

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 340 of 2000**

Sachitanand And Another

---- Appellants

Versus

Smt.Triveni Bai And Others

---- Respondents

For Appellants : Shri Alok Bakshi, Advocate
None for respondents

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/12/2015**

This appeal was admitted for hearing on the following substantial question of law:-

“Whether both the Courts below were justified in holding that Late Nanki Bai had the status of wife of Late Brijmohan particularly when in the succession proceedings it was categorically held by the Court that she was not wife of Late Brijmohan?”

2. The respondent-plaintiff filed a suit seeking declaration of his title in respect of disputed property on the pleadings inter alia that the land in dispute originally belonged to Lala Brijmohan, who was survived by his wife Nanki Bai and Nanki Bai, later on, after the death of Lala Brijmohan, sold the property in favour of Banshdhari Dubey-purchaser, vide registered sale deed dated 12-04-1975, Ex.P-1.

The defendant claiming to be nephew of Lala Brijmohan started creating cloud on the title by holding that the Nanki Bai had no title to sell property of Lala Brijmohan, therefore, Banshdhari Dubey, purchaser and thereafter, his successor-the plaintiffs had no title in respect of the land in dispute. Therefore, the cause of action arose for the plaintiff to file suit for declaration.

The defendant came out with a plea that Lala Brijmohan was married to one Kanti Bai who alone his legally wedded wife. Lala Brijmohan never married Nanki Bai and Nanki Bai was not his legally wedded wife. Nanki Bai lived as concubine of Lala Brijmohan for sometime but that does not confer on her, legal status of wife of Lala Brijmohan so as to succeed his property after his death. It was also that the case of the defendant that earlier, in succession proceedings, it was held that Nanki Bai was not the legal wedded wife of deceased-Lala Brijmohan, and therefore, she was not entitled to succeed to his estate.

Both the Courts below have recorded a concurrent finding that Nanki Bai was the wife of Lala Brijmohan and therefore, she succeeded to estate and the property of Lala Brijmohan after his death, she had valid title over the land and house in dispute, which was sold by her to Banshdhari Dubey vide Registered Sale Deed, Ex.P-1.

3. Learned counsel for the appellant argued that the Courts below have recorded perverse finding that Nanki Bai was legally wedded wife of Lala Brijmohan. It was urged with vehemence that in the absence of any pleading and proof of performance of marriage ceremony according to Hindu rituals between the Lala Brijmohan and Nanki Bai, no presumption of they being husband and wife could be drawn only on the basis of the evidence of co-habitation.

4. Learned counsel for the appellant argued that the Courts below have recorded a perverse finding of long co-habitation. The evidence led by the plaintiff does not prove long co-habitation, therefore, the finding of long co-habitation is perverse. Next contention of learned counsel for the appellant is that the Courts below ought to have held that the findings recorded in proceedings under Indian Succession Act, 1925 (In short "the Act") in the matter of grant of succession, were binding on the parties and those findings having attained finality, the finding contrary to these findings was impermissible under the law. It is lastly urged that the additional evidence admitted on record by the learned lower appellate Court has not been properly appreciated. The will deed nowhere records Nanki Bai as wife by its testator Lala Brijmohan. It is argued that if Nanki Bai was married to Lala Brijmohan, there was no reason not to mention her as his own wife by the testator Lala Brijmohan. This clinching evidence leads to inference that Lala Brijmohan never accepted Nanki Bai as his legally wedded wife .

5. None represented the respondents.

6. In so far as submission that the findings recorded in proceedings for grant of succession certificate under the Act is concerned, that was binding on the parties, the same deserves to be rejected at the threshold in view of the provisions contained in Section 387 of the Indian Succession Act, which is extracted hereinbelow:-

387. Effect of decisions under this Act, and liability of holder of certificate thereunder.-No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

7. A bare perusal of the statutory provisions contained therein leaves no

manner of doubt that the finding recorded by the Court in proceedings for grant of succession certificate under the provisions of the Act will not preclude either of the parties to take recourse to the remedy in appropriate forum for declaration of their legal status which they claim.

8. The Courts below have applied principle of long co-habitation to raise presumption in favour of valid marriage as between Late Brijmohan and Nanki Bai. Reliance has been placed on the judgment of Supreme Court in the case of **Badri Prasad v. Dy. Director of Consolidation and others, AIR 1978 SC 1557**. In the aforesaid decision, the Supreme Court held:-

“For around 50 years, a man and a woman, as the facts in this case unfold, lived as husband and wife. An adventurist challenge to the factum of marriage between the two, by the petitioner in this special leave petition, has been negated by the High Court. A strong presumption arises in favour of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. The contention deserves to be negated and we do so without hesitation. The special leave petitions are dismissed.”

The principle laid down in the aforesaid decision lean in favour of legitimacy based on long co-habitation. Therefore, the principle which has been applied by the Court below cannot be said to be incorrect.

9. There is overwhelming evidence on record to prove long co-habitation between Lala Brijmohan and Nanki Bai. Amarchand Jaiswal, PW-2, Suresh Kumar Verma, PW-3 and Nathu Lal, PW-4 have stated in their evidence with regard to long co-habitation between Lala Brijmohan and Nanki Bai by deposing that both of them were living together as husband and wife. In particular, Amarchand Jaiswal, PW-2 has clearly stated in his evidence that he has seen Lala Brijmohan and Nanki Bai living together for 15 to 20 years prior to execution of sale deed dated 12-04-1975, Ex.P-1. This evidence of Amarchand Jaiswal, PW-2 has remained uncontroverted. Suresh Kumar Verma, PW-3 and Nathu LAL, PW-4 have also deposed that they have seen Lala Brijmohan and Nanki Bai living together as husband and wife and after death of Lala Brijmohan, Nanki Bai sold some of the property to other persons including Banshdhari Dubey. There is evidence on record to show that after death of Lala Brijmohan, the name of Nanki Bai was mutated in revenue records. The aforesaid evidence proved long co-habitation as a matter of fact. Once long co-habitation as husband and wife is proved, the burden shifts to one who asserts that there was no marriage or marital relationship, but the defendant in the present case has failed to discharge this burden by leading clinching evidence on this issue. Therefore, on this aspect, the finding of the Court below does not warrant any interference.

10. Learned counsel for the appellant placed heavy reliance on the will deed which was produced by the appellant during appellate proceedings in the Court below. The document is a will deed. It contains recital regarding bequeathing of the property in favour of Nanki Bai. In the entire will deed, as it literally reads, the name of Nanki Bai was mentioned as beneficiary of the will to the exclusion of all other successors.

Submission of learned counsel for the appellant is that as this document does not contain any recital that Nanki Bai was the wife of the testator and therefore, irresistible inference is liable to be drawn that Nanki Bai was not standing in any relation to deceased-Lala Brijmohan, not even as wife but only leads to inference that she was his concubine.

In the considered opinion of this Court, this is essentially in the realm of appreciation of evidence without involving any aspect of illegality or perversity. There is no basis to hold that, as a general rule, while recording a will, if relationship of the testator with the beneficiary is not stated, inference of no relationship, has to be drawn. Learned counsel for the appellant could not satisfy this Court with reference to any particular law on the aspect. True it is that the learned lower appellate Court has recorded that Nanki Bai was not his wife has also not been recorded, it hardly leads to any conclusion by itself. But I am inclined to reject this submission that mere non mention of Nanki Bai as his wife should be taken as the clinching evidence to draw irresistible conclusion that Nanki Bai was not the legally wedded wife of Lala Brijmohan.

11. In view of above consideration, the finding of the Court below regarding legal status of Nanki Bai as being wife of Lala Brijmohan is not liable to be interfered with.

12. The appeal, therefore, fails and is hereby dismissed. Decree be accordingly drawn.

Sd/-
Manindra Mohan Shrivastava
Judge