

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.M-3 of 2015

DATE OF DECISION: January 07, 2015.

Rajinder Singh

....APPELLANT.

VERSUS

Mandeep Kaur

....RESPONDENT.

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. C.S. Rana, Advocate for the appellant.

SNEH PRASHAR, J.

1. This is an appeal directed against the judgment and decree dated 23.07.2014 vide which the petition under Section 11 of the Hindu Marriage Act, 1955 (in short “the Act”) for declaring the marriage of appellant-husband Shri Rajinder Singh with respondent-wife Smt. Mandeep Kaur, was dismissed with costs.

2. The facts extracted from the record are as under:-

Appellant Rajinder Singh and respondent Mandeep Kaur were married on 20.04.2005 at village Diwaniwal, Tehsil Batala, District Gurdaspur according to Sikh rites and rituals. After marriage, they cohabited as husband and wife at village Nangal Bagbana, Tehsil Batala and a son was born out of the wedlock who is since in custody of

Mandeep Kaur.

The instant petition for declaring the marriage between the parties as null and void was filed by Rajinder Singh on the ground that Mandeep Kaur was married to one Baljit Singh son of Sewa Singh, resident of village Shohan, Tehsil Kalanaur, District Gurdaspur and that marriage still subsists and had not been dissolved by a decree of divorce passed by a court of law. The factum regarding first marriage of Mandeep Kaur was concealed from him and his relatives. He learnt about it only on 15.09.2011 when Sewa Singh, father of Baljit Singh issued a certificate to him regarding that marriage. Resultantly, his marriage with Mandeep Kaur was a nullity since its inception and he had been defrauded by Mandeep Kaur.

3. The petition was contested by respondent Mandeep Kaur. In her written statement the preliminary objection raised by her was with regard to maintainability of the petition in the present form.

Replying on merits, she admitted that she is a legally wedded wife of Rajinder Singh and that a son namely, Tejinder Singh was born out of their wedlock. She denied that prior to her marriage with Rajinder Singh she was married to Baljit Singh son of Sewa Singh. According to her, Rajinder Singh, who is employed as Head Constable in the police had concocted a false story about her first marriage with a view to get rid of her and the minor child. She had filed a petition before learned Judicial Magistrate Ist Class, Batala, against Rajinder Singh for grant of maintenance allowance to her and her minor son, in which he had

appeared through counsel but subsequently due to default in appearance he had been proceeded against exparte. The said petition was decided exparte on 20.11.2010 awarding monthly allowance to the tune of ₹1500/- each to her and her son. On a petition for execution of the order filed by her Rajinder Singh had appeared and filed an objection petition denying his marriage with her with a malafide intention to avoid payment of maintenance allowance. An amount of ₹96,000/- had become due as arrears of maintenance and as a counter blast to the same Rajinder Singh had filed the instant petition.

4. On the pleadings of the parties, following issues were settled:-

- (1) Whether marriage between petitioner and respondent is void and nullity, as alleged by the petitioner? OPP.
- (2) Whether the petition is not maintainable? OPP.
- (3) Relief.

5. Both the parties adduced evidence in support of their respective contentions.

6. Finding that the appellant had not been able to establish on file that respondent already was married to Baljit Singh when she married appellant on 20.04.2005 and he does not have any ground for declaring his marriage with respondent as null and void, learned trial Court dismissed the petition with costs by judgment dated 23.07.2014.

7. Feeling aggrieved by the judgment dated 23.07.2014, appellant Rajinder Singh preferred the instant appeal.

8. The submissions made by Mr. C.S. Rana, Advocate, learned counsel representing the appellant have been heard.

9. To begin with it may be noticed that section 5 (i) of the Act prohibits second marriage of a party having a living spouse. Section 11 of the said Act postulates that a marriage solemnized in contravention to clause (i) of Section 5 is a nullity. Taking shelter of the said provision, Rajinder Singh had filed the instant petition alleging that prior to marriage with him on 20.04.2005, Mandeep Kaur was married to one Baljit Singh son of Sewa Singh, resident of village Shohan, Tehsil Kalanaur, District Gurdaspur. That marriage had not been dissolved in due process of law. Since the first marriage of Mandeep Kaur subsisted and she had a living spouse, her marriage with him was void from the very inception.

10. Learned counsel for appellant Rajinder Singh argued with vehemence that the allegation of the appellant regarding first marriage of Mandeep Kaur with Baljit Singh was corroborated by Sewa Singh, father of Baljit Singh, who appeared as PW2. He deposed that his son Baljit Singh was married to Mandeep Kaur on 18.06.2004. He also testified that Mandeep Kaur was also known as Nirmaljit Kaur and that marriage between Mandeep Kaur and Baljit Singh was dissolved by way of a “divorce deed” dated 25.11.2004 Ex.P1.

The other documents to which learned counsel for the appellant referred to were two voter lists one of the year 2003 of village Diwaniwal prepared by the office of District Education Officer, Gurdaspur, which was tendered in evidence by the appellant as Ex.P2 and

another of the same village, which was tendered as Mark-A. Learned counsel contended that in both the documents at serial no.628 to 637 are the names of family members of Sibhdev Singh. Father of Mandeep Kaur, namely Harbhajan Singh, is son of Sibhdev Singh. In the said list, Nirmaljit Kaur had been named as daughter of Harbhajan Singh at serial no.637. Hence, from the said documents, it is proved that Nirmaljit Kaur and Mandeep Kaur was one and the same lady.

11. Further, elaborating his argument learned counsel for the appellant contended that the first marriage of Nirmaljit Kaur alias Mandeep Kaur with Baljit Singh could be dissolved only by a decree of divorce passed by a court of law. The divorce deed Ex.P1 was not a legal and valid document and therefore, the first marriage of Mandeep Kaur could not be held to be dissolved. When she had a living spouse of her first subsisting marriage on the date she was married to Rajinder Singh, her said second marriage was null and void as provided under Section 5 (i) read with Section 11 of the Act.

12. Analyzing the above ocular and documentary evidence led by Rajinder Singh and referred to by his learned counsel, the findings of learned trial Court were as under:-

“To bring home this point, learned counsel for the petitioner referred to the voter list Ex.P2 and Mark-A. These reflect the name of one Nirmaljit Kaur daughter of Harbhajan Singh as voter. No negative inference can be drawn from it that Harbhajan Singh does not have any other daughter with name Mandeep Kaur. Petitioner consequently has failed to prove that it is respondent Mandeep Kaur, who

is mentioned as Nirmaljit Kaur in the divorce deed Ex.P1 or that she was married to Baljit Singh earlier.”

13. Indeed, there appears no adversity or perversity in the above findings of learned trial Court. Learned counsel failed to refer to anything material on record which could indicate that the findings were erroneous.

First of all, apparently it was neither pleaded nor deposed by Rajinder Singh that his wife Mandeep Kaur was also known as Nirmaljit Kaur and was the only daughter of her father Harbhajan Singh. No evidence worth in its name could be led by him to prove that Nirmaljit Kaur and Mandeep Kaur was one and the same lady. Mere statement of PW2 Sewa Singh was not enough to establish the said facts especially when he did not mention the source of his information on the basis of which he testified that Nirmaljit Kaur and Mandeep Kaur was one and the same lady. In absence of required evidence, the divorce deed Ex.P1, which was purported to have been executed between Baljit Singh and Nirmaljit Kaur as well as the voter lists Ex.P1 and Mark-A cannot be attributed to respondent Mandeep Kaur. Moreover, in none of the said documents it was mentioned that Nirmaljit Kaur was known by the name of Mandeep Kaur also. She was not addressed as Nirmaljit Kaur alias Mandeep Kaur.

14. Secondly, appellant Rajinder Singh failed to explain when and how he came across Sewa Singh after more than seven years of his marriage with Mandeep Kaur, who disclosed to him that Mandeep Kaur was known by the name of Nirmaljit Kaur and she was earlier married to

his son Baljit Singh. Surprisingly, it was not even proved that Baljit Singh was son of Sewa Singh, who appeared as PW2 and was still alive.

15. Thus, on such flimsical ground learned trial Court rightly held that the marriage between appellant Rajinder Singh and respondent Mandeep Kaur, which admittedly was solemnized in a legal manner i.e. by observing Sikh rites and rituals, cannot be declared as null and void. Even Baljit Singh was also not examined as a witness by the appellant to support his version.

In the above premises, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

January 07, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.