
(2005) 05 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1545 of 2005

Varindra Singh and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Evidence Act, 1872 — Section 40, 41, 43

Hindu Marriage Act, 1955 — Section 13, 2, 2(1), 2(3), 8

Citation : (2005) 3 RCR(Civil) 716 : (2005) 3 RLW 1791 : (2005) 3 WLC 501

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Vinod Bhadu, for the Appellant; Rameshwar Dave, Dy. GA, for the Respondent

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned counsel for the petitioners.

2. The petitioners have submitted an application for impleading state as party.

3. It appears that the petitioners inadvertently did not implead the State of Rajasthan as party and now is seeking to implead it as party. The petitioner inadvertently impleaded the Registrar of Hindu Marriage, who is District Collector, Sri Ganganagar also, as party by name instead of impleading the Registrar of Hindu Marriages and District Collector, Sri Ganganagar as party and also failed to implead the State of Rajasthan as party. However, reply has already been filed by the Officer-in-charge of the State Government through Dy. Government Advocate, therefore, the application for impleading State as party is allowed. Amended cause title, which has already been filed, is taken on record. At the request for learned counsel for the parties, the matter is finally heard as the pleadings are complete.

4. The petitioner No. 2 was residing in Canada and she was married. She

obtained a decree for divorce from Supreme Court of British Columbia and for which a certificate has been issued on 6.10.2004.

5. The petitioner No. 2 contracted second marriage with the petitioner No. 1 on 21.1.2005 at Sri Ganganagar in India. The Marriage ceremonies performed according to Hindu Law and, therefore, both the petitioners claimed that they are married according to the provisions of Hindu Marriage Act, 1955 (for short the "Act of 1955"). The petitioners submitted an application for registration of their marriage under the provisions of Section 8 of the Act of 1955 and the Rules framed thereunder known as Registration of Hindu Marriage (Rajasthan) Rules, 1956. The petitioners produced the copies of affidavits, passport, certificate of divorce etc. before the Collector who is Registrar of Hindu Marriage under the Rules of 1956. The District Collector cum Registrar of Hindu Marriage, Sri Ganganagar vide order dated 15.2.2005 rejected the petitioners' application for registration of their marriage under the Act of 1955 on the grounds that one of the contracting party-petitioner No. 2 is not Indian Domicile as she is resident of Canada and since the divorce decree has not been granted under the Act of 1955 but has been granted under the Divorce Act Canada and has been granted by Supreme Court of British Columbia, therefore, the circumstance of marriage under the Act of 1955 and the Rules framed thereunder cannot be granted.

6. According to learned counsel for the petitioners, so far as the controversy about domicile is concerned, this Court in S.B. Civil Writ Petition No. 2100/2002 (Smt. Radha v. State of Raj. and Ors.) decided on 27.8.2002 held that where one of the parties is domicile in India, the marriage can be registered under the Act of 1955 and the Rules framed thereunder despite the fact that the other party is not domicile.

7. According to learned counsel for the petitioners, the decree for divorce granted by a foreign court is also binding and the foreign judgment is conclusive unless it falls in exception of Section 13 CPC.

8. According to learned counsel for the petitioners, have is not finding of the Registrar of Magistrate that the judgment of the Foreign Court, Supreme Court of British Columbia, is falling in any of the exception to Section 13. It is also submitted that by registration of the marriage of the petitioners, the Registrar of Marriages is not deciding the validity of marriage itself and he can issue a proof for marriage only and if the marriage is questioned, then that can be challenged by the concerned party to the marriage in the Court of law.

9. Learned counsel for the respondent State submitted that the Registrar of Marriage has not committed any illegality in view of the fact that the Act of 1955 applies to the persons mentioned in Section 2 of the Act of 1955 and the Registrar of Marriage rightly held that since one of the party, petitioner No. 2, is not domicile in a State of India, therefore, the Act of 1955 has no application to the petitioner No. 2 and, therefore, she is not entitled to get certificate u/s 8 of the Act of 1955.

10. Learned counsel for the respondents further submitted that a marriage solemnised under the Act of 1955 in India can come to an end only when the decree for divorce is granted or when one of the spouse dies. It is also submitted that in the life time of legally wedded wife or husband, no second marriage can be contracted and if contracted, it is void and, therefore, the Registrar of Marriage after holding that the decree of divorce has not been obtained under the provisions of the Act of 1955 by the petitioner No. 2, the petitioner No. 2 failed to prove the divorce.

11. I considered the submissions of learned counsel for the parties.

12. It appears that the Registrar of Hindu Marriage and District Magistrate, Sri Ganganagar committed illegality in holding that the Act of 1955 does not apply to the petitioner No. 2

13. Clause (a) of Sub-section (1) of Section 2 of the Act of 1955 makes the Act of 1955 applicable to all persons who are Hindu by religion irrespective of the fact where they reside.

14. Clause (b) of Sub-section (1) of Section 2 of the Act of 1955 further provides that the Act of 1955 shall apply to all persons who are Buddhist, Jaina or Sikh by religion thereby to all persons residing anywhere in words but professing the religion Buddhism, Jainism or Sikhism.

15. Clause (c) of Sub-section (1) of Section 2 of the Act of 1955 further extends the applicability of the Act of 1955 and it provides that the Act of 1955 shall apply to any other person (obviously other than the persons already covered under Clause (a) and (b) of the Sub-section (1) of Section 2 of the Act of 1955) domiciled in the territories to which the Act of 1955 extends. Clause (c) excludes the applicability of the Act of 1955 upon Muslim, Christian Parsi or Jew by religion. But that exclusion is also not merely because of their religion being Muslim, Christian, Parsi or Jew but on proof that such person would not have governed by Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with in the Act of 1955.

16. Sub-section (3) of Section 2 of the Act of 1955 reads as under:-

"(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, person to whom this Act applies by virtue of the provisions contained in this section."

17. Therefore, Section 2 of the Act of 1955 is very wide enough to cover all persons who are Hindu by religion irrespective of the fact where they are residing and whether they are domiciled in Indian territories or not.

18. In view of the above, the Marriage Officer and District Magistrate, Sri Ganganagar acting as Registrar of Marriage committed illegality in holding that since the petitioner No. 2 is not Indian domicile, therefore, she cannot get registration of her marriage u/s 8 of the Act of 1955 and the Rules framed

thereunder.

19. The Marriage Officer and District Magistrate, Sri Ganganagar without there being any evidence or allegations of any of the parties challenging the binding character of the judgment passed by Supreme Court of British Columbia and the certificate dated 6.10.2004, refused to recognise the foreign judgment which is binding u/s 13 CPC upon the parties as a conclusive judgment. It is nobody's case that the judgment or order of Supreme Court of British Columbia obtained by the petitioner No. 2 falls in any of the exceptions of Section 13 CPC particularly Sub-clause (c) of Section 13.

20. It appears that the authority below was under impression that a decree under Hindu Marriage Act can be passed only by the courts in India whereas as per Sub-clause (c) of Section 13, any judgment delivered by the foreign court is conclusive between the parties and finally decided the controversy provided except in cases where the said court refuses to recognise Law of India. Therefore, if the foreign court has granted decree of divorce after satisfying itself about availability of the grounds for divorce as provided u/s 13 of the act of 1955 or declare the marriage void, according to the provisions of the Act of 1955, then that judgment decides the controversy once and for all between the parties and that judgment in view of Section 13 is a conclusive judgment between the parties.

21. Section 41 of the Indian Evidence Act, 1872 (for short "the Act of 1872") makes the judgments in matrimonial matters as relevant for the purpose of finding due existence of such relations, Section 43 of the Act of 1872 provides that any party to the suit or other proceeding may show that any judgment, order or decree which is relevant u/s 40, 41 and 42 was delivered by a court not competent to deliver it or was obtained by fraud or collusion, therefore, the judgment of foreign court referred above is a relevant judgment u/s 40 and 41 of the Act of 1872 and is conclusive u/s 13 CPC so far as the status of the petitioner No. 2 as married or divorcee is concerned, was a relevant piece of document before the Marriage Officer and the said authority has no reason and material to ignore effect of the said judgment.

22. Apart from the above, it will be worthwhile to mention here that Section 8 of the Act of 1955 only provides that for the purpose of facilitating the proof of Hindu marriage, the State Government may make rules providing the parties to any such marriage may have the particulars in relation to their marriage entered in such manner and subject to such conditions as may be prescribed. Therefore, the certificate itself is not a conclusive proof of the marriage and as per Sub-section 1 of the Section 8 itself, it is only a certificate of "facilitating the proof of Hindu Marriages."

23. In view of the above reasons, the Marriage Officer cum District Magistrate, Sri Ganganagar committed illegality in refusing to register the marriage u/s 8 of the Act of 1955 and committed illegality in ignoring the relevant and conclusive

judgment of Supreme Court of British Columbia and the certificate dated 6.10.2004.

24. In view of the above discussion, this writ petition is allowed and the Marriage Officer cum District Magistrate, Sri Ganganagar is directed to register the marriage of the petitioners and issue certificate.