suit is properly valued and stamped under the Court Fees Act?
- (ii) Who is the legally married wife of Late Ashok Kr. Roy, either the plaintiff No.1 or the defendant No.1?
- (iii) Whether the plaintiff No.2 has got locus-standi to claim the service/pensionary benefits or debts and securities left by Lt. Ashok Kr. Roy?
- (iii) What other relief or reliefs the parties are entitled to?

6. To substantiate their claim the plaintiffs adduced three witnesses including the elder brother of said Ashok Kumar Roy namely Ranjit Kumar

Roy (PW-2). The defendants examined two witnesses including the defendant No.1, Smt. Anjali Roy who was nominated by Ashok Kumar Roy

as the nominee in his service record. The Family Court after recording the evidence as stated has returned the finding that the plaintiffs have failed

to establish "the marriage between the plaintiff No.1 and Shri Ashok Kumar Roy @ Ashok Roy and that in the wedlock the plaintiff No.2 was

born". It has been observed by the Family Court in the impugned judgment as under:

But I find that the witness nowhere stated regarding performance of requisite ceremonies and "saptapadi" around the sacred fire etc., rather during

her crossexamination, she stated that she even could not remember the name of the priest who conducted the marriage though she stated that the

priest had expired. The witness further stated in her cross-examination that she could not remember the year when she went to Bangladesh and

came over to India. It is also stated by the PW-1 during cross-examination that her marriage was solemnised at Teliamura in the house of her aunty

and she is still alive but no such aunty is produced by the plaintiff as an witness in this case. The maternal uncle of the aunt who took the initiative

and arranged for the marriage of the plaintiff as stated by her during chief were also not produced as witness of this case. Besides, I also find that

the plaintiff Smt Renu Rani Roy categorically stated in her examination-in-chief that after her marriage she was taken to her matrimonial home and

then in a rented house at village Gamaibari, Teliamura, where she resided with her husband for more than 2 years, but I find no such witness of that

area could be produced by the plaintiff as a witness in support of said fact as stated by the plaintiff No.1 herself. No Birth Certificates of her son or

daughter could be produced to show that the children were born during wedlock of the plaintiff No.1 and her husband Ashok at that time, rather

she stated during cross-examination that though her daughter Ruma had taken some education at Agartala but she does not have any paper in

support of the fact. No identity card or even voter identity card of the plaintiff No.1 or her husband is produced by the plaintiff to show the relation

in between them and their residential address at that relevant period. No explanation for non-submission of aforesaid witness and documents could

also be given by the plaintiff No.1 in this case. The citizenship certificate produced by the plaintiff under Exbt. P.1 goes to show that the certificate

was issued on 18-10-1977 in favour of Smt Renu Rani Roy showing the name of her husband as Ashok Kumar Roy. It is also mentioned in the

citizenship certificate that Smt Renu Rani Roy was a resident of North Banamalipur, under East Kotwali, West Tripura. But I find that during her

cross-examination this PW-1 stated that she cannot remember in whose house she used to reside at North Banamalipur and she also could not

show any paper relating to the application of citizenship certificate submitted by her husband at any point of time. In such a circumstances, it is

hardly possible to rely on the document (Exbt. P.1) as the proof of a valid marriage of the plaintiff No.1 with said Ashok Kumar Roy as per Hindu

rites and customs. There is no doubt that it is for the party who claim to have been married to a person to show that the customary rites and

ceremonies were performed. Factum of marriage is also to be established by appropriate pleadings which is also absent in or present case.

7. It has been further observed by the Judge, Family Court that:

...it appears that the defendant No.1 have been residing with Ashok Roy (deceased) for a considerable period as husband and wife and the

defendants No.2, 3 and 4 were begotten during their wedlock, a strong presumption of marriage certainly can be inferred from the circumstances

specially when the deceased Ashok Roy made nomination in his service book in favour of the defendant No.1 showing her as his wife and also the

defendants No.2, 3 and 4 showing them as his children. The document under Exbt. 1-Series i.e, the voter identity cards of Purnima Roy and

Aparna Roy i.e, defendant No.3 and 2 respectively also goes to show that the name of Ashok Roy was shown their as her father. The copy of

Admit Card issued by the Tripura Board of Secondary Education (TBSE) and the Admit Card of TBSE issued in favour of Purnima Roy under

Exbt.2 Series also indicate that the name of Ashok Kumar Roy was recorded in both the documents as father of the defendants No.2 & 3

respectively. The copy of Admit Card under Delhi Board of Secondary Education (DBSE), Delhi, in favour of Gopal Krishna Roy i.e, defendant

No.4 goes to show that the name of Ashok Kumar Roy and Anjali Roy (defendant No.1) were recorded therein as his father and mother. The

copy of document issued by the Colony Dispensary, ONGC under Exbt. 1 series also indicate that the defendants had been enjoying the medical

facilities from the dispensary under ONGC as wife and children of the deceased Ashok Kumar Roy.

On the basis of such finding the suit was dismissed and the plaintiff has filed this appeal challenging the above finding on the ground that the finding

and observations are outcome of mis-reading of the evidence as placed on record.

8. Mr. N. C. Pal, learned counsel appearing for the appellant has strenuously argued that the plaintiff (PW-1) has elaborately stated during trial

how the marriage between her and Ashok Roy @ Ashok Kumar Roy had taken place. The said statement has been corroborated by the elder

brother of Ashok Kumar Roy, namely Sri Ranjit Kumar Roy, PW-2. PW-2 has categorically stated that as per the direction of his mother he

arranged the marriage of his younger brother, namely Ashok Kumar Roy with Smt. Renu Roy (the plaintiff) and the said marriage was solemnized

in the house of Shri Haribal Saha at Kalitala, Teliamura on 29th of Sravana 1380 BS. She has also stated that Ashok Kumar Roy and the plaintiff

No.1 had lived as husband and wife for quite sometime. Later on in the year 1977, the plaintiff No.1 and the plaintiff No.2 and the minor son

namely, Ashit Roy, now deceased approached PW-2 with the complaint that Ashok Kumar Roy was cohabiting with his maid servant namely Gita

@ Anjali Roy. Several meetings were conducted by the family members to settle up the matter, but all went in vain. Even the local club and the

neighbours had tried their level best to conciliate the matter, but they could not achieve.

9. PW-3 is the husband of the younger sister of Ashok Kumar Roy, since deceased. He has also stated that he was invited for the marriage

ceremony between the plaintiff No.1 and said Ashok Roy @ Ashok Kumar Roy. But he could not attend the marriage. But he heard from the

family elders that Ashok Roy married the plaintiff No.1. There is no dispute that the PW-3 did not see the marriage which was solemnized. What

heard from PW-2 he had just narrated that episode in the court. When he was asked whether he could produce the invitation letter (the card for

inviting in the marriage) he said that he did not preserve the card and as such he was not in a position to place the same in the evidence.

10. For the defence, the defendant No.1 (DW-1) has stated elaborately how the marriage between her and Ashok Kumar Roy had taken place.

She has categorically stated thus:

I was married with my deceased husband Ashok Kumar Roy on 15.08.1977 in my parental house located at Melaghar as per Hindu rites and

customs. My elder brother Sri Jiban Krishna Dey performed the ceremonial occasion of my marriage and my brother as per Hindu rites handed

over me to my husband. At the time of our marriage, my husband was working as driver, but subsequently he got a job as driver in ONGC. After

our marriage, we initially stayed in a rented house at Nimbark and thereafter to Siddhi Ashram and subsequently purchased a plot of land at

Kanchanpalli near ONGC Complex and started living in that house after constructing new dwelling house. Any my husband and myself were living

in our house till his death and during our living together as husband, res. No.2, 3 and 4 were born. My youngest daughter Smti Purnima Roy was a

graduate, but my elder daughter could not pass BA and my only son has been prosecuting his studies in Tripura University. My daughters were

given in marriage when my husband was alive and the husband of my eldest daughter is a businessman and the husband of my youngest daughter

has been serving as Engineer at Ambassa. After death of my husband I collected the death certificate of my husband and also obtained a survival

certificate from SDM, Bishalgarh and at the relevant time, Smti Tanusree Debbarma was an SDM, Bishalgarh. In the service book of my husband,

I was shown as his wife and my children were shown children of my husband. I have furnished copies of documents in which the father of my

children was shown as Ashok Kumar Roy and other documents including survival certificate. Nomination in the service book, Voter ID, Admit

Card/Admit Card of my daughter and son, Citizen Certificate of my daughter and son etc. were furnished to this court [see Exbt. A, B. C.

D(series), E(series), F(series), G, H, I, J(series), K, L etc.]

11. DW-2, Gopal Krishna Roy is the son of Ashok Roy, since deceased and Anjali Roy. He has categorically stated that they had strained relation

with Ranjit Roy and Jogendra Debnath. To conspire against them, the suit has been filed as designed by Ranjit Roy and Jogendra Debnath.

12. We have appreciated the evidence as well as the submission of the learned counsel appearing for the parties and of the view that by returning

the finding as stated above, the Family Court did not commit any irregularity or illegality as alleged or at all. On the standard of preponderance of

probability the Family Court has correctly observed that the plaintiffs have failed to establish their claim in respect of their status and as such this

court is not inclined to interfere with the judgment. The Trial Court has correctly observed that the "Hindu Marriage" [the rites and ceremonies

including saptapadi in terms of Section 7 of the Hindu Marriage Act, 1955] could not be proved as the rite and customs. Even has not been

averred and proved. From the evidence as led by the defendants it has been clearly established that Ashok Roy @ Ashok Kumar Roy was only

living with the defendants No.1 to 4 and in all their records his name has appeared as the husband or father. In the service record, the defendant

No.1 has been nominated as his nominee, but no document of such nature could be produced by the plaintiffs. From the common course of the

natural events, human conducts etc., this court has been prompted to presume that the marriage between the defendant No.1 and Ashok Roy,

since deceased is reliable probability. But the marriage between the plaintiff No.1 and Shri Ashok Roy could not be proved as there is total

absence of evidence in respect of rites and customs of a valid Hindu Marriage. Thus the impugned judgment cannot be faulted with.

In the result, appeal fails and it is accordingly dismissed.

Draw the decree.

Transmit the records forthwith.