

(1998) 03 CAL CK 0023
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction S.A. No. 523 of 1995

Union of India and Another

APPELLANT

Vs

Smt. Sipra Moitra and Another

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Evidence Act, 1872 — Section 114
Specific Relief Act, 1963 — Section 34

Citation : (1998) 2 CALLT 125 : (1999) 2 CivCC 104

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. B.R. Ghosal and Mr. Dipak Mukherjee, for the Appellant; Mr. Subir Sanyal, for the Respondent

Judgement

B. Panigrahi, J.—This appeal is directed against the reversing judgment and decree passed by the Assistant District Judge, Sealdah in title appeal 145 of 1990 by which the plaintiff Suit in Title Suit No. 618 of 1986 has been decreed.

2. Plaintiff/respondent No. 1 has filed the suit for declaration and permanent injunction of her status as the legally married wife of the deceased Biplab Kumar Moitra and for mandatory injunction directing the appellant to give her suitable job under rehabilitation scheme.

3. The deceased Biplab Kumar Moitra was an employee in the Post and Telegraph Department and had worked as wireman (Planning Branch) under Calcutta Telephones. At the time of his death he was attached with Exchange No. 52 at B.T. Road. He married to the respondent No. 1 according to Hindu Rites on 31st January, 1983 and thereafter they lived as husband and wife. After working for sometime the respondent/plaintiffs husband left for Joypore to bring back his belongings which he had left before his transfer to Calcutta. But, unfortunately, plaintiff got Information from the office of the employer of her husband that he died on 17th December, 1983. Immediately after having come to know about death of her husband, she made several representation to the General Manager,

Calcutta Telephones about her claims payable on account of death of her husband and further sought employment on compassionate ground but all her requests were turned down. The appellant had, however, directed the respondent No. 1 on 18th May, 1985 asking her to produce legal evidence in support of her marriage with deceased Biplab. But, subsequently, the authorities denied her claims on the ground that the deceased Biplab Kumar Moitra had earlier married to Gopa who produced succession certificate in support of her claim. Thus, the claiming of the plaintiff was Ignored by the appellant.

4. The defendant No. 3 who is the appellant in the case only contested the suit, inter alia, denying all the material facts pleaded by the respondent No. 1. It has been averred in the written statement that the letter alleged to have been sent to the A.E. Staff on 3.6.1983 did not contain the signature of Biplab Kumar Moitra as the said signature in fact had not tallied with the signature contained in the Service Book. Although Rs. 500/- was granted to the plaintiff as financial assistance from Circle Welfare Fund Committee for immediate relief but such payment shall never be construed as admission to the status of the plaintiff as the widow of the deceased Biplab Kumar Moitra. Both, Gopa and Sipra were directed to produce succession certificate as regards their respective claim but the plaintiff could not produce the said certificate whereas Gopa produced the same in original along with an affidavit alleged to have been sworn in by her mother-in-law. Therefore, all the dues payable to the widow of Biplab Kumar Moitra had been dispersed in favour of Gopa Moitra before the suit.

5. From the record, it transpired that Gopa Moitra had claimed to have married to Biplab Kr. Moitra on 5.3.81 according to Hindu rites. Out of their lawful wedlock a child was born. Therefore, in the above backdrop the defendants claimed dismissal of the suit.

6. The trial court on careful consideration of the evidence on record was, however, inclined to dismiss the plaintiff's suit. But the first appellate court on reappraisal of evidence had reversed the findings of the trial court and decreed the suit. Thus, the respondent No.1 being aggrieved by the judgment and decree of the appellate court has preferred the appeal.

7. Mr. Ghosal, the learned Advocate appearing for the Union of India has strongly urged that the first appellate court has committed serious Irregularities in considering the alleged letter submitted by the deceased Biplab Kumar Moitra as a genuine one Inasmuch as the signature of Biplab in the Service Book had not tallied with the signature contained in the letter, in such circumstances the court should have not assumed the role of an expert for making comparison. Sometimes, it becomes risky to come to any definite conclusion without the assistance of an expert. It has been further submitted that since there was no legal evidence adduced by the respondent No. 1 to prove her marriage with Biplab, therefore, the trial court has rightly dismissed the suit whereas the appellate court on the basis of inadmissible evidence and also on gesture and surmises reversed those findings.

8. From the further submission of Mr. Ghosal, it appears that there were preponderance of evidence on behalf of the respondent No. 2 namely Gopa Moitra suggesting her marriage with the deceased Biplab Kumar Moitra, and therefore, the appellate court should not have relied on the scanty evidence of marriage as claimed by the respondent No. 1 with Biplab Kumar Moitra.

9. The witnesses who were expected to be present at the time of alleged marriage were purposely withheld by the plaintiff and therefore, on such paucity and insufficiency of evidence, the appellate court should not have granted declaration of marriage of the plaintiff with the deceased Biplab Kumar Moitra.

10. Mr. Subir Sanyal, the learned advocate appearing for the plaintiff/ respondent No. 1 has contended while supporting the findings of the first appellate court that the respondent No. 2 Gopa Moitra has no Interest in the matter and had she any such claim, she could not have remained quiet without contesting the suit. Her silence will speak about her fake claim regarding the alleged marriage with Biplab Kr. Moitra. Succession Certificate will lose its significance, particularly, when the name of the plaintiff was omitted in the succession proceedings. There were photographs filed by the plaintiff which would suggest the plaintiff's marital relationship with the deceased. Therefore, the appellate court has very correctly reversed the findings of the trial court,

11. Matter in issue of this case, lies within narrow compass as to whether the plaintiff is the legally married wife of the deceased Biplab Kumar Moitra, if so, what right would it flow from the marriage? it is significant to note that the plaintiff has not examined any near and dear relation except her brother. Undisputedly, no document has been filed suggesting their marriage nor the marriage certificate so that the presumption could have been raised as regards marriage. Mere filing of photographs could not raise a presumption regarding the validity of the marriage, at the best it may be one of the circumstances but not the sole criteria to prove marriage.

12. It is true that Gopa Moitra did not contest the suit. It has also to be born in mind that Gopa Moitra claims to be a widow of a class-IV servant who resides far away in Jaipur from the place of suing. Mere not contesting the suit by Gopa Moitra without any legal proof will not render the marriage as valid between plaintiff and Biplab. Mr. Sanyal has placed reliance on the declaration purported to have been submitted by the deceased in his office. The trial court did not place any reliance on the said declaration allegedly given in the office as the signature appearing in the Declaration Form did not tally with the signature of Biplab Kumar Moitra in the Service Book. Normally, the court should not have taken burden of comparing signature in the disputed document with the admitted document. As a matter of prudence the court should not have played the role of a hand writing expert itself and should have taken the assistance of an expert in arriving at its findings. The first appellate court presumably has committed serious mistake by taking the task upon itself while discerning the signature appearing in the disputed document as well as in the Service Book. In the above

background I am not in a position to place any reliance on the declaration form allegedly submitted by Biplab.

13. The findings of the first appellate court presumably appeared to be full of confusion as it has found.

"It is immaterial to me if Biplab did deliberately suppress his any other marriage. From the materials on record we only find that Sipra is his legally married wife as Gopa Moitra never come before court challenging this marriage."

I am at a loss to understand the aforesaid observation of the first appellate court Inasmuch as merely because Gopa Moitra did not contest the Suit that by Itself will not concern a marital status to Sipra. Strangely, Biplab's mother though alive at the time of suit had not been impleaded.

14. The appellate court was oblivious to the fact that Gopa Moitra filed the following documents before the appellant immediately after the death of Biplab Moitra. Those documents were, such as original death certificate, Gopa's signature, attested, photograph of Gopa and Biplab. photo copy of the identity mark, discharge slip, photo copy of power of attorney executed by Biplab's mother, Photo copy of affidavit and photo copy of the birth of the child. It is significant to note that the appellate court has not considered about the merit of such documents. Had those document been considered, the appellate court ought to have come to a different conclusion.

15. From the record it appears that Biplab Moitra entered in the service before his marriage with Gopa Moitra which was solemnised on 9th March. 1981. Thus, non-mentioning the name of Gopa in the Service Book cannot be treated as a circumstance to deny her marriage with Biplab Moitra, it is quite unusual of a Hindu woman to gather Information of the death of her husband from the official source. Ordinarily married wife will first come to know about the sad demise of her husband. In the Instant case the plaintiff had claimed to have learnt it from the office where Biplab Moitra was working. Original death certificate was also not produced by Sipra.

16. The learned first appellate court has unreasonably drawn an Inference that since Sipra was not made a party in succession case: the certificate granted by the court shall automatically loose its probative value. In the succession case general citation is usually made. The interested persons would normally, file their objection after having come to know about the case. Even after issue of such succession certificates it is open to a party to pray for cancellation of succession certificate. Till date no steps has been taken by the plaintiff for cancellation of the succession certificates. Therefore, presumptive value of such succession certificate shall not loose its importance, in the absence of such steps being taken by the plaintiff, rather, the mother of Biplab Moitra had affirmed an affidavit in favour of Gopa Moitra by stating that there was a legal marriage of her son and Gopa.

17. The first appellate court in course of discussion in the judgment had made some contrary and inconsistent observation. It is stated as below:

"I am not going into the dispute if Gopa and Deep, the son of Biplab as alleged are the legal heirs to the Estate of Biplab. I am also not going into the dispute if Gopa and Deep has acquired the right in view of the succession certificate in dispute. But in view of the available materials and as Slpra has come before court for redress and as her marriage with Biplab has been established. I have not hesitation to hold that she is entitled to the family pension benefit as the service benefit on compassionate ground from the respondent No. 2."

18. Once it was held that Gopa as the widow of Biplab Moitra and out of their lawful wedlock, a son was born. Then they shall represent not only the estate of the deceased but also all other service benefit accrued to him. Thus, findings of the first appellate court that in so far as the property of the deceased is concerned, it will devolve upon Gopa and her son but in respect of service benefit the plaintiff has acquired a right seems to be incongruous and inharmonious. If Gopa is accepted as the widow to whom Biplab Moitra had married for the first time, all the service benefit would go to her. In this case, apparently, the mother-in-law of Gopa has affirmed an affidavit suggesting the marriage with Biplab on 9.3.1981. Thus, even assuming the plaintiff's marriage was held on 31st January, 1983, this marriage being for the second time held undoubtedly it is Invalid. Therefore, the plaintiff cannot claim any right muchless as regard service benefit through the deceased Biplab.

19. Thus, on a careful cogitation of the facts and circumstances of the case and on perusal of the evidence on record, I find that the findings of the first appellate court are not valid and in the result, the appeal is allowed and accordingly the plaintiffs suit is dismissed but however, without costs.

20. Appeal allowed