

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.730 of 2012

Arti Jaiswal, wife of Sri Pawan Choudhary, resident of Mohalla – Mitha Kuan Nakhas Chawk, Hajipur, P.S. and P.S. – Hajipur (Town), District – Vaishali.

.... Appellant

Versus

1. Sri Pawan Chaudhary, son of Late Kedar Nath Chaudhary, resident of Mohalla – Alkapuri, Krishna Nagar Colony, P.S. Sukh Dev Nagar, District – Ranchi (Jharkhand), Permanent address village – Gerabari, P.O. Gerabari, P.S. K. Hat, District – Katihar.
2. Mostt. Nirmala Devi @ Nero Devi, wife of Late Kedar Nath Chaudhary, resident of Krishna Nagar Colony, P.S. – Sukh Das Nagar, District – Ranchi (Jharkhand)
3. Lakshmi Devi, wife of Sri Pawan Chaudhary, resident of village – Vidya Nagar, P.O. and P.S. Sukhdeo Nagar, District – Ranchi (Jharkhand).

.... Respondents

Appearance :

For the Appellant	:	Mr. Aditya Narayan Singh-1, Advocate
For the Respondents No. 1	:	None.
For the Respondents No. 2	:	Mr. Saroj Narain Yadav, Advocate Mr. Umesh Prasad, A.O.R. No. 4365 Mr. Nikhilesh Kumar, Advocate
For the Respondents No.3	:	None.

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 05-09-2016

The present appeal, under Section 18 of the Family Courts Act, 1984, arises from the judgment and decree dismissing the suit, as filed by the appellant under Section 11 of the Hindu Marriage Act, to declare the marriage as solemnized on 20.04.2007, between her and opposite party



no. 1, Pawan Choudhary, as a nullity. The suit was filed on the ground that opposite party no. 1, Pawan Choudhary, had a subsisting marriage with opposite party no. 3, Lakshmi Devi, which was not disclosed at the time of marriage. The applicant had further claimed that her *Stridhan* and other money be returned to her. The case was registered as O.S. Case No. 150 of 2007 before the Principal Judge, Family Court, Vaishali at Hajipur. Notices of the suit were issued to the three opposite parties, but they evaded service of notice. Step by step efforts were made to serve notice to the opposite parties. All of them have their residence at Ranchi. Ultimately, a newspaper publication of notices was made. In spite of that, none of the opposite parties had chosen to appear. In support of her case, the appellant filed examination-in-chief for three witness i.e. her father-in-law, herself and a neighbour. As no one appeared, the witnesses being present, were not cross-examined, therefore, there was no written examination to the plaint nor any cross-examination to the examination-in-chief as filed on behalf of the appellant. Curious to note that trial court noted all these things but it committed serious error on record in noting that there is no other evidence, either oral or documentary, or



affidavit in support of the averments made in the petitions by the applicant. We have called for the record and examined the same. The three examination-in-chief supported by affidavit are there on record. Thus, to say that there is no evidence, is void *ab initio*. In any view of the matter, the appellant being present in the court, the plaint being there, no one was ready to cross-examine the witnesses, in the facts and circumstances of the case, the learned court below ought to have decreed the suit without contest. It was not correct on the part of learned Principal Judge, to dismiss the application on the ground of lack of evidence. It is well settled principle that unless the things are traversed and contradicted, they would be deemed to be admitted. Here, in the present case, none appeared to oppose, whereas, there was evidence by way of affidavit, filed.

Thus, in our view, the learned trial court was wrong in dismissing the suit. To the contrary, we are of the opinion that, in view of the evidence on record, by affidavit, and the pleadings which have remain unchallenged, it has to be assumed that opposite party no. 1 to whom the appellant had been married, in spite of subsisting marriage, would have rendered this marriage void *ab initio*. Therefore, we have no

option but to set aside the judgment and decree of the trial court and allow this appeal, upholding the marriage as between the appellant and opposite party no. 1, Pawan Choudhary, as solemnized on 20.04.2007, being void and nullity.

The curious aspect may be noted for the second part of the prayer. Even without notice being issued, opposite party no. 2, mother-in-law of the appellant, has appeared in the Court in these appellate proceedings, but again she has chosen not to oppose the prayer. We have noted the circumstances under which she has appeared in our earlier orders. We think, she has rightly appeared only to get peace in this old age. She is personally present in the Court and represented through a lawyer Sri Umesh Prasad, A.O.R. No. 4365. Though, on her behalf, it is contested that the story of first marriage, is not correct. She has chosen not to oppose it. As she says that her son, Pawan Choudhary, who had been arrested in one of the cases lodged by the appellant under Section 498A, has abandoned the house and the family, the day next to release from the jail. He has not been heard since then. This was in July 2007 itself, within few months of the marriage. She, the mother-in-law, however states that, there is





a fixed deposit jointly in her name and the appellant, though, it does not entirely belong to the appellant. She is ready to part with entire maturity amount of the fixed deposit to the appellant. The said fixed deposit of an amount of Rs. 50,000/- is with the Punjab and Sindh Bank, Alkapuri, Krishna Nagar, Ranchi, which must have substantially multiplied by now. This was used to cover as security in locker no. 65 in the joint name of the appellant and her mother-in-law, opposite party no. 2 namely, Most. Nirmala Devi @ Nero Devi. Thus, the fixed deposit would not be permitted to be encashed and the Bank is directed to pay the entire amount to the appellant.

So far as the contents of the locker is concerned, the opposite party no. 2, Most. Nirmala Devi @ Nero Devi, states that it was never the locker of the appellant, all by herself. She further submits that jewellery kept in the locker are of both mother-in-law and daughter-in-law, which is but natural. We are not satisfied by the appellant's claim that the entire jewellery belongs to her. If we were to believe on the appellant, it would mean that so far as the daughter-in-law's jewellery is concerned, all was locked up in the locker and mother-in-law either has no jewellery, or, all her jewellery are kept at home. Both submissions are absurd and being

illogical, therefore, cannot be accepted.

Having considered the matter, as to how the contents of the locker would be identified, neither party is in a position to satisfy the Court as to what jewellery belongs to whom. In our view, it would be appropriate to direct the Bank aforesaid to open the locker in presence of both the parties i.e. the appellant and opposite party no. 2, Most. Nirmala Devi @ Nero Devi, and inventory should be prepared by the Bank of all the jewelleries and other articles that are found in the said locker and the same would be divided as between the appellant, Arti Jaiswal and opposite party no. 2, Most. Nirmala Devi @ Nero Devi. This would be done under the supervision of the Bank Manager. The two would fully cooperate in this matter. The Bank Manager would intimate both the parties as to the convenient date on which both would appear for opening of the locker. If anyone of them fails to appear on that date and the other party is present the Bank would proceed to open the locker and after making inventory, divide the jewellery retaining half of it to be handed over to the either side, as and when she comes.

The appellant also undertakes that all cases instituted by her or on her behalf as against the opposite



parties-respondents, may be criminal or otherwise, would then stand withdrawn and all cancelled.

With these directions, this appeal is allowed.

The marriage, as noted above, be declared void *ab initio*. The parties would obey orders of the Court.

Let the records be returned to the Lower Court immediately.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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