

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-.-

FAO No. 7131 of 2015
Date of decision: 19.10.2015

Kala Singh

..... Appellant

Versus

Jaspreet Kaur

.....Respondent

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. P S Dhaliwal, Advocate
for the appellant

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

Rekha Mittal, J.

The present appeal lays challenge to the judgment and decree dated 22.07.2015 passed by the District Judge (Family Court), Barnala (hereinafter to be referred as 'the trial Court') whereby the petition under Section 11 of the Hindu Marriage Act, 1955 (in short, 'HMA') filed by the respondent - wife has been allowed and marriage of the parties has been declared to be null and void.

Jaspreet Kaur - respondent prayed for declaring marriage of the parties as void on the premise that the appellant obtained her consent for marriage by administering some intoxicant in a cold drink. The appellant

was earlier married with Manpreet Kaur and had a living spouse at the time of performance of marriage with the respondent.

The appellant filed the written statement, denied the allegations that consent of the respondent for marriage was obtained by playing fraud or she was not in her full senses at the time of giving consent. It has been admitted that the appellant got married with Manpreet Kaur daughter of Parsha Singh, resident of Gehri Devi Nagar, Tehsil and District Bathinda but denied that no legal divorce took place between the appellant and his earlier wife *namely* Manpreet Kaur. It is averred that after getting divorce from the appellant, Manpreet Kaur has performed second marriage and is living with her husband.

The controversy between the parties led to framing of following issues:-

1. *Whether the petitioner is entitled for declaring her marriage with the respondent as void and nullity? OPP*
2. *Whether the marriage of the petitioner with the respondent was solemnized during the subsistence of first marriage of the respondent with Manpreet Kaur daughter of Parsha Singh, resident of Gehri Devi Nagar, Tehsil and District Bathinda? OPP*
3. *Whether the respondent was already divorced at the time of his marriage with the petitioner? OPR*
4. *Whether the petition is not maintainable in the present form? OPR*
5. *Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective claims. The respondent examined Subash Garg

(PW2), Harwinder Singh (PW3) and herself appeared in the witness box PW1.

To rebut evidence of the respondent, the appellant examined Jaspal Singh (RW1), Santokh Singh Granthi (RW2) and himself appeared as his own witness (RW1).

The learned trial Court, on due consideration of the pleadings, evidence adduced by the parties and rival submissions made by their respective counsels, negated plea of the respondent that her consent for the marriage was obtained by playing fraud. However, the Court accepted claim of the respondent that her marriage with the appellant was performed during subsistence of earlier marriage of the appellant with Manpreet Kaur and, therefore, the marriage was performed in violation of the provisions of Section 5 (i) HMA, rendering it null and *void ab-initio*.

Counsel for the appellant would urge that though the appellant earlier performed marriage with Manpreet Kaur, a relative of the respondent but his marriage with Manpreet Kaur was legally dissolved. It is further submitted that after dissolution of marriage of the appellant and Manpreet Kaur, she (Manpreet Kaur) has performed marriage and is residing with her husband.

We have heard counsel for the appellant and perused the records.

The sole question that arises for consideration is '*whether the marriage of the appellant with Manpreet Kaur was subsisting at the time of marriage of the parties?*

As per the case set up by the appellant, he was earlier married

with one Manpreet Kaur daughter of Parsha Singh, a relative of the respondent (Jaspreet Kaur) and after getting divorce from his first wife, he performed marriage with Jaspreet Kaur-respondent. It is also averred that marriage of the appellant with his first wife Manpreet Kaur was dissolved by way of executing an affidavit Ex. P5.

On the other hand, respondent - Jaspreet Kaur stated that she was not legally married with appellant Kala Singh as her consent for the marriage was obtained by playing fraud. She has also stated that Kala Singh was having a living spouse at the time of his marriage with her and, therefore, marriage of the parties is null and void since inception as per Section 5 (i) HMA.

In response, counsel for the appellant would submit that as the appellant's marriage with Manpreet Kaur was legally dissolved by way of customary divorce, recognized by law, there was no legal hindrance nor his marriage with the respondent offends any of the conditions prescribed in Section 5 HMA, particularly clause (i) of Section 5.

Section 29 (2) HMA, which protects the custom in relation to the marriage which is solemnized under HMA, reads as follows

“Section 29 in The Hindu Marriage Act, 1955

29 Savings.

(1) xx xx xx

(2) Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3)xx xx xx

(4) xx xx xx”

It is well settled that in order to succeed on custom, the person claiming custom has to plead and prove the custom. There is absolutely no evidence to prove existence of any such custom in the community of the parties by which the divorce could be granted. The appellant, therefore, failed to substantiate his plea that his marriage with Manpreet stood dissolved by legal means and he did not have a living spouse at the time of his marriage with Jaspreet Kaur. In this view of the matter, we are unable to find any error much less illegality in the impugned judgment.

No other point has been urged.

For the aforesaid reasons, the appeal is dismissed in limine.

(Rajive Bhalla)
Judge

(Rekha Mittal)
Judge

19.10.2015
Mohan Bimbra