
(2008) 08 OHC CK 0027

In the Orissa High Court

Case No : Regular Second Appeal No. 191 of 2004

Suresh Chandra ' Tulu Nayak

APPELLANT

Vs

Smt. Shantilata Bhoi

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Special Marriage Act, 1954 — Section 24, 31, 31(1), 4

Citation : (2008) CLT 469 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B. Baug and Associates, for the Appellant; Y. Mohanty and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Defendant in the trial Court is the Appellant in this Second Appeal filed against a decision of the Addl. District Judge, Bhubaneswar dtd. 11.3.2004 in R.F.A. No. 15/41 of 2003/03 confirming a decision of the Civil Judge (Sr. Division), Bhubaneswar dated 22.10.2003 in C.S. No. 78/2003 (T.S. No. 169/97).

2. The present Respondent as Plaintiff had filed the civil suit praying for declaration that the marriage certificate issued by the Marriage Officer on 25.6.1994, in favour of herself and Defendant was null and void and inoperative in the eye of law. In the plaint she alleged that the Defendant was her maternal uncle's son. In the year 1994 he persuaded her to sign some printed forms convincing her that the same were applications to enter into Government service and believing him in good faith she had signed those documents Without knowing the contents thereof. Towards the end of June, 1994 the Defendant informed her that in connection with Government service she had applied for, she had to swear an affidavit and present the same before the Government Officers personally, and deceptively took her to the Registration Office. She further alleged that on 16.12.1996 her father received a registered envelope in which xerox copy of a Marriage Registration Certificate and an Oriya type written letter

without any signature were there. Only thereafter the Plaintiff could know that the Defendant had committed fraud and without her knowledge of an consent got the paper works done for registration her marriage with him. After obtaining the certified copy of the Marriage Registration Certificate she filed the suit.

3. After receiving notice the Defendant appeared and filed his written statement contending that the Plaintiff was a major being eighteen years" old at the time of marriage and both of them though related to each other and their relationship was within the prohibited degree for marriage, the custom governing them permitted such marriage as per provisions of Section 4 of the Special Marriage Act. He further averred that the Plaintiff out of her own free will and love towards him had agreed for the marriage and had appeared before the Marriage Officer. The allegation of any fraud or misrepresentation was denied.

4. On the basis of the pleadings the trial Court framed as many as six issues for decision in the suit.

5. In order to substantiate their respective cases the Plaintiff got four witnesses examined besides exhibiting fourteen documents and the Defendant got five witnesses examined while exhibiting five documents. The trial Court after referring to the evidence of P.Ws.1 and 2, the certificate issued by S.B. High School, Bingarpur, Khurda, vide Ext.D and the transfer certificate, Ext.3 issued by that School, held that the date of birth of the Plaintiff was 15.6.1978 and that she was a minor being under 16 years of age at the time of issuance of Marriage Certificate. The trial Court also came to the conclusion that the Plaintiff and Defendant were within the degree of prohibited relationship being Hindus. It was further held that the Defendant had actually suppressed the real facts before the Marriage Officer, Bhubaneswar and such suppression amounted to fraud and concluded that the Marriage Certificate dtd. 25.6.1994 had been obtained by the Defendant fraudulently by suppressing his degree of prohibited relationship with the Plaintiff. Accordingly the trial Court held that the marriage was to be declared as null and void.

Considering the submissions with regard to maintainability of the suit as per Section 31 of the Special Marriage Act, the trial Court held that as the prayer in the suit was for declaring the Marriage Certificate dtd. 25.6.1994 to be null an void on the allegation that the same had been obtained fraudulently by the Defendant, the said suit was maintainable before the Civil Court and Section 31 of the Special Marriage Act was not attracted.

With the aforesaid findings the trial Court decreed the suit and declared the Marriage Certificate to be null and void and inoperative in the eye of law.

6. Being aggrieved by the said decision the Defendant filed appeal in the Court of Addl. District Judge, Bhubaneswar which was registered as R.F.A. No. 15/41 of 2002/03 mainly on the ground that the Court of the Civil Judge (Jr. Division) had no jurisdiction to entertain the suit in view of Section 31 of the Special Marriage Act which confers the jurisdiction only upon District Court.

7. In course of hearing of the Appeal, the Defendant filed a petition for examination of Marriage Officer, Bhubaneswar and production of relevant document in Misc. Case No. 110/1994, but then the said prayer was subsequently abandoned. The Appellate Court after going through the evidence, both oral and documentary, confirmed the findings arrived at, by the trial Court with regard to the age of the Plaintiff as well as the prohibitory degree of relationship between the Plaintiff and Defendant. According to Appellate Court as the Plaintiff had asserted that she never married the Defendant and never knew that her signatures were taken on blank forms for the purpose of solemnization of her marriage with the Defendant and that her signatures were procured on the pretext that an application had to be made for job, held that the Marriage Certificate was procured by practising fraud and the said certificate was a nullity in the eye of law.

8. So far as the bar u/s 31 of the Act was concerned the Appellate Court held that when the marriage itself was denied and the marriage certificate was challenged on the ground that the same was obtained fraudulently, the Civil Court was competent to decide the dispute. With the aforesaid findings the appeal was dismissed. Being aggrieved the Defendant has approached this Court.

9. After hearing learned Counsel for the parties, this Court finds that most of the disputes are factual in nature. Both the Courts below have discussed the evidence, both oral and documentary, and the findings of fact recorded by them need no interference in the Second Appeal. at apart this Second Appeal has been admitted only on the following substantial questions of law:

Whether the Court of learned Civil Judge (Jr. Division), Bhubaneswar has jurisdiction to try the suit filed by the Respondent in view of the provisions of the Special Marriage Act, 1954 and, in particular, Section 31 thereof, that a petition under Chapter-V or Chapter-VI of the said Act shall be presented before the District Court of whose original civil jurisdiction the marriage was solemnized or the Respondent resides or parties to the marriage last resided?

10. To answer the said question it would be necessary to refer to Section 31 of the Special Marriage Act, 1954 (hereinafter called "the Act") which reads as follows:

Section 31 - Court to which petition should be made (1) Every petition under Chapter V or Chapter VI shall be presented to the district Court within the local limits of whose original civil jurisdiction

(i) the marriage was solemnized; or

(ii) the Respondent, at the time of the presentation of the Petitioner, resides; or

(iii) the parties to the marriage last resided together; or (iii-a) in case the wife is the Petitioner where she is residing on the date of presentation of the Petitioner; or

(iv) the Petitioner is residing at the time of the presentation of the petition, in a case where the Respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive.

(2) Without prejudice to any jurisdiction exercisable by the Court under Sub-section (1). the district Court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

11. It appears that the Section quoted above presupposes that every petition under Chapter-V or Chapter-VI of the Act has to be presented to the district Court within the local limits of whose original civil jurisdiction the marriage was solemnized or other ingredients of the said section were fulfilled. Chapter-V of the Act deals with restitution of conjugal rights and judicial separation and is not applicable to the case at hand. Chapter-VI deals with nullity of marriage and divorce. Section 24 under the said Chapter stipulates that any marriage solemnized under the Act shall be held to be null and void and may, on a petition presented by either party thereto against the other party; be so declared by a decree of nullity if any of the conditions specified in Clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled or the Respondent was impotent at the time of the marriage or at the time of the institution of the suit. Reading of the said section thus reveals that the provisions contained in Section 24 deal with the grounds on which the marriage solemnized under the Act can be declared as null and void. Applicability of the said Section thus arises only if a marriage was solemnized and that too in accordance with the Act. In the case at hand, the plea of the Plaintiff is that the marriage was never solemnized and by practising fraud and misrepresentation the Defendant had obtained the marriage certificate. On the other hand, when the marriage itself is denied and the marriage certificate is challenged on the ground that the same was obtained by practising fraud, there being no provision under the Act to decide such dispute the Civil Court's jurisdiction cannot be ousted. The main issue which was to be decided in the present case was as to whether there was any marriage between the Plaintiff and Defendant and/or the marriage certificate was obtained by practising fraud. Both the Courts below have arrived at a conclusion that the Civil Court had jurisdiction and that the Plaintiff had not attained the age of eighteen years as mandatorily required, and that the parties were within the degree of prohibitory relationship. Though it was pleaded that customs prevailed in the area, but then the evidence in that regard was not worth the name.

12. It is well settled that exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the statutes give finality to the orders of the special tribunals/authorities and the tribunals/authorities are entitled to decide all the disputes that the Civil Court would normally do in a suit. Only in such

circumstances the Civil Court's jurisdiction can be inferred to be excluded, (see Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, and Puri-Konark Development Authority Vs. Ratna Bhadra and Others,

It is also well settled that the Civil Court's jurisdiction cannot be said to be excluded if it is alleged that the provision of a particular Act has not been complied with or that the authorities have not acted in conformity with the fundamental principles of judicial procedure.

13. The scenario of facts and law discussed above and the pleadings inter se would clearly reveal that it is not a case" where the marriage conducted under the Special Marriage Act is prayed to be set aside on the grounds enumerated in the said Act. On the other hand, the consistent case of the Plaintiff was that the marriage was never solemnized and the marriage certificate was procured by practising fraud. Fraud being a question of fact, and there being no provision under the Special Marriage Act to decide that aspect, it can be safely concluded that only the Civil Court has jurisdiction to decide the same.

That apart Mr. Mohanty, learned Counsel for Respondent, in course of arguments submitted that the Defendant has again got married in the meanwhile and is leading a blissful married life.

Considering all these facts, this Court finds that the bar imposed u/s 31 of the Act shall not be applicable to the case at hand and the suit as frame was maintainable before the Civil Court. The question framed is answered accordingly.

14. For the discussions made above, this Court is not inclined to interfere with the confirming Judgment and dismisses this Second Appeal with direction that the parties shall bear their own costs.