
(2018) 06 GAU CK 0026

In the Gauhati High Court

Case No : RSA 116 of 2018, I.A.(Civil) 1542 of 2018, I.A.(Civil) 632 of 2017

Smti Trishna Boruah Konwar

APPELLANT

Vs

Smti Alakananda Devi Konwar And Anr

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Special Marriage Act, 1954 — Section 24(1)(i), 31
Specific Relief Act, 1963 — Section 34
Code Of Civil Procedure, 1908 — Section 9

Citation : (2018) 06 GAU CK 0026

Hon'ble Judges : PRASANTA KUMAR DEKA, J

Bench : Single Bench

Advocate : P Mahanta, A. Barkataki, K. Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. P. Mahanta, the learned counsel for the appellant. Also heard Mr. M. K. Choudhury, the learned senior counsel assisted by Mr. A.

Barkataki, the learned counsel for the respondents.

2. This second appeal is preferred by the defendant/appellant No.1 thereby impugning the judgment and decree dated 15.09.2016 passed in Title

Appeal No.3/2016 by the learned Civil Judge, Tinsukia. The said First Appellate Court's judgment arose out of the judgment and decree passed in

Title suit No.18/2013 passed by the learned Munsiff No.2, Tinsukia dated 23.12.2015. The plaintiff/respondent filed the suit for declaration of the

marriage dated 22.02.2013 between the defendant and the proforma defendant is illegal, null and void amongst other reliefs including permanent

injunction against the present defendant/appellant. The proforma defendant is also the husband of plaintiff/respondent and she is the first wife. The suit

was resisted by the defendant/appellant by stating that the suit is not maintainable in the Court of the learned Munsiff inasmuch as the marriage between the defendant/appellant and the proforma defendant was solemnized under the Special Marriage Act and as such the same ought to have been preferred in the District Judge, Tinsukia. It is the contention of the plaintiff/respondent that during the validity of the marriage between her and the proforma defendant/husband and that too during the lifetime of the plaintiff/respondent, her husband/proforma defendant cannot get married to the defendant/appellant inasmuch as there is a specific bar under the provision of Special Marriage Act. The subsequent marriage between the defendant/appellant and the proforma defendant/husband was not disputed by either of the parties to the marriage. Even then as the defendant/appellant claimed herself to be the legally married wife of the proforma defendant/husband, as such the plaintiff/respondent, in order to get her status as the married wife of the proforma defendant/husband affirmed, filed the suit seeking reliefs hereinabove mentioned.

3. The learned Munsiff No.2 at Tinsukia, on the basis of the pleadings, framed issues and amongst others, whether the suit is maintainable and whether the marriage between the defendant/appellant and the proforma defendant/husband is illegal, null and void and the plaintiff is entitled to get the decree as prayed for. The learned trial court held the Issue No.2 in the negative, i.e., against the plaintiff/respondent holding that the said Court has no jurisdiction to try the suit inasmuch as the relief claimed by the plaintiff/respondent is within the purview of Section 24 (1) (i) of the Special Marriage Act and as such the learned District Judge has the exclusive jurisdiction as per Section 31 of the said Special Marriage Act. Accordingly, the suit was dismissed.

4. Being aggrieved, the plaintiff/respondent preferred Title Appeal No.3/2016 in the Court of the learned Civil Judge, Tinsukia which was allowed thereby decreeing the suit vide judgment and decree dated 15.09.2016. Thereafter the present second appeal has been preferred by the defendant/appellant.

5. Mr. Mahanta submits that from the nature of the relief claimed by the plaintiff/respondent there is a specific bar in deciding the suit by the Court of learned Munsiff and the same as per Section 31 of the Special Marriage Act

ought to be decided by the learned District Judge, Tinsukia. It is also submitted that the plaintiff/respondent is not the proper party to seek for the relief of nullity of the marriage between the defendant/appellant and the proforma defendant/husband. Mr. Mahanta also submits that the learned court below was wrong in annulling the marriage between the defendant/appellant and her husband/proforma defendant merely on the allegation leveled by a stranger to the said marriage. Accordingly, he sought for admission of this second appeal on the ground of wrong application of the jurisdiction by the First Appellate Court.

6. Mr. Choudhury, the learned senior counsel, on the other hand, submits that there is no infirmity in passing the judgment and decree by the First Appellate Court inasmuch as it is the status of the plaintiff/respondent seeking as consequential relief after getting the marriage between the defendant/appellant and the proforma defendant/husband annulled the proforma defendant is the husband of the plaintiff/respondent and as such the first wife has the right to seek her declaration of her status as the legally married wife of the husband/proforma defendant.

7. Considered the submission of the learned counsel. This is a case wherein the first wife of the common husband of the plaintiff/respondent and the defendant/appellant has filed a suit in order to get her declaration as the legally married wife with proforma defendant and in order to get the said declaration until and unless marriage between the defendant/appellant and the proforma defendant/husband is declared null and void till then, the consequential relief of the status of the plaintiff/respondent cannot be declared by the Court.

8. Section 34 of the Specific Relief Act, 1963 stipulates the discretion of the Court as to the declaration of the status or right. Any person entitled to any legal character, may institute a suit against any person denying or interested to deny, his or her title to such character and the Court has its discretion to give a declaration that he or she is so entitled. Even if the said suit is held to be barred under Section 34 of the Specific Relief Act, 1963 then also the suit is not barred under Section 9 of the CPC. The plaintiff/respondent has a right to claim the status as wife of the proforma defendant inasmuch as the subsequent marriage is null and void per se and the same is specifically hit under the specific provisions of Special Marriage Act.

Though this second appeal is based on the judgment and decree passed by the learned First Appellate Court reversing the finding of the learned trial

court, even then, in my opinion, there is no substantial question of law to be involved inasmuch as the suit is filed by a stranger to the marriage

between the defendant/appellant and the proforma defendant/husband and the said marriage has affected the status of the stranger. Under such

circumstances, the Civil Court has the jurisdiction to decide and the learned Civil Judge has rightly held to be so inasmuch as the suit cannot be termed

to be within the ambit of scope of the Special Marriage Act only.

9. Accordingly, I do not find any substantial question of law involved in this second appeal and the same stands disposed of.