

(1998) 10 MP CK 0024

Madhya Pradesh High Court

Case No: F.A. No. 334 of 1994

Vidyudeep

APPELLANT

Vs

Smt. Subhadrabai

RESPONDENT

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**Date of Decision:** Oct. 26, 1998**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 15, 16, 17

**Citation:** (2000) 2 DMC 387**Hon'ble Judges:** A.K. Mathur, C.J; S.K. Kulshrestha, J**Bench:** Division Bench**Advocate:** K.N. Agarwal, for the Appellant; S. Agarwal, for the Respondent**Final Decision:** Allowed

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### Judgement

A.K. Mathur, C.J.

This is the First Appeal directed against judgment and decree dated 8th November, 1994, passed by IVth Additional Judge to the Court of District Judge, Sagar in Civil Suit No. 7A of 1991.

2. Facts giving rise to this appeal are that the plaintiff Smt. Subhadra Bai filed the present suit against the defendant Smt. Vidya Devi, wife of deceased Chhidamilal Sukhad, her son Vidyudeep, State of M.P. and the Superintendent of Police, Sagar praying that the succession certificate granted in favour of defendants Smt. Vidya Devi and her son Vidyudeep in the Civil Suit No. 33 of 1989 judgment dated 22nd January, 1990 may be declared as null and void as the plaintiff is the lawfully wedded wife of deceased Chhidamilal Sukhad and she is entitled to all post retrial benefits, i.e. the sum of Rs. 10,000/- of widow fund, G.I.F. in the sum of Rs. 50,000.00, gratuity in" the sum of Rs. 37,760.00, leave encashment amount of Rs. 5,496.00, ex-gratia amount in the sum of Rs. 14,300.00 and GPF amount of Rs. 12,000.00: totalling to Rs. 1,39,556.00 and other dues mentioned in the Schedule-A- The plaintiff also sought a direction that the State of M.P. and the Superintendent of Police, Sagar may be

directed to pay this amount to her.

3. It may be relevant to mention here that in earlier Civil Suit No. 33 of 1989, judgment dated 22.1.1990, defendants Smt. Vidya Devi and Vidyudeep were declared as successors of deceased Chhidamilal Sukhad and a decree was accordingly passed. The case of the plaintiff is that deceased Chhidamilal Sukhad was a lawfully married husband of the plaintiff and she was his wedded wife. It is alleged that defendant Smt. Vidya Devi developed illicit relation with her husband and started living with him. It is alleged that Vidyudeep was born out of this illegal marriage and he is not legitimate son of deceased Chhidamilal Sukhad. It is alleged that Smt. Vidya Devi has obtained the succession certificate by misrepresenting that she was the lawfully married wife of Chhidamilal Sukhad and Vidyudeep is his legitimate son. The plaintiff has alleged that Smt. Vidya Devi was not lawfully married to deceased Chhidamilal Sukhad nor Vidyudeep was legitimate son. It is alleged that she is the lawfully married wife of deceased Chhidamilal Sukhad and even if deceased Chhidamilal Sukhad had contracted this illegal marriage with Smt. Vidya Devi, then also marriage is void ab initio and, therefore, defendants Smt. Vidya Devi and Vidyudeep are not entitled to succeed in the property of the deceased Chhidamilal Sukhad.

The suit was contested by the defendants No. 1 and 2 and they denied the allegations made in the plaint. It was submitted that defendant Smt. Vidya Devi married deceased Chhidamilal in a temple and was living with him since then and Vidyudeep was born out of this wedlock; therefore, he is legitimate son and is entitled to a succession certificate and to all the assets of the deceased Chhidamilal Sukhad.

4. On the basis of pleadings of the parties, as many as 8 issues were framed by the Trial Court. The learned Trial Court, held that the plaintiff was lawfully married wife of deceased Chhidamilal Sukhad in May, 1960 according to Hindu rites and accordingly she is legitimate Successor of deceased Chhidamilal Sukhad. The learned Trial Court further held that the marriage of defendant Smt. Vidya Devi with the deceased Chhidamilal Sukhad, said to have been solemnised on 2.12.1970 according to Hindu rites is not a valid marriage. It was further held that the defendant Smt. Vidya Devi was only a mistress of deceased Chhidamilal Sukhad. Accordingly, the learned Trial Court decreed the suit of the plaintiff. Hence, the present appeal has been filed by the defendants Smt. Vidya Devi and Vidyudeep (Smt. Vidya Devi has meanwhile expired).

5. The plaintiff, in order to substantiate the allegations, examined herself as P.W. 1 and in support of her contention that she was the lawfully married wife of deceased Chhidamilal, she also examined P.W. 3 Laxman (brother-in-law of deceased Chhidamilal Sukhad) who supported her testimony that the marriage of deceased Chhidamilal Sukhad was solemnised with plaintiff Smt. Subhadra according to Hindu rites. P.W. 6 Hariram Sukhad (brother of deceased Chhidamilal Sukhad) also

supported the contention of the plaintiff. The plaintiff also examined her own brother P.W. 7 Chandanlal Sukhad who deposed that the marriage between Smt. Subhadrabai and deceased Chhidamilal Sukhad solemnised and she went to village Bikor. The testimony of these three witnesses was accepted by the learned Trial Court for arriving at the conclusion that a lawful marriage in accordance with the Hindu rites was solemnised between Smt. Subhadrabai and the deceased Chhidamilal Sukhad.

6. As against this, defendant Smt. Vidya Devi examined herself as D.W.I. She also examined one Laxmi Narayan Pateria as D.W. 2 and Dhan Singh as D.W. 3.

7. From the statements of above witnesses, it appears that the first marriage of deceased Chhidamilal Sukhad was solemnised with the plaintiff Smt. Subhadrabai. On the basis of evidence of witnesses, like brother and brother-in-law of deceased Chhidamilal Sukhad and the brother of the plaintiff, it appears that a regular marriage according to Hindu rites was solemnised between plaintiff Smt. Subhadrabai and deceased Chhidamilal Sukhad. It appears that soon after the marriage; Chhidamilal Sukhad deserted Smt. Subhadrabai (plaintiff) and started cohabiting with the defendant Smt. Vidya Devi and as per evidence, a marriage was also solemnised in a temple on 2.12.1970 and affidavits to this effect were executed vide Exs. D23 and Ex. D24 and deed of agreement was also executed vide Exs. D25 and D.26. It also appears that in the voters' list, the name of defendant Smt. Vidya Devi appears as wife of deceased Chhidamilal Sukhad. Likewise, in the nomination papers of the Insurance, Smt. Vidya Devi has been declared as nominee of the deceased Chhidamilal Sukhad. In other documents like certificates of B.A. and B.Ed, Smt. Vidya Devi is shown as the wife of deceased Chhidamilal Sukhad (vide Exs. D34 and D35). Photographs Exs. D.36, D.37 and D.38 also show their marriage. Likewise; in the document Ex. D44 certificate issued by school where Vidyudeep took admission, he is shown to be the son of deceased Chhidamilal Sukhad and their photographs also support this fact. In the bank account also defendant Smt. Vidya Devi is nominated as a wife of deceased Chhidamilal Sukhad. All condolence messages were received in her name. The deceased Chhidamilal Sukhad was a Police Officer. His revolver and cartridges were deposited in the Police Department by her and certificate to this effect was given to her. Therefore, it does transpire that a second marriage was contracted by deceased Chhidamilal Sukhad. But the question is, can this second marriage survive in face of the first marriage which was duly solemnised according to Hindu rites?

8. In the present case, it appears that deceased Chhidamilal Sukhad was already lawfully married with plaintiff Smt. Subhadrabai way back in 1960 which clearly appears from her evidence supported by the evidence of her relations as well as relations of the deceased Chhidamilal Sukhad. Therefore, the factum of first marriage stands established, it is more than apparent that the first marriage was duly solemnised according to the Hindu rites. But it appears that the deceased

Chhidamilal Sukhad deserted her and contracted second marriage. From various documents as well as oral evidence, it appears that the second marriage was also solemnised by deceased Chhidamilal Sukhad with the defendant Smt. Vidya Devi in a temple in a clandestine manner all through his life, he cohabited with her and in all documents, he had shown the defendant Vidya Devi to be his nominee and " out of that marriage, Vidyudeep was also born. In the school record also, Vidyudeep is shown to be the son of deceased Chhidamilal Sukhad. However, we have to examine whether the second marriage can be said to be legitimate marriage or not Our answer to this question is in negative. The second marriage solemnised by deceased Chhidamilal Sukhad is illegal marriage in face of subsistence of first marriage.

9. According to Section 5 of the Hindu Marriage Act, 1955, a marriage can be solemnised between any two Hindus if certain conditions are fulfilled i.e. neither party has a spouse living at the time of marriage. In the present case, deceased Chhidamilal Sukhad had first subsisting marriage with plaintiff Smt. Subhadrabai, therefore, he could not have contracted the second lawful marriage. Section 17 of the Hindu Marriage Act also lays down that any marriage between two Hindus solemnised after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living. This is also punishable under Sections 494 and 495 of the Indian Penal Code. Therefore, so called second marriage solemnised between the defendant Smt. Vidya Devi and deceased Chhidamilal Sukhad was apparently illegal marriage. Since the second marriage contracted by deceased Chhidamilal Sukhad was an illegal marriage and it is nullity and void marriage, therefore, Smt. Vidya Devi could not have been treated as a lawful successor of deceased Chhidamilal Sukhad. Accordingly, the so called succession certificate given by the Civil Court in C.S. No. 33 of 1989 to that extent cannot be sustained.

10. Next question is as to what is the effect of such illegal marriage and the issues born out of such illegal marriage. It is established from the documents, photographs, school certificate the defendant Vidyudeep was enrolled in the school as the son of deceased Chhidamilal Sukhad. D.W. 1 Smt. Vidya Devi has also deposed that Vidyudeep was born out of this wedlock and he is son of Chhidamilal Sukhad. It is thus established beyond doubt that Vidyudeep was born out of this wedlock between deceased Chhidamilal Sukhad and Smt. Vidya Devi. Can such a son born out of illegal marriage have any right qua his father ? This question is also answered by the provisions of Section 16 of the Hindu Marriage Act which say that irrespective of the fact that the marriage is null and void, even then a child born out of such marriage would be legitimate: Therefore, so far as defendant Vidyudeep is concerned, he cannot be denied to succeed in the assets and properties of the deceased Chhidamilal Sukhad. Section 16 reads as under :

"16. Where a decree of nullity is granted in respect of any marriage u/s 11 or Section 12, any child begotten or conceived before the decree is made who would have

been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity :

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity and rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

In this connection, reference may be made to the case of [Mahila Mathuro Bai and Others Vs. Ramwati and Others](#), . In this case, it is held that Section 16 of the Hindu Marriage Act is for the benefit of children born out of void marriages and has to be applied in full, so as to confer status with interest in property of their parents, it was also held that law leans in favour of legitimacy and frowns upon bastardity. Same view was subsequently taken by learned Single Judge of this Court in the case of Nera Bai v. Pusia Bai 1996 MPLJ 87.

11. So far as grant of succession certificate in favour of Vidyudeep is concerned, it cannot be declared to be void as the second marriage may be illegal but the issues born out of that marriage are not illegitimate. Therefore, so far as Vidyudeep is concerned, he is legitimate son of deceased Chhidamilal Sukhad and is entitled to share the property with Smt. Subhadrabai (plaintiff), the first married wife of deceased Chhidamilal Sukhad. During the pendency of this appeal, defendant Smt. Vidya Devi expired and Vidyudeep being the only surviving defendant, he continued to prosecute as the sole appellant and the name of Smt. Vidya Devi was deleted.

12. As a result of above discussion, this appeal of the appellant Vidyudeep is allowed in part and he is declared to be legitimate successor of deceased Chhidamilal Sukhad and is entitled to share as an heir of deceased Chhidamilal Sukhad. Since Vidyudeep (defendant) is the heir of Class-I, therefore, he will share movable as well as immovable properties of the deceased Chhidamilal Sukhad as a Class-I heir along with the first wife of Chhidamilal Sukhad. Earlier decree passed by the learned Trial Court declaring that the succession certificate granted in favour of defendants is null and void is accordingly modified. The learned Trial Court shall divide the assets of the deceased Chhidamilal Sukhad in accordance with law.