
Sajeevan Das Vs Tirith Bai

Second Appeal No. 661/2003

Court: Chhattisgarh High Court

Date of Decision: Feb. 13, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 100#Hindu Marriage Act, 1955 " Section 11, 12, 16, 5#Hindu Succession Act, 1956 " Section 10, 8

Citation: (2014) 3 CGLJ 360 : (2014) 3 MPHT 78

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: P.P. Sahu, Advocate for the Appellant; Akhil Agrawal, Panel Lawyer, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay K. Agrawal, J.

1. This is plaintiffs" second appeal u/s 100 of the CPC (for short ""the CPC"") against the judgment and decree dated 17-7-2003 passed by 3rd

Additional District Judge, Bemetara, Distt. Durg in Civil Appeal No. 122-A/2003, affirming the judgment and decree dated 31-10-2000 passed

by Civil Judge, Class I, Bemetara, District Durg in Civil Suit No. 56-A/98, dismissing the suit.

(For sake of convenience, the parties shall be referred to according to their array in the suit.)

Plaintiffs herein filed a suit for declaration stating inter alia that defendant Nos. 1 to 5 have no right or title over the suit property as they have

obtained ex parte order of partition of the suit property from the Tehsildar, Bemetara, which is bad in law. It was further pleaded that plaintiff No.

2-Phootki Bai is the first wife (widow) of deceased Ramdayal @ Ramlal and other plaintiff-Sajeevan Das is the son of deceased Ramdayal @

Ramlal out of wedlock with Phootki Bai whereas defendant No. 1-Tirith Bai is the second wife (widow) of deceased Ramdayal @ Ramlal out of

second marriage (Churi form marriage) during the life time of first wife and the defendant Nos. 2 to 5 are the son and daughter of deceased

Ramdayal @ Ramlal out of the wedlock with defendant No. 1-Tirith Bai. Plaintiffs further pleaded that marriage of defendant No. 1 with

Ramdayal @ Ramlal during the life time of plaintiff No. 2-Phootki Bai was illegal and the defendant Nos. 2 to 5 being illegitimate children born out

of void second marriage, they would not inherit the share in the property of late Ramdayal @ Ramlal.

2. The Trial Court, by its judgment and decree dated 31-10-2000, dismissed the suit, holding that defendant Nos. 2 to 5 being the illegitimate

children born of void second marriage would inherit the share in the property of Ramdayal @ Ramlal by operation of Section 16 of the Hindu

Marriage Act, 1955.

3. The plaintiffs preferred first appeal there against. The First Appellate Court, after re-appreciating the entire evidence adduced in the case,

affirmed the judgment and decree passed by the Trial Court, leading to filing of this second appeal u/s 100 of the Code of Civil Procedure.

4. Shri P.P. Sahu, learned Counsel appearing for the plaintiffs would submit that concurrent findings recorded by both the Courts below holding

that defendant Nos. 2 to 5 being illegitimate children born out of void second marriage of Ramdayal @ Ramlal with Tirith Bai would inherit the

properties of Ramdayal @ Ramlal is bad in law and that raises a substantial question of law for determination in this appeal.

5. I have heard learned Counsel appearing for the parties and perused the records of both the Courts below including judgment and decree

impugned.

6. It is not in dispute that Ramdayal @ Ramlal during the life time of his first wife-Phootki Bai entered into second marriage with defendant No. 1-

Tirithi Bai in Churi form and out of wedlock with defendant No. 1-Tirith Bai, defendant Nos. 2 to 5, son and daughter of Ramdayal @ Ramlal

were born. Thus, they are the children of Ramdayal @ Ramlal, and marriage of defendant No. 1-Tirith Bai with Ramdayal @ Ramlal was void in

view of contravention of Section 5 of sub-section (ii) of the Hindu Marriage Act, 1955, but by operation of Section 16 of the Hindu Marriage Act

children born of the void second marriage namely defendant Nos. 2 to 5 though illegitimate children will entitle and would inherit share in the self

acquired properties of Shri Ramdayal @ Ramlal and by said provision, they will treated as legitimate for all practical purposes including succession

to the property.

7. Section 16 of the Hindu Marriage Act provides as follows:--

16. Legitimacy of children of void and voidable marriages.--

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 any 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.

8. Sections 11 and 12, which are referred to in Section 16 above are also quoted below:--

11. Void marriage.--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. Voidable marriages.--(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be

annulled by a decree of nullity on any of the following grounds, namely:--

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required u/s 5 as it stood immediately

before the commencement of the Child Marriage Restraints (Amendment) Act, 1978 (2 of 1978) the consent of such guardian was obtained by

force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage--

(a) on the ground specified in clause (c) of sub-section (1), shall be entertained if--

(i) the petition presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate

or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the Court is satisfied--

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

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such

commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said

ground.

9. In case of Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, , the Supreme Court, while dealing

with the question as to whether illegitimate children were entitled to succeed the property of their parents, has held that by virtue of Section 16 of

the Hindu Marriage Act, 1955 illegitimate children out of wedlock of the void second marriage would inherit share in the property of their parents

by operation of Section 16 of the Act of 1955. Paragraph 79, 80 and 82 of the report as under:--

79. Section 16 contains a legal fiction. It is by a rule of fictio juris that the legislature has provided that children, though illegitimate, shall,

nevertheless, be treated as legitimate notwithstanding that the marriage was void or voidable.

80. When an Act of Parliament or a State Legislature provides that something shall be deemed to exist or some status shall be deemed to have

been acquired, which would not have been so acquired or in existence, but for the enactment, the Court is bound to ascertain the purpose for

which the fiction was created and the parties between whom the fiction was to operate, so that full effect may be given to the intention of the

legislature and the purpose may be carried to its logical conclusion. [See: J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India

(UOI) and Ors. ; American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another,].

82. In view of the legal fiction contained in Section 16, the illegitimate children, for all practical purposes, including succession to the properties of

their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which

in its operation, is limited to the properties of the parents.

10. Thereafter, the Supreme Court in case of Rameshwari Devi Vs. State of Bihar and others, , has held as under:--

14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu

Marriage Act and was a void marriage. u/s 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956,

property of a male Hindu dying intestate devolves firstly on heirs in clause (1), which include widow and son. Among the widow and son, they all

get shares (See: Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain

Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain

Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of

Rameshwari Devi with Narain Lal.

11. In case of Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others, , the Supreme Court held that while engrafting a rule of fiction in

Section 16 of the Act, the illegitimate children have become entitled to get share only in self-acquired properties of their parents. The Court held as

under:--

4.....Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of

contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as

the case may be, of bastardising the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among

the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the

Hindu Marriage Act, 1955. The legitimate status of the children, which depended very much upon the marriage between their parents being valid

or void, thus, turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to

suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in

enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the

children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application,

so far as succession or inheritance by such children are concerned to the properties of the parents only.

5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming, illegitimate,

at the same time, it expressly provide in sub-section (3) by engrafting a provision with a non-obstante clause stipulating specifically that nothing

contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage, which is null and void or which is

annulled by a decree of nullity u/s 12, "any 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 the light of such an express mandate of the legislature itself, there is no room for according upon such children, who but for Section 16

would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of

reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only

violence to the provision specifically engrafted in sub-section (3) of Section 16 of the Act, but also would attempt to Court re-legislating on the

subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the

submissions on behalf of the appellants.....

12. This view has been approved and followed by the Supreme Court in cases of Neelamma and others Vs. Sarojamma and others, (2006) 9

SCC 612 , and it has held that illegitimate children would be entitled to share of self acquired property of parent and not to the Joint Hindu Family

property and further in case of Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others, , the same view has been reiterated.

13. Thus, if the decision of both the Courts below are scanned in the light of the pronouncement made by Supreme Court in the aforesaid cases

(supra), it would be luminously clear that defendant Nos. 2 to 5 being the illegitimate children of Ramdayal @ Ramlal out of the wedlock with

defendant No. 1-Tirth Bai, are entitled to succeed to the properties of their father Ramdayal @ Ramlal and the Trial Court as well as First

Appellate Court has not committed any illegality in dismissing the plaintiffs suit.

14. Thus, the concurrent findings recorded by both the Courts below are finding of fact based on material available on record and I do not find it

either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

15. Recently, the Supreme Court in the case of Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, , has held that High Court should not

disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paras 36 and 37 of report as under:--

36. In Major Singh Vs. Rattan Singh (Dead) by LRs. and others, , it has been observed that when the Courts below had rejected and disbelieved

the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable

in law while hearing an appeal u/s 100 of the Code of Civil Procedure.

37. In Vidhyadhar Vs. Manikrao and Another, , it has been ruled that the High Court in a second appeal should not disturb the concurrent findings

of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on

record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of

the evidence, the High Court would not be entitled to exercise the jurisdiction u/s 100 of the Code of Civil Procedure. This view of ours has been

fortified by the decisions of this Court in Abdul Raheem Vs. The Karnataka Electricity Board and Others, .

16. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by both the

Courts below is based on evidence, no substantial question of law is involved in this appeal, thus, appeal deserves to and accordingly dismissed at

admission stage itself. No order as to costs.