
(2013) 10 RAJ CK 0021

Rajasthan High Court

Case No: Civil Misc. Appeal No. 13/2006

Malti Devi (Smt.)

APPELLANT

Vs

Ramphal and Another

RESPONDENT

Date of Decision: Oct. 17, 2013

Citation: (2014) 1 WLN 567

Hon'ble Judges: Arun Kumar Mishra, J

Bench: Single Bench

Judgement

Arun Bhansali, J.

This appeal is directed against the judgment dt. 05.05.2005 passed by District Judge, Balotra, whereby the application filed by the appellant-applicant seeking dissolution of relationship and divorce has been rejected by treating the same to be under Sec. 13 of the Hindu Marriage Act, 1955 ("the Act"). Brief facts of the case may be noticed thus: the appellant filed a proceedings seeking dissolution of relationship and divorce without indicating any specific provision of law. It was claimed that the respondent Ramphal deceiving her with the promise of marriage brought her to Rajasthan from Uttar Pradesh; telling her that he was not married to defendant No. 2 Fefui Devi; he has already divorced her; the parties started living as husband and wife under threat from the husband that she should not disclose the correct facts to any-one; from the said relationship, they had a daughter and two sons aged about 12 years, 9 years and 4 years respectively at the time of filing plaint.

2. It was further claimed in the plaint that subsequently, the plaintiff came to know about the existence of subsisting relationship of defendant No. 1 with defendant No. 2 and that the respondent No. 1 had two sons and two daughters from defendant No. 2 when the respondent No. 1 used to take money from her and send it to them for their maintenance and construction of the house. The allegations about physical violence; attempt to burn and threatening to kill her were also made part of the pleadings.

3. Based on the said averments it was claimed that the marriage between the parties was null and void and the applicant was entitled to dissolution of relationship and a declaration in this regard was sought. The relief part of the plaint may be noticed thus:

4. A written statement to the said plaint was filed by the respondent No. 1 inter-alia with the averments that both appellant and the respondent No. 1 were married and that he had left his first wife based on the social customs and the plaintiff was aware of the said fact. Rest of the averments made in the application were denied and ultimately it was prayed as under:-

5. Two issues were framed by the trial Court and on behalf of appellant, four persons were examined and on behalf of the respondent No. 1, two witnesses were examined.

6. The learned trial Court based on the averments made in the plaint that parties were merely living as husband and wife and were never married came to the conclusion that in such circumstance, the decree of divorce cannot be passed and the same can only be passed, if the marriage is solemnized as per the Hindu customs and the grounds for grant of divorce were available. Consequently, the application was dismissed on this count by treating the same under Sec. 13 of the Act

7. It is submitted by learned counsel for the appellant that a bare look at the averments and the evidence led by the respondent No. 1, it is apparent that the respondent No. 1 specifically claimed marriage between the parties and therefore, to reject the plaint based on the averments and plea raised by the plaintiff was not correct.

8. Reliance was placed on the judgment of Hon"ble Supreme Court in the case of [Reema Aggarwal Vs. Anupam and Others](#), .

9. On the other hand, learned counsel for the respondent submitted that the appellant has to stand on her own legs and she cannot rely on a written statement and/or the weakness of the defendant"s case and from a bare reading of the plaint, it is apparent that no case was set up seeking divorce in absence of alleged allegations of no marriage having taken place between the parties.

10. I have considered the rival submissions.

11. The learned trial Court while deciding issue No. 1 has merely relied on the averments made in the application and has failed to consider the substance of the application, nowhere in the application provision of Section 13 of the Act was cited and on the other hand, as noticed here-in-before a specific relief was sought that the marriage be declared void. The relevant provision for declaration of the present nature relationship as void would be Section 11 of the Act, which reads thus:-

11. Void marriages.-Any marriage solemnised after the commencement of this Act shall 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 it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5.

12. The said provision enables a party to the marriage to seek declaration of the said marriage as nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5. Clause (i) of Section 5 of the Act reads thus:

5. Conditions for a Hindu marriage.-A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

13. It was a specific case of the plaintiff that despite the fact that the respondent No. 1 had a spouse living at the time of marriage, he had promised to/entered into wedlock with him, though she has denied the fact of marriage as such. However, it has come on record by way of documentary evidence that name of respondent No. 1 has been entered as husband and that of the appellant as wife at various official documents like appellant's service record etc.

14. However, from the pleadings of the parties/respondent No. 1 a plea was raised that he had determined the relationship based on custom with his first wife. Neither the appellant nor the defendant have led any evidence on the said aspect. While the appellant has filed certain documents showing the existing relationship between the respondents No. 1 & 2, the respondent in view of the nature of the petition, which was not very happily worded, has not led any evidence on the said aspect. In view of the above facts and circumstances, in the interest of justice, the appeal is partly allowed; the judgment and decree passed by the trial Court is set aside and the matter is remanded back to the trial Court with a direction to treat the petition filed by the appellant as a petition under Sec. 11 of the Act; re-frame the issues; permit the parties to lead evidence on the said issues and thereafter re-decide the application/petition. As the matter is old, it would be in the interest of justice that the trial Court is directed to proceed with the suit as expeditiously as possible and decide the same preferably within a period of one year. The parties are directed to remain present before the trial Court on 11.11.2013. The record be sent back immediately.