

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.894 of 2011

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Ranvir Kumar Choudhary S/O Sri Amar Nath Choudhary R/O Mohalla - South
Digghi Tank, P.O. Lalbagh, P.S. Town (Darbhanga), District - Darbhanga

.... Appellant

Versus

Smt. Sushmit Suman (Wife of Ranvir Kumar Choudhary) D/O Dr. Sanjay Kumar
Singh, at present residing in Mohalla - 97, Ganga Sagar Allalpatti, P.O. - D.M.C.
Campus, P.S. Laheria Sarai, District - Darbhanga

.... Respondent

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Appearance :

For the Appellant/s : Mr. Gajendra Kumar Jha, Advocate

For the Respondent/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate with
Mr. Ranjan Kumar Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 22-05-2015

Heard learned counsel for the appellant and learned counsel
for the respondent.

2. The appeal is directed against the judgment and order
dated 5.9.2011 passed by the Principal Judge, Family Court,
Darbhanga in Matrimonial Case No. 154 of 2008 by which he has
dismissed the Matrimonial case under Section 9 of the Hindu
Marriage Act for restitution of conjugal right filed by the appellant on
contest.

3. The appellant had filed an application under Section 9 of
the Hindu Marriage Act (in short, 'the Act'), alleging that his
marriage ceremony with the respondent was solemnized with
customary rites and ceremony on 27.11.2005 at the parents' house of



the respondent at Mohalla-87, Gangasagar Allalpati, P.S. Laheriasarai. After the marriage the parties lived together as husband and wife. The marriage was consummated by cohabitation. It is stated that the applicant-appellant and the respondent are both Hindus though belonging to different castes and they met and fell in love and irrespective of being of different castes they decided to marry which has resulted in the aforesaid marriage ceremony. Thereafter they decided to get the marriage registered and applied for registration before the Marriage Officer, Darbhanga and after the process was adopted the parties were directed to appear and they did appear along with three witnesses on 8.2.2006 and both the applicant and the respondent accepted the said marriage before the Marriage Officer in the presence of the witnesses and upon being satisfied the Marriage Officer issued certificate of marriage dated 8.2.2006. It was the further stand that the parties continued to lead conjugal life till July 2008 and in the 1st week of August, 2008 the respondent went to her parents' house. However, when the appellant went to his Sasural on 29.8.2008 to meet his wife, the father-in-law and some other relatives present there became furious by stating that the caste men including the relations were opposing the inter-caste marriage and under threat to life he was directed to write on a stamp paper as per their dictation, which he did and thereafter the appellant was driven out from his sasural without being allowed to meet his wife. The appellant did not

take any legal action on account of such conduct due to the assurance given by the respondent that she was still ready to live with him and forbade him from taking any action. However, all efforts of the applicant to bring the respondent to the matrimonial home failed, upon which the application under Section 9 of the Act was filed.

4. The respondent appeared upon notice and filed the written statement by way of objection taking the plea that the case has been filed with vexatious, malicious and dishonest intentions for maligning and defaming the prestige of the respondent and high reputation of her in-laws and the parents and for extorting money from them as the respondent had or has no concern with the applicant. It was further asserted that the respondent is the daughter of a reputed Doctor and her mother is also Principal and Director of Jesus and Mary School, Darbhanga and further that the respondent is married with Dr.Rajnish, son of Mrs. Veena Singh and Ramashankar Singh, the Joint Commissioner, Commercial Taxes on 24th November, 2008 and is leading happy conjugal life with her husband. It was also asserted that the statement regarding her marriage made in the application was totally false and at the relevant time she was living with her parents and a regular student of final year MBBS and never married or even knew the applicant. It was also asserted that from a reading of paragraphs 1, 3 and 4 of the Matrimonial case it is apparent that no ceremonies like Saptapadi and Kanyadan were performed in



the alleged marriage dated 27.11.2005 and thus such marriage cannot be said to have been solemnized in accordance with the provisions of Section 7 of the Hindu marriage Act, 1955. It was further asserted that the applicant sent forged affidavit along with a C.D. and photographs at the address of her Mausi which she came to know on 6.8.2008 and thereafter her father appeared in court, swore affidavit on 14.8.2008 and filed the same before the Marriage Officer, Darbhanga. It was asserted that a fraudulent marriage certificate had been obtained in the name of the respondent by forging her signature by impersonating the respondent before the Marriage Officer on 8.2.2006 as well as on the affidavit dated 5.1.2006 and the C.D. and the photographs of the alleged marriage were brought into existence by mechanization by computer by placing the face of the respondent using software of computer aided design. It was however admitted that the applicant was carrying out the business of computer and also supplied computers in Jesus and Mary School run by the mother of the respondent and alleged that it was possible that he might have taken advantage of access to the said school where often the respondent also went to meet her mother. It was also asserted that an application was filed for scrapping the marriage certificate in question.

5. Upon the said pleadings the court below framed/settled the following four issues :-

- (i) Whether the petition as framed and filed is maintainable ?
- (ii) Whether the respondent is legally

wedded wife of the petitioner ?

(iii) Whether the petitioner is entitled for restitution of conjugal rights ? and

(iv) To what other relief, if any, the petitioner is entitled to ?



6. In support of his case the applicant examined four witnesses, namely, AW 1 Amarnath Jha, AW 2 Rishi Kumar Chaudhary, AW 3 Sanjeev Kumar Jha and AW 4 Ranvir Kumar Chaudhary, the applicant himself. The applicant also filed several documents including the marriage certificate (Ext.1), Policy document in the name of the applicant Ranvir Kumar Chaudhary of Bajaj Allianz and LIC Ltd. (Ext.2), certified copy of Final Form of Laheriasarai P.S.Case No. 429 of 2008 (Ext.3) and certified copy of order dated 21.5.2010 passed by the Chief Judicial Magistrate, Darbhanga in Laheriasarai P.S.Case No. 429 of 2008 accepting the final form (Ext.4). The applicant also filed in court a large number of photographs of the respondent including several joint photographs which were simply marked for identification only but not admitted as evidence. The same were held by the court as not duly proved and not worth reliance.

7. The respondent did not examine any other witness except herself nor produce any documentary evidence. On the basis of the pleadings and evidence of the parties the learned Principal Judge, Family Court held that the respondent is not the legally married wife of the applicant and the applicant is not entitled for decree of

restitution of conjugal right and held the other two issues also against the applicant-appellant.

8. The question to be considered in this appeal is as to whether the certificate of marriage is valid in the eye of law and further as to whether the alleged marriage itself is valid in the eye of law.

9. Sections 15, 16 and 18 of the Special Marriage Act, 1954 are as follows :

“S.15. Registration of marriages celebrated in other forms.- Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely :-

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living ;

(c) neither party is an idiot or a lunatic at the time of registration ;

(d) the parties have completed the age of twenty-one years at the time of registration ;

(e) the parties are not within the degrees of prohibited relationship :

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.



S.16. Procedure for registration.- Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of this marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

S.18. Effect of registration of marriage under this Chapter.- Subject to the provisions contained in sub-section (2) of Section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents :

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.”

10. From a perusal of the aforesaid provisions of the Special Marriage Act it is evident that any marriage solemnized, but other than a marriage solemnized under the provisions of the said Act



and its predecessor Act, may be registered under Chapter III in which the said Sections have been incorporated if certain conditions are fulfilled, inter alia, that a ceremony of marriage has been performed between the parties and they have been living together as husband and wife. The procedure for registration is prescribed in Section 16 under which an application signed by both the parties to the marriage has to be presented before the Marriage Officer for registration under the said Chapter III, who is required to give a public notice in the prescribed manner and after expiry of the 30 days notice period for receiving objection and after hearing any objection if received within the said period, if the Marriage Officer is satisfied that the conditions mentioned in Section 15 are fulfilled then he is required to enter the certificate of marriage in the Marriage Certificate Book in the specified form and such certificate has to be signed by the parties to the marriage and by three witnesses. Section 18 provides for effect of registration of marriage under Chapter III of the said Act declaring that as from the date of entry in the Marriage Certificate Book the marriage shall be deemed to be a marriage solemnized under this Act and all children born after the date of ceremony of marriage shall in all respects be deemed to be and always to have been the legitimate children of their parents.

11. From the aforesaid provisions it is evident that the moment a certificate of marriage is finally entered in the Marriage

Certificate Book the deeming fiction of law takes effect and the said marriage is deemed to be a marriage solemnized under the said Act and other consequences follow.

12. Learned counsel for the appellant submits that in view of the aforesaid provisions of the Special Marriage Act, 1954 read with Sections 70, 77 and 79 of the Evidence Act as also Section 114(e) thereof it is evident that the court below has seriously erred in rejecting the marriage certificate on grounds which are not at all germane. It is also submitted that it was not open to the learned Principal Judge to have held that since the applicant and the respondent had appeared before the Marriage Registration Officer only once on 8.2.2006, hence the marriage certificate was issued in contravention of the provisions of Section 16 of the Special Marriage Act.

13. Learned counsel for the appellant assails the finding that since only one of the three witnesses of the Marriage Registration Certificate had been examined, namely, AW 3 Sanjeev Kumar Jha who is a pet man of the applicant and further that he has acted as Purohit in the alleged marriage thus his evidence is not reliable.

14. He has also challenged the finding that since the respondent had denied her signature over the marriage certificate (Ext.1) and the applicant failed to produce alleged joint application filed before the Marriage Registration Officer for registration of the

alleged marriage, thus the applicant has completely failed to prove the marriage certificate.

15. Learned counsel for the respondent, on the other hand, has supported the aforesaid reasons and findings of the court below.

16. In our view, the findings of the court below on this point are totally contrary to the aforesaid provisions of the Indian Evidence Act and the principles of appreciation of evidence. It is undoubted that marriage certificate under the provisions of Chapter III of the Special Marriage Act is a public document being the Act/ record of fact of a public officer vested with statutory authority under the Special Marriage Act. Thus, in terms of Section 76 of the Evidence Act all that is required to prove it is production of certified copy of such public document and such certified copies in terms of Section 77 of the Evidence Act may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. It is thus evident that even in the absence of production of all the three witnesses and on the mere denial of signature by the respondent, the genuineness of the said certificate cannot be said to have been failed to be proved by the applicant. As per the deeming provision of Section 18 of the Special Marriage Act a mere entry of the certificate of marriage in the Marriage Certificate Book under Chapter III of the said Act raises a legal fiction of the marriage from the date of such entry to be deemed to be a marriage

solemnized under that Act. It is thus not at all necessary for the applicant to have produced any more evidence than what he has done.

17. If the registration itself was denied by the respondent then the onus of disproving the same clearly fell upon the respondent who had totally failed to discharge the said onus by showing on the basis of clear and cogent evidence that she was neither a joint applicant of the application for the purpose of such registration nor she was present nor signed the certificate of marriage. The respondent having failed to discharge the said onus, it has to be held that the certificate of marriage issued under Section 3 of the Special Marriage Act stands and the consequences of such certificate as enumerated under the said Act would also follow.

18. The question, however, will remain that even if Ext.1, the certificate of marriage, stands as a legal and valid document as to what is the legal effect of such a document on the validity of the marriage itself. A large number of cases were cited on behalf of the respondent in the court below in support of the proposition that mere registration of the marriage under Chapter III of the Special Marriage Act by itself cannot be a proof of a valid marriage. The stand of the respondent taken from earliest even in the written statement has been that there is no pleading in the application of the matrimonial case regarding essential rites of a valid Hindu marriage having been performed, namely, the performance of Saptapadi and Kanyadan as

required by Section 7 of the Hindu Marriage Act. In support of the same learned counsel relies upon various decisions which were cited by the respondent in the court below also, namely, Smt. Seema v. Ashwani Kumar : AIR 2006 SC 1158, Joyita Saha v. Rajesh Kumar Pandey : AIR 2000 Calcutta 109 and Sanjay Mishra v. Miss Eveline Jobe : AIR 1993 Madhya Pradesh 54.

19. Learned counsel for the appellant admits that there is no specific evidence in the deposition of any of the witnesses on the point of Saptapadi and Homa. He, however, submits that the court below should have considered the evidence as a whole which is consistent with the stand regarding the marriage of the parties.

20. In support of his stand learned counsel for the appellant relies upon a decision of the Supreme Court in the case of Sumitra Devi v. Bhikan Choudhary : AIR 1985 SC 765, replying upon paragraph-3 thereof which is quoted below :

“3. We are impressed by the fact that the respondent had not seriously disputed the fact of marriage and had taken the stand that such marriage was void being vitiated by fraud and suppression of material facts as also for non-performance of religious rites. The Additional Sessions Judge and the High Court have adopted a technical approach while considering the question of marriage. There is no doubt that in order that there may be a valid marriage according to Hindu law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered by this Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and



marriages of this type give rise to legal relationship which law accepts. The Additional Sessions Judge as also the learned Single Judge of the High Court did not refer to the fact that for about a decade the parties had lived together. Public records including voters' lists described them as husband and wife and competent witnesses of the village of the wife as also the husband had supported the factum of marriage. Witnesses have also spoken about the reputation of the appellant being known in the locality as the wife of the respondent. These facts should not have been totally overlooked while considering the case of marriage. It is possible that on account of the lawyer's mistake the appellant's witnesses have not referred to the religious rites which might have been performed at the time of marriage. It is equally possible that the learned Magistrate while recording the evidence has not specifically recorded the details and has only indicated that witnesses have spoken to the fact of marriage. Since the form of marriage has not been found and traditional marriage according to Hindu law requires performance of certain religious rites, we consider it proper in the peculiar facts of the case to remit the matter to the learned Magistrate for a fresh inquiry at which apart from the evidence already on record both sides should be entitled to lead further evidence particularly in support of their respective stands relating to the factum of marriage."

21. It has been the consistent view of the courts that a certificate of registration under Section 15 of the Special Marriage Act by itself does not validate the marriage unless the essential ceremonies are proved in terms of the provisions of the Hindu Marriage Act and any such certificate is not a conclusive proof of valid Hindu marriage which has to be tested on the anvil of Section 7 of the Hindu Marriage Act. The consistent view of the courts with regard to Section 7 of the Hindu Marriage Act has been that, whether

the parties belong to different castes or not, such rites and ceremonies include the Saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire; the marriage becomes complete and binding when the seventh step is taken.

22. It is true that a valid Hindu marriage can take place without even performance of Saptapadi if it is proved that according to the customary rites of either of the parties for the solemnization of the marriage Homa and Saptapadi are not essential rites.

23. It is the consistent case of the respondent that Homa and Saptapadi are the essential rites to be performed and only after that the marriage would be a valid marriage according to her family and customary rites, which essential rites not stated to have been performed by the applicant. On the other hand, it has not been asserted by the appellant that the Homa and Saptapadi are not essential rites according to the customs of his family nor there is any such statement either in the written statement or in the evidence.

24. In the aforesaid view of the matter, it is difficult to accept that a valid marriage took place between the appellant and the respondent on 27.11.2005. The mere existence of a certificate under Chapter III of the Special Marriage Act is not proof of such marriage, nor the production of a large number of photographs which unfortunately the court below held that they have not been duly proved and merely marked for identification. In our view, the



provisions of Evidence Act do not bind the Family Court in view of Section 14 of the Family Courts Act, 1984 that the Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. The court below ought not to have excluded the photographs as being inadmissible in evidence in view of the aforesaid provision but may have rejected the same keeping in view the fact that in the present state of technological development it is possible to morph such photographs. In the present matter, however, even considering the very large number of photographs taken, including joint photographs of the appellant and the respondent, it cannot be held to be forged and manipulated without further investigation of the matter and without further evidence on the point. It is a different matter, however, that since none of the photographs show the performance of essential rites of performance of Saptapadi, hence they have no effect on the final view regarding the validity of the marriage.

25. In the light of the aforesaid discussions, we are of the view that even though certificate of marriage in Chapter III of the Special Marriage Act cannot be held to be a non-genuine or invalid document, but the same alone does not prove the stand of the appellant so far as a valid marriage having taken place between the

appellant and the respondent under the provisions of Section 7 of the Hindu Marriage Act is concerned. We thus see no reason to interfere with the order of the Family Court. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Dr. Ravi Ranjan, J)

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