

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CRP No.94 of 2012

Smt. Lipika Malakar,
Daughter of Shri Sudhir Chandra Malakar
Resident of Khulidahar,
P.S. Kadamtala, at present resident of North Nayapara,
P.O. & P.S. Dharmanagar, District North Tripura.

..... *Petitioner.*

– *Versus* –

Sri Sekhar Das
Son of Sri Nityananda Das,
Resident of Village Tulamura,
P.O. Jitendranagar, PIN - 799105,
P.S. Kakraban, District - South Tripura.

..... *Respondent.*

B_E_F_O_R_E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	:	Mr. A K Bhowmik, Sr. Advocate, Mr. R Dutta, Advocate.
For the respondent	:	Mr. K. K. Pal, Advocate.
Date of hearing and delivery of judgment.	:	04.03.2015.
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 13th August, 2012 passed by the learned trial Court where by the application filed by the petitioner (*hereinafter referred to as the lady*) for recalling PW.3 has been rejected.

2. This is a rather unusual case. The petitioner lady filed a petition under Section 12 of the Hindu Marriage Act, 1955 alleging that

the marriage certificate issued by the Registrar of Marriages was *null and void* because her consent to the marriage had been obtained by fraud and coercion.

3. In the marriage certificate it is mentioned that the marriage took place at 'Mangalik Community Centre' which appears to be a wedding hall where marriages are performed. The wife examined the owner of the Mangalik wedding hall Sri Ajoy Paul, PW.3 by way of filing an affidavit in which he stated that no marriage between the petitioner lady and the respondent Shekhar Das was performed in his marriage house Mangalik on 12th March, 2009 or at any other time. When this witness was cross-examined, he stated that he could not produce any paper to show that he is the owner of Mangalik Community Centre. He also stated that he had not brought to Court the register in which entries about the marriages are made. The cross-examination of this witness was concluded on 20th January, 2011. Thereafter the case was listed on 7th April, 2011 for the evidence of the respondent and the witnesses were examined and cross-examined. The matter was adjourned to 24th June, 2011 and two more witnesses were examined and cross-examined on 25th August, 2011.

4. It appears that written arguments were filed in the matter and on the same date when written arguments were filed an application for recalling PW.3 Ajoy Paul was filed with a prayer that he be directed to appear in Court along with the register maintained by him as owner of Mangalik containing the entries with regard to the

marriages which took place on 12th March, 2009. This application has been rejected by the impugned order by holding that by filling the petition under Section 12(1)(C) of the Hindu Marriage Act the petitioner has admitted that her marriage was solemnized and, therefore, it is not necessary to decide the question whether any marriage was actually solemnized on 12th March, 2009 or not.

5. I am not at all in agreement with this observation. It is made clear that this Court is not expressing any opinion on the merits on the case. However, the allegation of this lady is that no marriage ceremony was performed at Mangalik and that the certificate was obtained by exercising fraud and coercion upon her. A marriage can be registered before Registrar of Marriages only if a marriage has been performed. The Registrar of Marriages himself can also perform a marriage if the parties so desire. The present case is not one where the Registrar himself has performed the marriage but is a case where he, on the basis of the application made by the lady and the gentleman, he(Registrar) has issued a marriage certificate in their favour.

6. The lady alleges that in fact no marriage ceremony was performed. In case no marriage ceremony was performed then that will be a very important matter to decide whether such certificate is valid or not. It will also help in deciding whether any fraud or coercion was exercised upon the wife. I see no harm why the owner of Mangalik wedding hall should not come before the Court and produce the

register with regard to the marriage. It is, however, made clear that if he so appears, he shall produce all documents and shall be cross-examined by the respondent. In case the respondent thinks that there is need to lead any further evidence after recording the statement of the witness who has been recalled they can pray to the Family Judge for recording such evidence also.

7. In this view of the matter the order dated 13th August, 2012 is set aside. The learned Judge, Family Court is directed to permit the petitioner herein to recall Ajoy Paul, PW.3 along with the register of marriages maintained by him as owner of Mangalik. He may also, if so advised, produce the evidence to show that he is the owner of Mangalik wedding hall. As already indicated above, in case the respondent desires he can also produce evidence to the contrary after recording the of evidence of Ajoy Paul.

8. The petition is disposed of in the aforesaid terms.

9. The parties are directed to appear before the learned Judge, Family Court, Agartala, West Tripura on **8th April, 2015** and he shall make an endeavour to decide the matter as early as possible and not later than 31st August, 2015.

10. Registry is directed to ensure that the lower court record is sent well before the next date.

CHIEF JUSTICE

Sukhendu