
(1999) 09 CAL CK 0015

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.A. No. 38 of 1997

Sri Naba Kumar Mondal

APPELLANT

Vs

Smt. Lilabati Mondal and Others

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Hindu Marriage Act, 1955 — Section 12(1)

Citation : (2000) 1 CALLT 1 : (2000) 1 DMC 709

Hon'ble Judges : Vinod Kumar Gupta, J; Prodyot Kumar Sen, J

Bench : Division Bench

Advocate : Mr. Supriya Roy Chowdhury, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Sen, J.—This matrimonial appeal is at the instance of the husband and is directed against an order of dismissal of his petition u/s 12(1)(c) of the Hindu Marriage Act, passed by Sri T.K. Ghosh. Additional District Judge, 14th Court, South 24 Parganas at Alipore.

2. The husband, who happens to be the appellant before this court, filed a petition for annulment of marriage u/s 12(1)(c) of the Hindu Marriage Act (herein after referred to as the said Act) upon the ground that the respondent wife had practised fraud upon him. His case is that he got married with respondent No. 1 on 7.5.90 upon negotiation. The husband, before marriage desired to have a bride of fair complexion and must have passed School Final Examination and must be below twenty-one years of age. Matchmaker approached the husband and thereafter marriage was settled between the appellant and respondent No. 1 at the Intervention of the matchmaker and respondent No. 2 and 3 who are brother and father respectively of the respondent wife. It was represented that wife is a fair complexioned girl of twenty years of age having passed the School Final Examination and so the marriage was settled. The marriage was solemnized on 7.5.90 as per Hindu rites and customs. After the marriage, the parties began to live together as husband and wife and the husband desired that the wife

should get her admitted in Class XI of a school, but the respondent wife was reluctant. When she expressed her unwillingness to proceed her further studies, the husband became surplus and went on pursuing as to whether the wife had actually passed School Final Examination. Subsequently, on a day In July, 1990. the husband asked his wife to recite a Bengali poem, but the wife could not Thus, further suspicion arose In the mind of the husband and he searched for educational qualification of his wife.

3. The respondent wife left the house on 1.8.90 for her parental home In order to bring School Final Certificate and Admit Card, but she could not bring those papers. One Ratan Mondal, a brother-in-law of the wife disclosed that the respondent wife read upto Class X only. Finally, the wife could not produce any Certificate showing her educational qualification and the husband came to know that she was aged twenty-seven years at the time of marriage and so upon these allegations, the husband lodged a petition before the District Judge, South 24 Parganas with a prayer for annulment of the marriage. His further case Is that he came to know of the fraud some time In 1993 and thereafter he filed a petition referred to as above.

4. In contesting the claim of the husband and upon filing of a written statement, the wife asserted that the suit is not maintainable as it is barred by limitation. One years after the date of marriage, the husband started misbehaving with the respondent wife for reason best known to him. The wife stayed at her matrimonial home till 15.1.93. She came to her parent's home being accompanied by her husband on 15.1.93 since then she has been leaving at her parent's home. The respondents further asserted that the petitioner had agreed to many the respondent wife knowing fully well her educational qualification and her age. Marriage was duly consummated. The husband had brought the suit with some ill motive and for the purpose of harassing the wife and accordingly all the respondents pray for dismissal of the suit.

5. Upon those pleadings, the learned trial Judge framed the following Issues and the suit was heard upon those issues. The Issues are :--

(1) Is the suit maintainable in its present form and in law? Is the suit barred by limitation?

(2) Was the marriage between the petitioner and the respondent No. 1 vitiated by fraud?

(3) Is the petitioner entitled to get the decree for annulment of marriage and recovery of damages etc. as prayed for?

(4) To what other relief/reliefs, if any is the petitioner entitled?

6. The trial court decided all the issues against the plaintiff-husband and dismissed the suit Hence the appeal.

7. The learned advocate, Sri Asoke Banerjee appearing for the plaintiff/ appellant

has submitted before us that it is a fit case where an order u/s 12(1)(c) of the said Act should have been passed by the trial Judge as according to him it is apparent that all the respondents have practised fraud and the marriage was vitiated by such fraud and mis-representation. As against thus, the contention of the respondent wife is that the suit is barred by limitation and there is no question of annulment of the marriage.

8. Therefore, the points for consideration in this appeal is whether It is barred by limitation and whether the marriage between the Parties was vitiated by fraud.

9. Now. let us take the question of limitation as it strikes at the root of the present litigation. Admittedly there was a marriage between the appellant and respondent No. 1 and it was a negotiated marriage, the marriage having taken place on 7.5.90 and it was solemnized according to Hindu rites and customs. The instant petition is one u/s 12(1)(c) of the Hindu Marriage Act and therefore it is mandatory that such petition should be presented within one year from the date of the marriage. Now. In this case, the marriage admittedly took place on 7.5.90, whereas the Instant petition for annulment was filed on 12.3.93. Now, according to the husband, he came to know of the fraud for the first time on 19.9.92 when he went to Sarada Vidyapith to ascertain as to whether his wife passed the School Final Examination from that school. The learned advocate appearing for the husband submitted that the suit was filed within time as he came to know of the fraud for the first time on 19.9.92 and limitation should run from that date. But this contention was not accepted to the learned trial court. It appears from his cross-examination of the plaintiff (vide deposition of P.W.I) that on 19.1.92, he came to learn that his wife had not passed Madhyamik Examination. P.W.2, Shankar Chakraborty, is a friend of the respondent and he stated In his evidence that on 1.9.90, the wife respondent disclosed her educational qualification in writing and he (that is P.W.2) handed over the said writing to the husband subsequently.

10. In paragraph 13 of the petition for annulment of the marriage, the husband has stated "although the marriage was initially consummated, yet there has not been sexual cohabitation between the appellant and respondent No. 1 between 1st August 1990 and till the date of the institution of this suit.

11. A question will naturally arise why there Is no joint leaving, that is no cohabitation after 1st August. 1990? In his evidence. P.W.I that Is the husband stated that after 1st August, 1990. he went to police station for lodging a diary. Now. lodging a diary against a wile Is an extreme measure and It only suggest that by that time, the love and affection of the husband for the wife had disappeared, which prompted him to resort to police station for the purpose of doing something which will go against their married life. It only Indicates that by that time, the husband must have known the alleged fraud and "so he made up his mind to bring an end to their marriage life. We have already mentioned that during deposition, the husband stated that on 19.1.92, he came to know from the school that his wife did not pass the Madhyamik Examination. Therefore, he

must have known the alleged fraud then.

12. Much has been said with regard to a letter (Exhibit "2") said to have been written by the wife. It contains a declaration made by the wife herself that she did not pass the School Final Examination. This letter appears to have been written on 1.9.90 and it is in evidence that P.W.2 obtained that letter from the wife on 1.9.90 and handed over the same to the husband. It Indicates that the husband came to know of the alleged fraud on 1.9.90, but he did not file the petition Immediately. He waited till 12.3.93 and on that date he filed a petition when his relief had become barred by limitation. In a case reported in 1986, Matrimonial Law 318, a suit on the ground of section 12(1)(c) is not maintainable If it is filed beyond one year. The period of limitation Is mandatory and it is neither relaxable nor open to condonation. Therefore, the period of limitation cannot be condoned and we find that the Instant petition filed by the appellant/ husband was barred by limitation when was presented before the trial court.

13. Forgetting for a moment, the question of limitation, let us now examine the merit of the case.

14. The husband has sought for annulment of the marriage u/s 12(1)(c) of the said Act on the ground that the marriage was performed after practising fraud upon him. To prove a case of fraud, the party alleging the fraud must establish the particulars of fraud and how it was practised. In this case, the definite case of the husband was that before marriage his demand was that the bride's age should be not more than 21 years and she should fair complexioned and must have passed School Final Examination. This desire according to the petitioner husband was conveyed to his matchmaker namely Govinda Kayat and Chitra Sardar and they acted as matchmaker in the Instant marriage. According to the husband, matchmaker Govinda Kayal had Informed him that a bride having requisite qualification was traced out. He accompanied the petitioner husband and his two brothers to the house of respondent No. 3 on 25. 3.90 for the purpose of negotiation of the marriage. The husband further asserted that the respondent No. 3 who happens to be the father of the bride had disclosed before them that the bride had passed Madhyamik Examination and she was aged about 20 years. The husband further slated that respondent No. 2 who was the brother of the bride had showed some certificates of Madhyamik Examination of the girl during the marriage negotiation. But the petitioner husband did not dare to examine either of the matchmaker for reasons best known to him. The matchmaker could have been the best witness on this point that is to say they can enlighten the court as to what was the demand of the husband with regard to the standard of his expected bride. I do not know what prevented the husband to examine either of the matchmaker. It may be so that they may negative the case of the husband. Admittedly, the marriage was solemnized on 7.5.90 and the couple lived together till 1.8.90 as husband and wife. Thereafter, as per evidence on record they did not live Jointly. Thus, barring the testimony of P.W. 1, there is nothing with regard to the case of the husband that he wanted a fair

complexioned girl, below twenty years of age, having passed School Final Examination for his life partner- P.W.2, Shankar Chakraborty is a friend of the husband having no knowledge about the negotiation of the marriage. He does not know what the husband petitioner wanted before the marriage and what was his demand with regard to the nature and quality of his bride. As against this, the respondent wife has examined herself as a witness (D.W.I) and has proved a certificate vide (Exhibit "B") wherefrom it appears that she was aged 19 years and few months at the time of her marriage. The husband stated on oath that on 19.8.92, he went to Sarada Vidyamandir wherefrom he came to know that the respondent wife read upto Class XI Standard and she was aged about 27 years at the time of her marriage, but to prove that fact there is no evidence. The husband could have called for the Admission Register of the school to prove the age of the wife. On the other hand, Exhibit "B" discloses that the wife was a student of Class VIII of the said Institution during the academic session of 1988-89 and she passed the annual examination of the same year and was promoted to Class XI. This document also shows that her date of birth as per school admission register was 4.2.71 which indicates that she was 19 years old at the time of marriage. Therefore, the case of the husband that the wife was 27 years of age fails.

15. The admit cards of Madhyamik Examination of Bihar School Board (Exhibit "C" and "D") indicate that her date of birth was 4.2.71. This confirms that the statement made in Exhibit "B" and it gives a death blow to the case of the husband that the wife was aged 27 years etc. Another statement made by the husband that he was shown a false certificate to the effect that the wife had passed School Final Examination, but there is no evidence on this point. The respondent wife categorically denied this case of the husband. It was the definite case of the wife that she read upto Class VIII at Rainkrishna Sarada Vidyamandir and subsequently she read in another school and passed the Madhyamik Examination from Bihar School Board in 1994. Thus, the husband had miserably failed to prove that a false certificate was shown to him at the time of marriage negotiation or it was represented to him that the bride had passed the Madhyamik Examination.

16. The allegation levelled by the husband against the wife was that the husband demanded a fair complexioned girl, but the wife is not fair complexioned. But there is no evidence on this point, so this allegation also fails.

17. Where in a case, fraud has been alleged, plaintiff is required to prove every item of fraud and how it was practised upon him. It is also necessary that the plaintiff should prove that he was influenced by mis-representation.

18. Ashoke Banerjee, the learned advocate, appearing for the husband has submitted before us that when the marriage is dead. It is of no use to keep it subsisting. But, it is not a question of sentiment that will render the court to deliver a Judgment annulling the marriage. In order to obtain a decree, for annulment of marriage u/s 12(1)(c) of the said Act, the party seeking relief

under that section Is required to prove the ground upon which a marriage can be dissolved. Here is a case where the husband who seeks to have a declaration that the marriage between the party was a nullity has miserably failed to prove that he was carried on by misrepresentation or fraud practised upon him and he was a victim of such fraud or mis-representation. On perusal of the pleadings of the parties and on the examination of the facts and circumstances of the case we find that all contentions of the plaintiff husband fall. They must fail, the appeal falls too.

The appeal is accordingly dismissed with costs throughout.

V.K. Gupta, J.

19. I agree.

20. Appeal dismissed