

(2021) 10 BOM CK 0066
In the Bombay High Court
Case No : Family Court Appeal No.11 Of 2019

Sunita W/O Suresh Pantawane	Vs	APPELLANT
Suresh S/O Keshavrao Pantawane		RESPONDENT

Date of Decision : 14-10-2021

Acts Referred:

Family Courts Act, 1984 — Section 19
Code Of Criminal Procedure, 1973 — Section 125
Hindu Marriage Act, 1955 — Section 9, 10, 11, 11(5)(1), 12, 13, 25

Citation : (2021) 10 BOM CK 0066

Hon'ble Judges : A.S. Chandurkar, J;G. A. Sanap, J

Bench : Division Bench

Advocate : S.P. Deshpande

Final Decision : Dismissed

Judgement

G. A. Sanap, J

1. In this appeal, filed under Section 19 of the Family Courts Act, 1984, the appellant/original petitioner has challenged the judgment and order dated 16th January, 2012 passed by the Principal Judge, Family Court, Nagpur, whereby the learned Judge of the Family Court dismissed the petition No.A/395/2009 seeking the decree of restitution of conjugal rights and petition No.E/29/2009 seeking maintenance from the respondent under Section 125 of the Code of Criminal Procedure filed by the appellant.

2. The facts leading to this case are as follows:-According to the appellant, the marriage between her and respondent took place on 16th August, 2003 at Dikshabhoomi, Nagpur as per their customs and rites. After marriage they resided together as husband and wife. The appellant and respondent wanted a child and therefore, respondent took medical treatment from Medical Collage Hospital, Nagpur, Indira Gandhi Medical Collage and Hospital Nagpur, Meयो Hospital, Nagpur and Tamaskar Test Tube Baby Centre, Ramdaspath, Nagpur. Appellant always accompanied the respondent to the Hospital.

3. It is the allegation of the appellant that the respondent suppressed his first marriage with Chandrakala from her. It is stated that when the appellant came to know about it, she insisted the respondent to divorce his first wife. The respondent, therefore, filed a petition for divorce and they obtained divorce decree by mutual consent on 20th August, 2008. It is the case of the appellant that they lived together as husband and wife. In October, 2008, the respondent demanded Rs.50,000/- from the appellant. The respondent left the appellant when she refused to pay the money. The appellant took search of the respondent. The appellant found him at the house of his relative at Barse Nagar. The respondent and his relatives beat her when she went there. The respondent left her company without reasonable cause. The respondent failed to maintain the appellant. According to the appellant, she being the legally wedded wife of the respondent, the respondent is bound to maintain her. On this averments, the appellant prayed for decree of restitution of conjugal rights in the Petition No.A/395/2009 and order of maintenance against the respondent under Section 125 of the Criminal Procedure Code in Petition No.E/29/2009.

4. The respondent contested both the petitions by filing written statement/reply. He opposed the claim of the appellant. He denied the factum of marriage. It is the case of the respondent that he has no concerned, whatsoever nature with the appellant. He has denied that the appellant is his legally wedded wife. According to him, the allegations made by the appellant are false and frivolous. The appellant wanted to grab the property of the respondent and lead luxurious life with the respondent and therefore concocted this false case. The respondent was married with one Chandrakala in the year 1990. There was difference of opinion, due to thinking behaviour and attitude between the respondent and his wife Chandrakala. There used to be quarrels' between them. He, therefore, filed a petition for divorce. The respondent and his wife decided mutually to dissolve their marriage. On the basis of consent terms filed by them, the marriage was dissolved by decree of divorce dated 13th January, 2009. It is contended that the respondent is highly educated. He is running and managing the school near Kanji house, Nagpur. He is reputed person in the society. He is associated with many social organizations. It is contended that taking the advantage of the situation and particularly having an evil eye on his property the appellant concocted the story. The appellant extended threats to involve him in criminal case. She tried to burn herself in front of the house of the respondent. According to him, the appellant is not entitled to get either the decree of restitution of conjugal rights or the order for maintenance.

5. The appellant examined herself to substantiate her claim. She examined four witnesses. The respondent filed the affidavit in lieu of examination-in-chief. However, he did not turn up to face the cross examination. The learned Judge of the Family Court after considering the oral and documentary evidence adduced by the appellant recorded a finding that the appellant has failed to prove that she is legally wedded wife of the respondent. The learned Judge of the Family Court further held that in any case the marriage of the appellant with the respondent

would be null and void inasmuch as the first marriage of the respondent with Chandrakala was subsisting. The learned Judge of the Family Court ultimately dismissed the petition for restitution of conjugal rights as well as the application for maintenance.

6. Being aggrieved by the judgment and order passed by the learned Judge of the Family Court, the appellant is before this Court. The appellant has challenged the judgment and order by pleading multiple grounds in the memo of appeal. According to the appellant, the learned Judge has failed to consider the evidence adduced by her in proper perspective and as such came to a wrong conclusion.

7. We have heard the learned Advocate for the appellant. None appeared for the respondent. We have gone through the record and proceedings.

8. Smt. S.P. Deshpande, learned Advocate for the appellant submitted that the learned Judge has not recorded cogent reasons for discarding the evidence of the appellant and her witnesses on the point of her marriage with the respondent. The learned Advocate submitted that the oral and documentary evidence adduced by the appellant is sufficient to accept the case on the point of her marriage with respondent as well as on the point of grant of maintenance. The learned Advocate further submitted that the oral and documentary evidence is sufficient to prove that the appellant and respondent lived together as husband and wife for long period of time and therefore, the learned Judge of the Family Court ought to have drawn the presumption that they got married and therefore, they lived together. The learned Advocate submitted that since the appellant has proved that she and respondent lived together as husband and wife, the learned Judge of the Family Court ought to have awarded maintenance to the appellant. The learned Advocate submitted that on the aforesaid grounds the judgment and order passed by the learned Judge of the Family Court, Nagpur is required to be set aside.

9. We have gone through the record and proceedings and particularly the judgment and order passed by the learned Judge of the Family Court, Nagpur. Perusal of the judgment of the learned Judge of the Family Court would show that the learned Judge has rejected the case of the appellant on both the counts. In order to satisfy us about the correctness or otherwise of the judgment of the learned Judge of the Family Court, we have minutely perused the oral and documentary evidence adduced by the appellant. At the threshold, it is necessary to mention that the appellant in her evidence has produced on record the divorce decree between the respondent and his wife Smt. Chandrakala dated 13th January, 2009. In oral evidence, the appellant has admitted that on the date of her so called marriage on 16th August, 2003 the marriage of the respondent with Chandrakala was subsisting. The appellant has deposed that before her marriage with the respondent, the respondent had concealed this fact from her. The learned Judge of the Family Court on the basis of the evidence was not convinced to accept this contention of the appellant. On re-appreciation of the evidence, we do not find any reason to interfere with this finding of fact recorded by the

learned Judge of the Family Court. Even if, it is assumed for the sake of argument that the appellant had been kept in dark about the first marriage of the respondent with Chandrakala in the year 1990, on proof of the said fact, the contention of the appellant that she is legally wedded wife of the respondent cannot be accepted. The appellant has examined herself and four other witnesses to substantiate her contention that she got married with respondent on 16th August, 2003 at Dikshabhoomi, Nagpur as per their customs. This contention needs to be examined to answer other questions involved in the appeal.

10. It is the case of the appellant that she was a social worker and as a social worker, she came into contact with the respondent. According to her, the respondent, proposed her. The respondent had denied the factum of marriage as well as suppression of his first marriage. On the point of solemnization of the marriage of the appellant with respondent the evidence of the appellant and two so called eye witnesses is not at all believable. In cross examination, she has admitted that she does not know the name of the Bhante who performed their marriage at Dikshabhumi, Nagpur. She has admitted that the marriage certificate was not issued. She has categorically stated that after marriage they signed the register of marriage kept in Bhuddha Vihar at Dikshabhumi, Nagpur. The appellant has not produced the copy of the said register on record. In her cross examination, she has categorically admitted that she knew about the marriage of the respondent with Chandrakala 8 to 10 years ago. In our opinion, this admission would reflect upon the conduct on the very foundation of the case of the appellant.

11. The other witnesses examined by the appellant to substantiate the factum of marriage are not reliable. On material points there are inconsistencies in their evidence. The witness Shahid Khan has admitted that he is friend of the brother of the appellant. He has stated that he has no knowledge about the signatures made in the register by the appellant and the respondent. He has admitted that he does not know the name of Bhante. Smt. Lata w/o Ramesh Nikose (PW-2) has stated that 10 to 20 people had attended the marriage. This statement is contrary to the statement of the appellant. The appellant has stated that only 4 to 5 persons had attended the marriage. On minute scrutiny of the evidence, we are of the opinion that the same does not inspire confidence on the factum of the marriage of the appellant with the respondent.

12. It is pertinent to mention that appellant could have obtained the marriage certificate as well as register where they made signature after the marriage at Dikshabhoomi, Nagpur. The appellant has not placed on record any plausible explanation for not undertaking this exercise. It is a common knowledge that if the marriage had been solemnized as stated by the appellant at Dikshabhoomi, Nagpur entry of the same would have been made in the register as well as certificate of the marriage would have been issued. On this point the adverse inference can be drawn against the appellant.

13. The appellant has relied upon the wedding card. It is seen that the learned

Judge of the Family Court exhibited this wedding card without recording the reasons, inasmuch as the same would be the secondary evidence. Besides, the appellant has admitted that no wedding cards were printed on her side. It is pertinent to note that if the marriage between the appellant and the respondent was a secrete act between them in the background of the first marriage of the respondent with Chandrakala, the respondent would not have printed the marriage cards. The appellant has relied upon one more document styled as gift deed of his property by the respondent in favour of the appellant. The learned Judge of the Family Court has exhibited this document. According to law, the gift deed of immovable property is compulsorily required to be registered. The learned Judge of the Family Court even did not bother to impound this document due to the non payment of the proper stamp. Be that as it may, the oral and documentary evidence is not sufficient to accept the case of the appellant to prove that she got married with the respondent on 16th August, 2003.

14. It is further pertinent to note that oral and documentary evidence is not sufficient to accept the case of the appellant that she and the respondent lived together as husband and wife for five to six years. On the basis of the evidence on record, this contention of the appellant cannot be accepted. The respondent has specifically pleaded that keeping an evil eye on his property the appellant tried to blackmail him. In view of this candid defence, the appellant was required to adduce cogent and concrete evidence. It is further pertinent to mention that if they had lived together as stated by the appellant, there would have been ample documentary evidence. Such evidence is not forth coming. The learned Judge of the Family Court has not accepted the case of the appellant on both the counts. On fresh appreciation of the oral and documentary evidence we fully agree with the learned Judge of the Family Court. On the basis of the available evidence, a conclusion other than the one recorded by the learned Judge of the Family Court is not possible.

15. At the time of argument, the learned Advocate appearing for the appellant in all fairness brought to our notice the judgment and order passed by the learned Principal Judge of the Family Court, Nagpur in petition bearing No.A-233/2012 filed by the appellant dated 29th December, 2014. The said petition was filed by the appellant under Section 11(5) (1) read with Section 25 of the Hindu Marriage Act, 1955 seeking declaration that the marriage between her and respondent dated 16th August, 2003 was null and void. In the said proceeding, the learned Judge recorded a candid finding that the appellant had failed to prove her marriage with the respondent. It is, therefore, apparent on the face of record that in this proceeding the learned Judge of the Family Court and in the said petition filed in the year 2012, the learned Judge of the Family Court recorded a finding that the appellant is not legally wedded wife of the respondent. In the petition No.A-233/2012 the prayer made by the appellant for maintenance under Section 25 of the Hindu Marriage Act was also dismissed. On going through the record and proceeding, we conclude that no fault could be found with the judgment of the learned Judge of the Family Court in this proceeding rejecting

the decree for restitution of conjugal rights as well as for rejection of application for maintenance under Section 125 of the Criminal Procedure Code.

16. The learned Advocate for the appellant relying upon the following three judgments submitted that even if the marriage is found to be null and void, the order of maintenance to the second wife cannot be denied. Similarly the learned Advocate submitted that it has been held in these judgments that if there is evidence to prove that parties have lived together as husband and wife for a long period then the women cannot be denied maintenance under Section 125 of the Cr.P.C. In the case of *Badshah Vs. Sou. Urmila Badshah Godse* and another reported in 2013 LawSuit (SC) 960 the Hon'ble Supreme Court has held that bigamous marriages are illegal as per the provisions of law but they are not immoral hence a financially dependent women cannot be denied maintenance, on the ground of being a second wife. In this case, it was proved that the wife and husband lived together and a female child was born in the wedlock to them. In the case of *Chanmuniya Vs Virendra Kumar Singh Kushwaha & Anr.* reported in 2010 LawSuit (SC) 687, in view of the judgments, in the case of *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav* and another, 1988 AIR(SC) 644 and *Savitaben Somabhat Bhatia Vs. State of Gujarat* and others, 2005 AIR (SC) 1809 the learned Division Bench of the Supreme Court has referred the matter to a larger Bench on the question whether a man and woman living together for long time even without a valid marriage to raise the presumption of valid marriage entitling such a woman to maintenance.

17. In the case of *Rameshchandra Daga Vs. Rameshwari Rameshchandra Daga* reported in 2004 LawSuit (SC) 1499 the respondent had married with the petitioner during the subsistence of her marriage. The decree declaring her second marriage as null and void was upheld by the Hon'ble Supreme Court. However, the decree granted in favour of the respondent awarding the maintenance under Section 25 of the Hindu Marriage Act, 1955 was upheld. In this case the Hon'ble Supreme Court has held that in Section 25 the legislature has used such wide expression as at the time of passing of any decree, it encompasses within the expression all kinds of decrees such as restitution of conjugal rights under Section 9, judicial separation under Section 10, declaring marriage as null and void under Section 11, annulment of marriage as voidable under Section 12 and divorce under Section 13 of the Hindu Marriage Act. It is held that at the time of the passing of any decree the right of maintenance under Section 25 of the Hindu Marriage Act cannot be denied to the woman.

18. In our opinion, on the basis of the proposition of law laid down in the judgments cited supra the submissions advanced on behalf of the appellant cannot be accepted. In this case the petition filed by the appellant for restitution of conjugal rights has been dismissed. Similarly the application made by the appellant seeking maintenance under Section 125 of the Cr.P.C. has been dismissed. The decree was denied because the appellant failed to establish the marriage with the respondent and also on the ground that the so called marriage

was null and void inasmuch as the first marriage of the respondent with Chandrakala was subsisting. It has come on record that the petition No.A/395/2009 filed by the appellant seeking a decree of declaration declaring her marriage with the respondent as null and void was dismissed vide order dated 16th January, 2012. Similarly the prayer made in this petition seeking the decree for maintenance under Section 25 of the Hindu Marriage Act, 1955 was also rejected. Learned Advocate for the appellant in all fairness submitted that the appeal filed by the appellant against this judgment and order was withdrawn by the appellant.

19. In the facts and circumstances, we conclude that there is no decree of any nature passed in favour of the appellant under the Hindu Marriage Act and therefore, there would be no question of awarding maintenance to her under Section 25 based on the proposition laid down in the judgments cited supra.

20. Before parting with the matter, we place on record our appreciation for the sincere efforts and assistance rendered to the Court by Smt. S.P. Deshpande, learned Advocate who has been appointed by the High Court Legal Aid Services Sub Committee, Nagpur.

21. In our view, there is no substance in the appeal. The appeal, therefore, deserves to be dismissed.

22. In view of the above, we proceed to pass following order:-

ORDER

(i) The appeal stands dismissed. Pending civil application is also disposed of.

(ii) Parties to bear their own costs.

(iii) The legal fees payable to Smt. S.P. Deshpande, learned Advocate is quantified at Rs.5,000/- and which shall be paid by High Court Legal Aid Services Sub Committee, Nagpur.