
(2014) 09 MAN CK 0022
In the Manipur High Court
Case No : MAT Appeal No. 1 of 2014

Thoudam (N) Kangjam (O) Kunjarani Devi	APPELLANT
Vs	
Kangjam Iboyaima Singh	RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2015) 1 GLT 68

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : S. Sarat, Advocate for the Appellant; Kh. Ajit and B. Surendra Sharma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, C.J.—This matrimonial appeal is directed against the judgment and order of the learned Judge, Family Court, Manipur in Mat. (Dec) Suit No. 63-A of 2012 dated 08.07.2013. The plaintiff before the Family Court is the appellant in this appeal.

1.1. The appellant had filed the Suit for declaration that she is the legally married wife of late Kangjam Biren Singh. Her case before the Family Court is that late Kangjam Biren Singh was working as Section Officer in IFCD, Electrical Mechanical Division of the Government of Manipur. Her, further, case is that she eloped with Kangjam Biren Singh sometime in 1989 and they stayed together as husband and wife by performing rituals as per the local custom and she was also recognized and acknowledged as the daughter-in-law by the father of late Kangjam Biren Singh. It is also the case of the appellant that in the year 2010, the father of late Kangjam Biren Singh expired whereafter both of them were being looked after by the brothers of the late father-in-law of the appellant. In the ceremonial functions and other religious functions, the appellant participated as wife of late Kangjam Biren Singh and she was recognized as the daughter-in-law in the family of Kangjam. Out of the said wedlock, three daughters and a son were born. The further case of the appellant is that late Kangjam Biren Singh had

abandoned his first wife and was staying with her. Towards the last part of the life of late Kangjam Biren Singh, he suffered from different ailments and was treated in the house of the appellant. It is alleged by the appellant that after the demise of late Kangjam Biren Singh, his first wife (i.e. defendant no. 4 in the Suit) had withdrawn the service benefits of late Kangjam Biren Singh by suppressing the fact that late Kangjam Biren Singh had married for the second time and the appellant, who is the second wife was still alive. Later on, there was an agreement between the appellant and the defendant no. 4 and under the said agreement, defendant no. 4 had agreed to share 50% of the pension with the appellant but she did not honour the said agreement. On these allegations the Suit was filed for a declaration as aforesaid.

1.2. The defendants 1, 2 & 3 filed the joint written statement admitting the claim of the plaintiff/appellant. Only the defendant no. 4 who is the first wife filed the written statement opposing the claim of the plaintiff/appellant. It is the case of the defendant no. 4 that she is the legally married wife of late Kangjam Biren Singh and the marriage took place on 9th June, 1978 as per the Hindu Customary Rights prevailing in the State. Out of their wedlock, four daughters and a son were born. It is the claim of the defendant no. 4 that the plaintiff/appellant is a concubine of late Kangjam Biren Singh and there was no marriage between the plaintiff/appellant and late Kangjam Biren Singh. It is also the case of the defendant no. 4 that her father-in-law (i.e. father of late Kangjam Biren Singh) and she were living together under the same roof along with late Kangjam Biren Singh. Her mother-in-law is still alive and is continuing to live with her along with the sister of late Kangjam Biren Singh even after the death of late Kangjam Biren Singh.

2. The learned Judge, Family Court dismissed the Suit on the ground that the plaintiff/appellant failed to establish her marriage with late Kangjam Biren Singh.

3. Mr. S. Sarat, learned counsel appearing on behalf of the appellant, Mr. Kh. Ajit, learned counsel appearing on behalf of respondent no. 1 as well as Mr. B. Surendra Sharma, referred to the custom prevailing in the State of Manipur in relation to marriage of Meiteis and submitted that as per the custom, there is no need for a regular proceeding for the purpose of divorce. Reliance was placed on a decision in the case of Puyam Liklal Singh Bhabando Singh-vs.-Moirangthem Maipak Singh & Anr., reported in 1956 Manipur 18 (AIR V 43 C 8 July). According to the said decision, divorce or khainaba is permissible amongst the Hindus of Manipur and it can be from the husband's side or from the wife's side. There is no condition attached and it can be done at pleasure. It is done even at a slight pretext. Gandharva form of marriage is also recognized in Manipur. The union of a man with a divorced woman is also recognized as a local valid marriage. Referring to these customs and usages, it was contended on behalf of the appellant that abandonment of the first wife amounts to divorce and there was no necessity to prove the marriage between the appellant and late Kangjam Biren Singh in accordance with the Hindu Marriage Act considering the custom

prevailing in the State of Manipur.

3.1. It was contended by the learned counsel appearing on behalf of defendant no. 4 that the parties to the proceeding are governed by the provisions of Hindu Marriage Act and local custom cannot prevail over the statutory provisions. It was, further, contended that in the absence of any material to prove divorce between the defendant no. 4 and late Kangjam Biren Singh, the second marriage if any of late Kangjam Biren Singh with the appellant is a void marriage.

4. After hearing the learned counsel appearing for the parties on these issues, unfortunately we find that the learned Judge, Family Court has neither framed any issue with reference to the pleadings of the parties nor the parties had been allowed to adduce evidence. Documents had been filed before the learned Judge, Family Court and parties relied on the documents without the same being proved in accordance with law. We fail to understand as to how the learned Judge, Family Court has decided the Suit without framing issues or directing the parties to adduce evidence when several disputed questions of facts and law relating to customs and usages prevailing in the State of Manipur had been raised. We, therefore, think it proper to remit the matter back to the learned Judge, Family Court for disposal of the Suit afresh by framing issues and directing the parties to adduce evidence.

5. Consequently we allow the appeal, set aside the impugned judgment and order dated 08.07.2013 passed in Mat. (Dec) Suit No. 63-A of 2012 and remit the matter back to the learned Judge, Family Court for disposal of the Suit afresh by framing issues with reference to the pleadings of the parties specifically the plaintiff/appellant and defendant no. 4 and directed the parties to adduce evidence in support of their respective claims. Since the Suit is of the year 2012, steps may be taken by the learned Judge, Family Court to conclude the matter within six months from the date of communication of this judgment and order.