

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.156 of 2016

Smt. Pushpa Bai, Wd/o Late Shri Heera Ram Sonkar,
aged about 53 years, R/o Village Thakurikapa, Tahsil
Mungeli, Distt. Bilaspur (Presently Civil Distt. Bilaspur
and Revenue Distt. Mungeli) (C.G.)

(Plaintiff)/
---- Appellant

Versus

1. Gaukaran, aged about 45 years, S/o Shri Lowan Sonkar
2. Ramautin Bai, Wd/o Late Ramprasad, aged about 74 years,
3. Satrupa Bai, W/o Shri Khelan, aged about 51 years,
4. Thanka Ram, aged about 31 years, S/o Late Shatruhan,
5. Chandrika Bai, aged about 28 years, D/o Late Shatruhan,
6. Saunee Bai, Wd/o Late Shatruhan, aged about 51 years,

All are R/o Village Thakurikapa, Tahsil Mungeli, Distt. Bilaspur (presently Civil Distt. Bilaspur and Revenue Distt. Mungeli) (C.G.)

7. State of Chhattisgarh, through the District Collector, Mungeli (C.G.)

(Defendants)/
---- Respondents

For Appellant: Mr. Malay Kumar Bhaduri, Adv.
For State/respondent No.7: Mr. Sameer Behar, PL.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

15/06/2016

1. Heard on admission.
2. The plaintiff's suit brought by plaintiff Smt. Pushpa Bai stating inter alia that she has a share in the property left by her husband Heera Ram Sonkar was dismissed by the trial Court holding that her marriage with Heera Ram Sonkar was null and void under Section 11 of the Hindu Marriage Act, 1955. The said judgment and decree was affirmed by the first appellate Court in appeal preferred by the appellant plaintiff. The Second appeal has been preferred by the appellant plaintiff against the judgment of the first appellate Court.
3. Mr. Malay Kumar Bhaduri, learned counsel for the appellant, would submit that the judgment of the civil court holding that the plaintiff's marriage with Heera Ram Sonkar was null and void in view of Section 11 of the Hindu Marriage Act, 1955 is unsustainable in law and raised substantial question of law as there is no formal declaration made by the competent court at the instance of husband or wife as the case may be and unless there is declaration by the competent court on application filed by husband or wife under Section 11

of the Act of 1955, the findings recorded by the two Courts below are unsustainable in law.

4. In the matter of **M.M. Malhotra v. Union of India and others**¹, Their Lordships of the Supreme Court in no uncertain terms have held that marriages covered by Section 11 of the Hindu Marriage Act, 1955 are void from the very inception and have to be ignored as not existing in law at all however, formal declaration through decree of nullity need not be obtained.

Paragraph 10 of the report states as follows: -

10. The marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and have to be ignored as not existing in law at all, if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose.”

5. In view of the aforesaid proposition of law clearly held by Their Lordships of the Supreme Court, it cannot be held that in absence of formal declaration from the competent Court, the civil court was incompetent to

¹ 2006(1) M.P.L.J. (SC) 1

hold that marriage of the appellant plaintiff was void under Section 11 of the Act of 1955.

6. In the result, I do not find any substantial question involved in this appeal in view of the concurrent finding recorded by the two Courts below which are based on evidence. Consequently, the appeal deserves to be and is hereby dismissed in limine. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma