(2002) 05 MP CK 0045

Madhya Pradesh High Court

Case No: First Appeal No. 491/96

Smt. Asha Qureshi	APPELLANT
Vs	
Afaq Qureshi	RESPONDENT

Date of Decision: May 17, 2002

Acts Referred:

- Contract Act, 1872 - Section 17(4)
- Special Marriage Act, 1954 - Section 25, 29

Citation: AIR 2002 MP 263 : (2002) 4 MPHT 108 : (2002) 3 MPLJ 394

Hon'ble Judges: Vijay Kumar Agrawal, J

Bench: Single Bench

Advocate: R.K. Khare, for the Appellant; A.S. Jha, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Agarwal, J.

This appeal u/s 29 of the Special Marriage Act, 1954 (hereinafter referred to as "Act" for short), is directed against the judgment and decree dated 14-10-1996, in Civil Suit No. 59-A/90, by Fourth Additional District Judge, Jabalpur, declaring the marriage between the parties as null and void, by a decree of nullity.

Facts not in dispute are that the parties were married on 23-1-90 at Jabalpur, in accordance with the "Act". They lived as husband and wife for a period of about one year. Subsequently, the relations between the parties became strained and they started living separately. The respondent filed a petition under Sections 24 and 25 of the "Act", seeking a decree of nullity and of declaration of their marriage as null and void. It was averred by the respondent/husband that after the marriage between the parties on 23-1-90, the respondent/husband came to know that the appellant/wife was already married to one Motilal Vishwakarma. Motilal Vishwakarma had died prior to marriage of the parties. It was further averred by the respondent/husband that the fact of her marriage with Motilal

Vishwakarma was suppressed by the appellant/wife, and that the respondent/husband agreed to marry her believing that she was a virgin. It was averred by the respondent/husband that the appellant/wife by suppressing from him the aforesaid fact has exercised fraud on him.

The appellant /wife denied the allegations as above. It was denied by her that she suppressed any material fact or exercised fraud. According to her, at the time of marriage of parties the respondent/husband was fully aware that the appellant/wife is a widow.

The learned Trial Court framed several issues in the case including as to whether the appellant/wife suppressed the fact that she was a widow and married the respondent/husband by practicing fraud ? Some other issues were also framed which are not relevant for the disposal of this appeal.

The learned Trial Court held that the appellant/wife suppressed the fact of her earlier marriage with Motilal Vishwakarma, and thus the consent of the respondent/husband for the marriage was obtained by fraud.

The learned Counsel for the appellant/wife assailed the finding as above. It was submitted that the appellant and the respondent were known to each other for a long time prior to the marriage and the respondent/husband was fully aware that the appellant/wife was married earlier and her first husband had died. It was, therefore, submitted that there was no suppression of any material fact so as to constitute exercise of fraud by the appellant /wife.

The learned Counsel for the respondent/husband however, supported the impugned judgment. It was submitted by the learned Counsel for the respondent/husband that material fact viz. her earlier marriage was never intimated by her to the respondent/husband. It was submitted that had the respondent/husband known about the earlier marriage of the appellant, he would not have entered into marital ties with her. It was therefore submitted that the Trial Court was justified in holding that consent of the respondent/husband for marriage was obtained by the appellant/wife by exercising fraud. It would be useful to reproduce Section 25 of the Act which lays down the conditions in which the marriage solemnized under the ''Act'' be avoided. It reads :--

''Voidable marriages.-- Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if--

(i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(iii) the consent of either party in the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 :

Provided that in the case specified in Clause (ii), the Court shall not grant a decree unless it is satisfied--

(a) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) that proceedings were instituted within a year from the date of the marriage; and

(c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the jpetitioner of the existence of the grounds for a decree :

Provided further that in the case specified in Clause (iii), the Court shall not grant a decree if--

(a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered."

The respondent/husband appears to have prayed for the decree of nullity of marriage u/s 25(iii) of the "Act". It has therefore, to be considered as to whether consent of the respondent was obtained by fraud as defined in the Indian Contract Act, 1872 ?

Section 17 of the Indian Contract Act defines "fraud" as below :--

"17. "Fraud".-- "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :--

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made; without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation :-- Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, on unless his

silence is, in itself, equivalent to speech."

Therefore, the question that arises for consideration is : as to whether the appellant/wife suppressed the material fact i.e., her earlier marriage with Motilal Vishwakarma and whether the suppression as above would amount to fraud ?

It may be noticed that the respondent/husband Mohd. Afaq Qureshi (A.W. 1) sfated that he married the appellant/wife on 23-1-1990 under the "Act". They resided together for about 7 or 8 months. A dispute thereafter arose between them as the appellant/wife had suppressed that she was already married with Motilal Vishwakarma. He states that thereafter a document captioried as "Iqrarnama" (Ex. P-1) was executed by the appellant/wife. The said document bears signature of the appellant/wife as well as of Jugal Kishore, the brother of the appellant/wife as well as one Mohd. Salim. During cross-examination, the respondent/husband Mohd. Afaq Qureshi (A.W. 1) has admitted that he was known to the appellant/wife for about 5-6 years prior to the marriage. He further stated that on enquiry from the appellant/wife as to why she was not married despite her advanced age, she had told the respondent/husband that as there was no responsible person in her family, she could not get married earlier. He denied suggestion in his cross-examination that he was aware about the earlier marriage of the appellant, when he married her.

As against the above statement, the appellant Smt. Asha Qureshi (N.A.W. 1) has admitted that she was married earlier before she married the respondent. She however, further states that about 8 years back when she befriended the respondent/husband, she had told him that she was married and that she was a widow from her childhood. It is however, noticed that the statement as above of the appellant/wife is not supported by her pleadings. The appellant/wife in her written statement nowhere specifically averred that she had intimated the respondent/husband about her marriage. In para 5 of her written statement, she had vaguely asserted that the present respondent/ husband was aware that the appellant was a widow. However, as mentioned above, she did not plead that she herself informed the respondent about her earlier marriage, prior to marriage with the respondent/husband. It may also be noticed that the appellant Smt. Asha Qureshi (N.A. W. 1) has earlier stated that the respondent came to know from her neighbours that she was a widow and then making an improvement has later stated that she herself informed the respondent about the above fact. As noticed above, the later statement of the appellant is not supported by her pleadings and does not appear to be reliable.

The learned Counsel for the appellant submitted that the document (Ex. P-1) according to the respondent/husband was written after the disclosure to him about the earlier marriage of the appellant/wife. However, the fact of earlier marriage and the disclosure thereof was not mentioned in the document (Ex. P-1). It was, therefore, submitted that it should be inferred from the above that the dispute leading to the execution of Ex. P-1 in fact was not the disclosure or knowledge of the respondent/husband about the earlier marriage of the appellant, and that the said document was got executed by the respondent/husband from

the appellant by exercising force or deception on her.

The contention as above cannot be accepted. It does not have any bearing on the real controversy between the parties. It may be noticed that though the respondent/husband states that dispute had arisen between the parties after their marriage, on the disclosure by the appellant/wife of the above fact, whereafter document (Ex. P-1) was executed. It is noticed that in the document (Ex. P-1) it was only stated that there was dispute between the parties, but the reason of dispute was not mentioned therein. It may be mentioned that the said document does not appear to have been drafted by any legal expert and appears to have been executed by the appellant/wife, in the presence of her brother and some other witnesses. It only contains an averment that in view of the dispute between them the parties wish to obtain divorce. Therefore, mere non-mention of the cause of dispute, in the said document (Ex. P-1) would not by itself be indicative of the fact that the appellant had disclosed to the respondent before their marriage that the appellant was married earlier.

As noticed earlier, the pleadings in the above regard of the appellant/wife are vague. No particulars of date, time and period when the disclosure was allegedly made by her, have been mentioned in the written statement. In fact, there is no specific pleading that she herself intimated the respondent about her earlier marriage. In view of the above, the statement of respondent Mohd. Afaq Qureshi that before their marriage, the appellant never told him about her earlier marriage deserves to be accepted in preference to the appellant''s statement that she did make such a disclosure. In the foregoing circumstances, the finding of the learned Trial Court in the above regard is affirmed.

It is therefore clear from the above that the appellant was married from before and was a widow at the time of her marriage with the respondent, was a material fact. It was not disclosed by the appellant to her husband/respondent. The suppression of material fact as above would amount to exercise of fraud. It may be noticed in the above context that in view of Sub-section (4) of Section 17 of the Contract Act, to constitute fraud, it is not essential, that there should be any misrepresentation by express words. It is sufficient if it appears that the party deceiving knowingly induced the defendant to enter into a contract by leading him to believe that which the party deceiving knew to be false. It also appears from the facts and circumstances of the case that it was the obligation and duty of the appellant to have intimated and apprised the respondent about her earlier marriage. She has failed to do so. The respondent/husband has stated that had he known that the appellant was married from before, he would not have entered into wedlock with the appellant. It is therefore, clear that suppression and active concealment of the fact of her earlier marriage and she being a widow would amount to material mis-representation.

In view of the above, the appellant is entitled to a decree of nullity u/s 25(iii) of the ''Act'' as has been prayed by him. The impugned decree granted as above, by the Trial Court is, therefore, justified. There is no substance in this appeal. It is accordingly dismissed.