

Neelam Kumar Vs Kamal Kumar

Court: JHARKHAND HIGH COURT

Date of Decision: Oct. 18, 2016

Acts Referred: Hindu Marriage Act, 1955 - Section 11, Section 5

Citation: (2017) 2 AIRJharR 65 : (2017) 1 DMC 68 : (2017) 1 JCR 460 : (2016) 4 JLJR 401

Hon'ble Judges: Mr. H.C. Mishra and Mr. Dr. S.N. Pathak, JJ.

Bench: Division Bench

Advocate: M/s. Binod Singh, Arvind Kr. Choudhary, Advocates, for the Respondent; M/s. Indrajit Sinha, Krishanu Ray, Advocates, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the learned counsel for the appellant and the learned counsel for the sole respondent.

2. The appellant is aggrieved by the Judgment and Decree dated 09.03.2010 passed by the learned Principal Judge, Family Court, Ranchi, in

Matrimonial Title Suit No. 133 of 2004, whereby, the petition filed by the husband under Section 5 (i) read with Section 11 of the Hindu Marriage

Act, 1955, for declaring the marriage between the parties as void, has been decreed by the Court below and the marriage between the parties has

been declared to be null and void.

3. The facts of this case lie in a short compass. The appellant wife was married to the sole respondent according to the Hindu customs and rites on

09.11.1998 at Kolkata. The marriage was also registered under the Provisions of Rule 5 of the West Bengal Hindu Marriage Registration Rules,

1958. Thereafter they settled at Ranchi, where they spent normal conjugal life till the year 2000, and out the wedlock, a female child was also born

to them. Subsequently, the husband learnt that the appellant wife had already married one Muslim gentleman prior to her marriage with the

respondent husband, in which also, there was some matrimonial dispute, for which Suit No. 484 of 1998 was filed by the first husband in the

Family Court at Allahabad, the document of which was found by the present husband, upon which, he learnt that the appellant had already married

the Muslim gentleman, after embracing Islam. Accordingly, the respondent husband filed the present matrimonial suit, being Matrimonial Title Suit

No. 133 of 2004, before the Principal Judge, Family Court, Ranchi, for declaration of marriage as null and void.

4. In the Court below, the appellant appeared and challenged the suit. It is the case of the appellant that the respondent husband had the prior

knowledge of the marriage of the appellant with the Muslim gentleman and accordingly, the suit was not maintainable in the Court below.

5. The impugned Judgment shows that two witnesses were examined on behalf of the petitioner in the Court below, one of whom, being the

petitioner husband himself. The witnesses were cross-examined and even the suggestion was given to the petitioner husband, who had examined

himself as P.W.1 in the Court below, that the petitioner was having the knowledge of the first marriage of the wife. On behalf of the appellant, no

witness was examined in the Court below, though a letter written by the petitioner husband was proved as Exhibit "A". The said letter shows some

knowledge to the petitioner in the year 1999 about the earlier marriage between the appellant and the Muslim gentleman.

6. Learned counsel for the appellant has submitted that the impugned Judgment passed by the Court below is absolutely illegal, inasmuch as, the

respondent husband was having the knowledge of the fact that the appellant had already embraced Islam prior to the filing of the matrimonial suit

and accordingly, the matrimonial suit in the present form was not at all maintainable in the Court below. Learned counsel accordingly, submitted

that on this ground alone, the impugned Judgment cannot be sustained in the eyes of law. Learned counsel, however, admits the fact that the

marriage between these parties was in accordance with the Hindu rites and customs and the marriage was also registered in accordance with the

Hindu Marriage Act.

7. Learned counsel for the respondent, on the other hand, has opposed the prayer and has submitted that in view of the admitted position that the

appellant had married the Muslim gentleman and had embraced Islam before the marriage with the sole respondent, the marriage between the

parties is absolutely null and void and there is no illegality in the impugned Judgment passed by the Court below, declaring the marriage between

the parties null and void.

8. Having heard the learned counsels for both sides and upon going through the record, we find that in this case, it is an admitted position that prior

to marriage of the appellant and the respondent in accordance with the Hindu rites and customs, the appellant had already married a Muslim

gentleman, embracing Islam.

9. Section 5 of the Hindu Marriage Act lays down the condition for a Hindu Marriage, which reads as follows :-

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;

(ii) -----

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10. Thus, a plain reading of this section clearly shows that for a valid marriage under the Hindu Marriage Act, it is a condition precedent that both

the parties to the marriage should be Hindus and neither of the parties should have a spouse, living at the time of marriage. Both these conditions

are not fulfilled in the present case, inasmuch as, it is an admitted position that the appellant had embraced Islam, while marrying another Muslim

gentleman, prior to the marriage with the sole respondent, which fact was not known to the sole respondent. Admittedly, that Muslim gentleman is

still alive and there is nothing on the record to show that the earlier marriage between the parties was not subsisting on the date of marriage

between these parties.

11. Section 11 of the Hindu Marriage Act, 1955, clearly provides that any marriage solemnized after commencement of the said Act, contravening

the provision of Section 5 clause (i) of the said Act shall be null and void.

12. In that view of the matter, we do not find any illegality in the Judgment and Decree dated 09.03.2010 passed by the learned Principal Judge,

Family Court, Ranchi, in Matrimonial Title Suit No. 133 of 2004, holding the marriage between the parties to be null and void.

13. There is no merit in this appeal and the same is accordingly, dismissed.