

(2012) 5 CHN 30

Calcutta High Court

Case No: C.O. No. 1323 of 2009

Smt. Pratima Maity

APPELLANT

Vs

Sujit Maity

RESPONDENT

Date of Decision: Aug. 16, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 498A
- Hindu Marriage Act, 1955 - Section 12, 19, 8

Citation: (2012) 5 CHN 30

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: R.N. Mahato, for the Appellant; Pushpal Satpathi, for the Respondent

Final Decision: Dismissed

Judgement

Syamal Kanti Chakrabarti, J.

In the instant revisional application under Article 227 of the Constitution the legality and propriety of the order No. 37 dated 13.03.2009 passed by the learned Civil Judge (Junior Division), Jhargram, Paschim Medinipore in Title Suit No. 60 of 2005 dated 16.03.2009 questioning jurisdiction of the learned Court to entertain a suit for a decree of nullity of her marriage with the Plaintiff.

2. It is contended that the Defendant Petitioner filed a petition dated 16.01.2009 praying for dismissal of the suit on grounds of want of jurisdiction. After hearing both the parties the learned Court below by impugned order No. 37 dated 13.03.2009 has held that the Plaintiff has filed the suit claiming that his marriage was never solemnized under the Hindu Law and there is No. consummation of such marriage. The marriage certificate obtained by the Defendant was not a valid document and binding upon him. Therefore, the Civil Court is competent to decide the matter and the suit was within the competence of the learned Court concerned.

3. Being aggrieved by and dissatisfied with such order the Petitioner/ Defendant has preferred this revisional application contending, inter alia, that she was married to the Plaintiff/ opposite party on 17.01.2001 which was solemnized at her father's residence as per Hindu rites and customs. On 25.09.2001 their marriage was registered in the office of the Marriage Registrar and she led conjugal life with him and the marriage was duly consummated. On account of her failure to meet demand of dowry she was subjected to physical and mental torture by her in-laws and ultimately she was driven out from her matrimonial home for which she has filed a case being G.R. Case No. 135/202 u/s 498A Code of Criminal Procedure and also filed an application u/s 125 Code of Criminal Procedure being M.R. Case No. 51 of 2002 claiming her maintenance allowance. During pendency of the above proceeding the Plaintiff/ opposite party has filed the aforesaid Title Suit praying for a declaration that the claim of the Petitioner-wife on the basis of such marriage certificate is a nullity. It is contended on behalf of the Petitioner that prayer (a) of the Plaintiff/ opposite party in the above suit for a declaration that the Petitioner is not his wife and his prayer for nullity of the marriage comes under the purview of Section 12 of the Hindu Marriage Act and as such the suit ought to have been filed u/s 19 of the Act before the learned District Judge/ Additional District Judge who can try the same. Therefore, the learned Court below has committed an error in admitting the suit and holding maintainability of the suit in the affirmative and his findings that the Civil Court has jurisdiction to entertain such suit is not sustainable in law and is liable to be dismissed.

4. Learned Lawyer for the Plaintiff/ opposite party has, however, opposed the move and contended that in the instant case the averment made by the Plaintiff is to the effect that the marriage was not solemnized and so the registration u/s 8 of the Act will not render such marriage as complete and binding between the parties. Such a registration may, at best, raise a presumption of marriage which is rebuttable. Therefore, there is No. ouster of jurisdiction of the Civil Court for a declaration sought for in the aforesaid Title Suit. Therefore, there is No. merit in this revisional application which should be dismissed. He has relied upon and referred to the principles laid down in the case of [Tapash Kumar Moitra Vs. Pratima Roy Choudhury](#), and [Monika Das Gupta Vs. Promode Kumar Roy](#), in support of such contention.

5. Admitted position in this case is that the Petitioner/ Defendant has claimed that the Plaintiff/ opposite party married her according to Hindu rites and customs on 17.01.2001 which has been denied in the averment made by the Plaintiff in T.S. No. 60 of 2005. A similar question was dealt with by this Hon"ble Court in the case of [Tapash Kumar Moitra Vs. Pratima Roy Choudhury](#), . It was a suit for declaration that the appropriate registration of Hindu marriage was null and void and the record of such registration should be cancelled, deleted and expunged from the relevant marriage register and the declaration given by the Plaintiff upon which the marriage was registered be declared null and void. In dealing with the matter it was held by the Hon"ble Court that the suit is simply for cancellation of the appropriate registration of the alleged marriage under the Hindu Marriage Act, 1955 and the Hindu Marriage Registration Rules, 1958 and consequential

reliefs. If it is the averment that marriage has not been solemnized then the registration u/s 8 of the said Act read with relevant provisions of the said Rules by itself will not result in making the marriage complete and binding between the parties. Such registration may raise presumption of marriage being solemnized. In such a case the plaint cannot be considered to be a petition u/s 19 of the Hindu Marriage Act and as such the Civil Court has jurisdiction to entertain such prayer. The same principle has been echoed in the case of Sasanka Sekhar Basu v. Miss. Dipika Roy reported in 1993 (2) CHN 189 as well as [Monika Das Gupta Vs. Promode Kumar Roy](#),

6. Therefore, relying upon the above principles I hold that the learned Court below is justified in rejecting the prayer of the Defendant and rightly held that he has jurisdiction to entertain the suit. Therefore, I do not find any merit in this revisional application which is accordingly dismissed. Since the suit is pending from 2005 the learned Court below is directed to dispose of the suit as expeditiously as possible, preferably within a period of four months from the date of communication of this order without granting unnecessary adjournments to the parties.

7. The interim order granted earlier stands vacated.

8. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.