

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A.(M) No. 43 of 2007**

Ajay Kumar (Died) Through Lrs.

1. Smt. Kusum, W/o Late Shri Ajay Kumar, aged about 44 years,
2. Kumari Anchal, D/o Late Shri Ajay Kumar, Aged about 12 Years
3. Kumari Ritu, D/o Late Shri Ajay Kumar, Aged about 9 years,

Applicant No.2 and 3 being minor through their mother, Smt. Kusum, W/o Late Shri Ajay Kumar.

All Residents of LIG-2, 30/7, 8 Jawahar Nager, Supela, Bhilai, District Durg (CG)

--- Appellants**Versus**

1. Smt. Saraswati Devi, W/o Ajay Kumar (Alleged) Aged About 23 Years R/o 19-B, KLC , Khursipar, Zone - 2, P. O. Bhilai, District Durg (Chhattisgarh)
2. Managing Director, Bhilai Steel Plant, P. O. Bhilai, District Durg (Chhattisgarh)

---- Respondents

For Appellants	:	Shri Amrito Das, Advocate.
For Respondent No.1	:	Shri Avinash Chand Sahu, Advocate.
For Respondent No.2	:	Shri Kashif Shakeel, Advocate

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Per Deepak Gupta, Chief Justice

1/12/2016

1. This Appeal is directed against the judgment dated 22.6.2007 passed in Matrimonial Suit No.04-A/07 filed by Respondent No.1 – Saraswati Devi against Shri Ajay Kumar (since deceased) who was an employee of Bhilai Steel Plant.

2. Briefly stated, the facts of the case are that Respondent No.1/Plaintiff-Saraswati Devi filed a suit for declaration that she is the legally wedded wife of Appellant/defendant-Ajay Kumar. She also prayed for a permanent injunction that in the service record, only her name should be shown as his wife and not the name of the other persons. This suit was contested by Appellant/Defendant-Ajay Kumar. He denied that he had ever got married to Saraswati Devi. His case was that he was married to one Kusum and out of this wedlock, two children were born namely Ku. Anchal and Ku. Ritu. Issues were framed and the main issue was whether there was a valid marriage between Ajay Kumar and Saraswati Devi.

3. The Trial Court held, on the basis of evidence, that the marriage between Saraswati Devi and Ajay Kumar was proved and accordingly decreed the suit and passed a declaratory decree declaring Saraswati Devi to be legally wedded wife of Ajay Kumar.

4. Aggrieved by this judgment and decree, Appellant/defendant-Ajay Kumar filed the present Appeal. During the pendency of this Appeal, unfortunately Ajay Kumar died and now the Appeal is being contested by Smt Kusum, who claims to be his legally wedded wife and her two children Anchal and Ritu.

5. The original suit was filed on 1.10.2003 in which it was alleged that the marriage between the parties had taken place in Nevra Gayatri Mandir on 25.3.1999. Respondent No.1/Plaintiff-Saraswati Devi stepped into the witness box herself and stated on oath that the marriage ceremony between her and Ajay Kumar was performed on 25.3.1999 in Nevra Gayatri Mandir. She has been cross-examined at length but she has stuck to her version that a ceremony was performed. In support of her claim, she had also examined Shri Mohit Ram

Kuruvanshi, PW-2, who is the Chief Managing Trustee of Nevra Gayatri Mandir. He produced the original register and stated that as per the entries made in the register, a wedding as per the Hindu rites had been solemnized between Saraswati Devi and Ajay Kumar. He also proved the marriage certificate Exhibit P-5, which is based on the entries made in the register. The register was seen by the Court and returned. The witness has been cross-examined at length. We shall deal with the other part of his cross-examination at the later stage. We are clearly of the view that his testimony that a marriage was solemnized at Gayatri Mandir, Nevra is true and no doubt on the same has been cast in the cross-examination.

6. Appellant/Defendant-Ajay Kumar appeared as DW-1. He admitted that he knew Saraswati Devi because her father used to work in the same Department where he worked but according to him, he never married Saraswati Devi. According to him, he was married to Kusum out of which wedlock, they had two children also. Though the Appellant/Defendant denied that he had married Saraswati Devi, he admitted that he knew her family well. He also admitted that Saraswati Devi had made a complaint in the Vigilance Department that he had married twice and on the basis of her complaint, an enquiry was held in which, the allegations of Saraswati Devi were found to be correct and penalty of withholding of two increments was imposed upon the Appellant/Defendant. However, it is further pointed out that in the Appeal, this penalty was set aside.

7. The photographs of the alleged marriage were shown to the Appellant/Defendant during cross-examination. He refused to recognize his mother or even himself in the said photographs but admitted the presence of Saraswati Bai and her father – Ramsundar in the photographs. The Trial Court

relied upon these photographs while decreeing the suit of Respondent No.1.

8. The first contention of Shri Amrito Das is that since the negatives have not been produced, the photographs cannot be taken on record or relied upon. While producing the photographs, Respondent No.1/Plaintiff had stated that the negatives of these photographs are with the Appellant/Defendant himself. We have ourselves seen the photographs. We are dealing with a case arising out of a Family Court's Act. These Courts are not supposed to be technical in nature. Even Lawyers cannot appear in these Courts without obtaining permission. The procedure is supposed to be non-technical. Section 14 of the Family Court, 1984 reads as follows:-

“14. Application of Indian Evidence Act, 1872.- A Family may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

Section 14 clearly lays down that the Family Court may receive as evidence, any report, statement, documents, information or matter that may help it to deal with the matter in dispute even if the same is not admissible under the Indian Evidence Act. No doubt the principles of Evidence Act cannot be thrown to the winds but technicalities of the Evidence Act cannot be used to throw out evidence by the Family Court. It may be true that the negatives which are the originals have not been produced but the photographs which are on record clearly show Respondent No.1/Plaintiff Saraswati Bai dressed as bride getting married to the Appellant/Defendant – Ajay Kumar. He has not denied the photographs of Saraswati Bai or her father but has gone to the extent of denying that his own image is shown in the photographs. It is not only these photographs but also the testimony of Mohit Kumar Kuruvanshi, PW-2 who is an independent

witness which clinches the matter that Saraswati Dvi had got married to Ajay Kumar.

9. It would be pertinent to mention as per the statement of Saraswati Devi at the time of her marriage in the year 1999, she was barely 14 years old. The marriage was voidable at her instance but Ajay Kumar cannot claim that since this is a void marriage he is not bound by the same.

10. It has next been urged by Shri Amrito Das that there is no proof that marriage of Saraswati Devi was performed as per Hindu rites. We are not impressed with this argument. We must remember that when Saraswati Devi was getting married, she was at a tender age of 14 and it was Ajay Kumar who was much older when the marriage was performed in Nevra Gayatri Mandir. It is for the temple authorities and the parents to ensure that all necessary ceremonies are performed so that the husband cannot take any benefit of the same and deny the marriage itself. The law is well settled that when there is a relationship, the Court will try to hold the same to be legitimate. Therefore, we are of the considered view that the Respondent/Plaintiff has proved that marriage was a legal marriage which had not been dissolved by a decree of divorce.

11. We cannot end the matter here. Respondent No.1 has claimed the Appellant to be her husband and also claimed that she should be the sole beneficiary of all the claims relating to the deceased/Appellant with Bhilai Steel Plant. In this regard, we must remember that the Appellant – Ajay Kumar got married a second time. The second marriage may not be legal because the Hindu Marriage prohibits any spouse from getting married during the subsistence of an earlier valid marriage. Even then, the children of the second marriage, which may not be a legal marriage, would be entitled to claim inheritance in the

12. Dealing with Section 63 of the said Act, the Apex Court in **Revanasiddappa and another vs. Mallikarjun and others** {(2011) 11 Supreme Court Cases 1} held as under:-

15. Prior to enactment of [Section 16\(3\)](#) of the Act, the question whether child of a void or voidable marriage is entitled to self-acquired property or ancestral property of his parents was discussed in a catena of cases. The property rights of illegitimate children to their father's property were recognized in the cases of Sudras to some extent.

22. The amendment to Section 16 has been introduced and was brought about with the obvious purpose of removing the stigma of illegitimacy on children born in void or voidable marriage (hereinafter, "such children").

29. On a careful reading of [Section 16](#) (3) of the Act we are of the view that the amended Section

30. With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role. Very often a dominant group loses its primacy over other groups in view of ever changing socio-economic scenario and the consequential vicissitudes in human relationship. Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different times.

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39. We are constrained to differ from the interpretation of Section 16(3) rendered by this Court in *Jinia Keotin* and, thereafter, in *Neelamma and Bharatha Matha* in view of the constitutional values enshrined in the preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in [Section 16\(3\)](#). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents. Such rights cannot be further restricted in view of the pre-existing common law view discussed above.”

13. In view of the judgment rendered by the Apex Court, there is no manner of doubt that even children born out of a relationship which is not legitimate are entitled to the same benefits as the children born out of a legitimate relationship except in relation to ancestral property. In the property of the parents, these children have the same rights. At the cost of reiterating what has been said by the Apex Court, we would like to state that children are not at fault. It is totally wrong to term these children as illegitimate children. It is the relationship between the adults which is illicit or illegitimate. The children should not be called illegitimate because they are not at fault. They are just children and society and Courts should desist from terming these children as illegitimate children. We may also point out that the Bhilai Steel Plant is an organization of the Government of India. Though strictly speaking, the office memorandum issued by the Ministry of Personnel may not apply to such organization, we may also point out that vide memorandum dated 27.11.2012, with regard to pension payable to families of deceased Government servants, it has now been laid down that the children born outside marriage are also entitled to their share in the pension.

14. We therefore put an end to this litigation by ordering the Bhilai Steel Plant which is a party before us to ensure that all amounts payable after the death of deceased/Appellant Ajay Kumar shall be paid in equal shares along with interest @ 9% per annum to Saraswati Devi and the two minor children Ku. Anchal and Ku. Ritu. Smt Kusum will not be entitled to any share.

15. Before parting with the case, we are constrained to observe that the manner in which Shri Mohit Ram Kuruvanshi, PW-2 conducted the marriage in Nevra Gayatri Mandir is not at all proper. The law has prescribed the minimum age for marriage. Consensual sex with a girl below the age of 18 is an offence

amounting to rape under the IPC. These religious or social bodies which carry out these marriage functions must ensure before they perform such marriage ceremonies that all the legal requirements have been followed and the law of the land marriage is not violated. Therefore, a direction is given to the Principal Secretary, Home, Secretary, Law and the Director General of Police to ensure that rules and regulations are framed in this regard. We further direct the Secretary (Law) to circulate this judgment to all such religious bodies and institutions be they temples, mosques, churches and Gurudwaras to ensure that before any marriage is performed in such organizations, they must verify that the age of the bride and groom is above the minimum age prescribed by law. They must also ensure that both parties are consenting parties. As far as possible, they must ensure presence of the family members or friends of both parties before such marriages are performed. Proper record of such marriages must be maintained.

16. The instant Appeal is disposed of in the aforesaid terms.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE