

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAT APP No. 80/2009

Judgment delivered on: 28th September, 2010

Ms. Megha Manchanda Appellant

Through: Mr. Sanjay Aggarwal, Adv.

versus

Saurabh Sharma Respondent

Through: Mr. Sanjiv Bahl, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 28 of the Hindu Marriage Act, 1955 the appellant seeks to set aside the judgment and decree dated 24.7.2009 whereby a decree of restitution of conjugal rights was passed in favour of the respondent and against the appellant.

2. Brief facts of the case relevant for deciding the present appeal are that both the parties got married on 27.04.2005 at Arya Samaj Mandir, Jamuna Bazar , Delhi and the marriage was registered on 12.05.05 vide registration certificate dated 12.05.05 at Delhi. That on the pretext of the brother of the appellant visiting from Australia the parents of the appellant called her to the parental house and she never returned thereafter. Consequently the respondent filed a petition under section 97 Cr.P.C which was dismissed. The appellant on the other hand had filed a suit for declaration to declare the marriage as null and void which was withdrawn. Thereafter the respondent filed a petition under section 9 of the Hindu Marriage Act for restitution of conjugal rights and vide judgment and decree dated 24.07.2009 the same was

decreed in favour of the respondent and against the appellant. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Counsel for the appellant states that the marriage between the parties was not solemnized according to Hindu rites and ceremonies. Counsel further submits that in the absence of the said marriage being proved by the respondent, no decree under Section 9 of the Hindu Marriage Act could have been passed by the learned trial court. Counsel further submits that the prerequisites as laid down under Section 9 were not fulfilled as no evidence was led by the respondent to prove that 'Saptapadi' was performed at the time of the marriage. Counsel further submits that even the marriage registration certificate could be of no help to the respondent once the said essential ceremony was not proved by the respondent. Counsel also submits that the appellant had filed a suit for declaration to get the said marriage declared as null and void but the said suit was withdrawn by the appellant in

view of the petition filed by the respondent under Section 9 of the Hindu Marriage Act.

4. Refuting the submissions of the counsel for the appellant, Mr. Bahl, counsel for the respondent supports the judgment passed by the learned Additional District Judge. Counsel submits that the respondent has duly proved on record the factum of marriage and therefore, no fault can be found in the impugned judgment and decree dated 24.7.2009 passed by the court of the learned ADJ under Section 9 of the Hindu Marriage Act.

5. I have heard learned counsel for the parties.

6. The case set up by the respondent husband in his petition filed under Section 9 of the Hindu Marriage Act was that both the parties got married on 27.4.2005 at Arya Samaj Mandir, Jamuna Bazar, Delhi against the wishes of their parents. It has also been stated that the said marriage was performed according to the Hindu rites and ceremonies in the presence of two close friends of the respondent husband and the said marriage was registered on 12.5.2005 before the

Registrar of Marriage at Saket, Delhi. It was also the case of the respondent husband that after the said marriage, the parents of the respondent had reconciled with their marriage and both the parties started residing together at the matrimonial home at Flat No. 130-B, First Floor, Motia Khan, New Delhi after mid of September, 2006. It was also stated that the parents of the appellant wife were still reluctant to agree to this marriage and the appellant was thus taken away by her parents and thereafter did not return back. The respondent had approached the Court of learned M.M. under Section 97 of Cr. P.C. and in the said proceedings the appellant had refused to join the company of the respondent.

7. The petition filed under section 9 by the husband was duly contested by the appellant wife. The preliminary objection raised by the appellant in the written statement was that the marriage was not solemnized according to the Hindu rites and ceremonies. The learned trial court framed the following issues:-

“1. Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse? OPP

2. Whether the petitioner is entitled to a decree of Restitution of Conjugal Rights? OPP”

8. The respondent husband adduced his own evidence and the evidence of his friend Nirmal Kumar by tendering affidavits as Ex. PW1/1 and Ex. PW2/1 respectively. The respondent husband proved the marriage certificate issued by Arya Samaj Vedic Marriage Mandal as Ex. PW1/A, Marriage Registration Certificate as Ex. PW1/B and marriage photographs of the parties as Ex. RW2/P1 to Ex. RW2/P5. The plea taken by the appellant in the written statement as well as in her evidence was that on 27.4.2005 she was made to drink cold drink which was adulterated and during the state of intoxication the said marriage was performed. Even in the proceedings initiated by the respondent husband under Section 97 Cr. P.C. the stand of the appellant was that their marriage was not performed according to Hindu rites and ceremonies. Although, no specific issue was framed by the learned trial court with regard to the said preliminary objection taken by the

appellant but in any case both the parties led their respective evidence to prove/disprove the factum of the said marriage.

9. The learned trial court in the impugned judgment has observed that the appellant was not in a position to tell the approximate time as to when she was intoxicated with the said adulterated drink; whether it was given in the morning or afternoon or in the evening. The learned trial court also observed that marriage certificate is a public document and therefore genuineness is attached to it and in the absence of any cogent evidence placed on record by the appellant the court did not disbelieve the said documents. It would be appropriate to reproduce para 11 of the impugned judgment here:

“11. Respondent’s first defence is that she was not in a position to give her consent for marriage as she was made to drink intoxicated drink. Her father/RW1 also stated so but her story on this point is not credible on following counts:-

i. She is not able to tell the approximate time when intoxicated drink was given to her i.e. Whether it was given in morning or in afternoon or noon or in evening.

ii. She stated the marriage certificate as fabricated. It is a public document and genuineness is attached to it.

iii. She admitted in her cross examination that *after the incident of 27.4.2005 her mother had forewarned to accompany the petitioner but she again accompanied him on 12.05.05 when the said marriage was registered at Saket. Why a girl would accompany a boy second time when he had already given her intoxicated drink and married her in that deception and also her mother had forewarned her.*

iv. No doctor was called to treat respondent on 27.4.2005 or on 12.5.2005.

v. Her counsel did not put any suggestion to PW1 and PW2 that she was forced to drink adulterated drink and then was forced to undergo marriage ceremonies.

vi. She disclosed the incident of 27.04.2009 to her mother but did not bring her in the witness box.

vii. Why she did not make any complaint to Police regarding both incidents.

viii. Photographs of marriage from Ex.RW2/P1 to Ex. RW2/P5 are on record and in those photographs, respondent is looking happy and there is no sign that she was intoxicated.”

10. This court does not find any infirmity in the above said findings of the learned trial court. The Id. Trial court has rightly held that the appellant failed to prove that she was administered the adulterated drink or that she was coerced to appear before the marriage registrar.

11. The second plea of the appellant is that the marriage was not solemnized according to Hindu rites and ceremonies. In para 13 of the impugned judgment also, the learned trial court has observed that even the father of the appellant himself admitted in his cross-examination that the marriage of his daughter was solemnized according to Hindu rites and ceremonies. Even in the certificate issued by the Arya Samaj Vedic Marriage Mandal, Jamuna Bazar it was clearly mentioned that the marriage was solemnized according to Hindu, Vedic rites and customs. Based on the documentary and oral evidence the learned trial court came to the conclusion that the marriage between the parties was solemnized according to Hindu rites and ceremonies.

12. When the fact of celebration of marriage is established it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have been gone through. In the present case, the marriage certificate issued by the Arya Samaj Vedic Marriage Mandal clearly states that the marriage between the parties has been solemnized according to Hindu Vedic rites and customs. Hence the presumption is in favour of a valid marriage. The presumption may not be available in a case, for example, where the man was already married or there was any insurmountable obstacle to the marriage, but presumption arises if there is strong evidence by documents and conduct which is the situation in the present case. The marriage certificate also is a strong piece of evidence which the appellant failed to rebut which goes to further augment the presumption of the factum of marriage. This court is therefore of the considered view that the learned trial court has rightly decided the existence of a valid marriage between the parties.

13. It cannot be lost sight of the fact that a petition under section 9 is an effort by one of the parties to the marriage to reconcile the differences which might have arisen between them and give an opportunity to the spouse to join back the matrimony unless there exists just and reasonable circumstances. Marriage is a sequence of bitter sweet events. When the spouse is unable to establish the cause of leaving the matrimony, it brings home the message that there is still a reserved potential, untapped which if explored can conduce the parties to lead a benign married life.

14. In the light of the aforesaid discussion, I do not find any perversity or illegality in the impugned judgment and decree.

15. There is no merit in the present appeal. The appeal does not deserve admission and is accordingly dismissed.

September 28, 2010
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KAILASH GAMBHIR, J