

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 39 OF 2015

MRS. DURVA GURU PAGI @ KAMAL DUKLO
PAGI.

... Appellant

Versus

MR. GURU @ DURGANAND PAGI.

... Respondent

Mr. Ryan Da Piedade Menezes, Advocate for the appellant.
Mr. Shivan Desai, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 10th June, 2016

ORAL ORDER :

Heard Mr. R. Menezes, learned counsel appearing for the appellant and Mr. Shivan Desai, learned counsel appearing for the respondent.

2. The above appeal challenges the judgments passed by the Courts below whereby the marriage between the appellant and the respondent solemnized way back in the year 2009 came to be declared to be a nullity in terms of Article 18 of Law of Civil Marriage as in force in the State.

3. Mr. R. Menezes, learned counsel appearing for the appellant has assailed the impugned judgments passed by the Courts below on the ground that the evidence of DW2 and DW3 adduced by the appellant to the effect that there was no discussion with regard to the

age of the appellant at the time of contracting the marriage between the appellant and the respondent has not at all been examined by the Courts below while passing the impugned judgments. The learned counsel has extensively taken me through the evidence of DW3 to point out that merely because he is a rickshaw driver, the Courts below have brushed aside the evidence of such witness. The learned counsel further pointed out that the witness has categorically stated that there was no discussion with regard to the age of the appellant at the time of the consent given by the respondent to enter into the marriage. The learned counsel further submits that though the appellant had given a declaration before the Sub-Registrar that she was 30 years old at the time of the marriage, nevertheless, such declaration was given on the basis of the birth certificate produced at the time of such marriage. The learned counsel further submits that the respondent had accepted the declaration by the appellant and freely consented to enter into the marriage. The learned counsel further submits that as there is no material on record to show that the respondent has been misled to give his consent at the time of the marriage, the Courts below were not justified to pass the impugned judgments. The learned counsel further submits that the birth certificate produced at the time of marriage dated 02.08.1978 was obtained at the instance of the brother of the appellant and according to the learned counsel the appellant was not involved in obtaining such certificate. The learned counsel further submits that the appellant was not aware that her birth certificate disclosing the date

of birth as 02.08.1978 and as such, it cannot be said that the appellant has mislead the respondent about her age at the time of such marriage. The learned counsel has taken me through the judgment of the learned Trial Judge to point out that the findings of the learned Judge that the consent was not given freely by the respondent is perverse which would require consideration by this Court. The learned counsel further pointed out that the learned Lower Appellate Court has failed to correctly analyse the evidence produced by the appellant and erroneously has come to the conclusion that the respondent was entitled for annulment of marriage. The learned counsel as such points out that as there is perversity in the findings of the Courts below, there is a case made out by the appellant for interference in the impugned judgments.

4. On the other hand, Mr. Shivan Desai, learned counsel appearing for the respondent has submitted that though the Courts below have rightly appreciated the evidence on record and taken note of the evidence of DW2 and DW3 while coming to the conclusion that the consent given by the respondent is vitiated, nevertheless, on the basis of clinching evidence produced by the respondent to point out that the birth certificate produced by the appellant at the time of the marriage disclosing her birth date as 02.08.1978 was on account of an illegal expedient resorted to in order to fabricate the birth certificate to be produced at the time of the marriage. The learned counsel further pointed out that such evidence of DW2 and DW3

would have no bearing on the face of the specific averments and the deposition of PW1 that at the time of the marriage the appellant itself has given a declaration about the date of birth which was found to be false and based on the fabricated birth certificate. The learned counsel further points out that by no stretch of imagination, the respondent who was 32 years old at the time of entering into the bond of marriage could marry the appellant who was admittedly at that time aged 40 years. The learned counsel thereafter has taken me through the judgments passed by the Courts below to point out that there is no perverse findings therein and submits that the appeal deserves to be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. It cannot be disputed that the correct date of birth of the appellant is 02.11.1968. In such circumstances, at the time of her marriage, the appellant was 40 years old. Though the appellant was well aware about her correct age, the declaration given at the time of the marriage is based on the certificate disclosing the date of birth as 02.08.1978 thereby holding out that she was aged 30 years at the time of the marriage. The fact finding Courts below have found that such certificate of birth produced by the appellant was by exercising fraud by falsely stating that the birth of the appellant was not registered before the Municipality. Another curious aspect to be examined is that the brother of the appellant who was examined in the Court has stated

that he had verified the birth registration records from the Municipality from the year 1971 when in fact the appellant was born in 1968. These findings of fact arrived at by the Courts below based on the evidence on record cannot be reappreciated by this Court in the present Second Appeal. There is no perversity in such findings rendered by the Courts below on that count. Once it is clearly established that the appellant was 40 years old at the time of the marriage whereas the respondent was 32 years old, what naturally flows is that this material aspect would have been examined at the time of giving consent for such marriage. But however, the respondent by mistake was misrepresented by the appellant of her age by giving a false declaration before the Registrar of Marriage at the time of marriage. The appellant has relied upon a fraudulent birth certificate to hold out to the respondent that she was 30 years of age at the time of the marriage. On the face of such material on record, the evidence of DW2 and DW3 would in any way not materially affect the findings of the learned Judge that the consent given by the respondent to enter into such marriage stands vitiated. The concurrent findings of fact arrived at by both the Courts below based on analysing evidence adduced by both the parties, this Court cannot reappreciate such findings in the present Second Appeal under Section 100 of Civil Procedure Code. On perusal of the Judgment of the learned Trial Judge, I find that the learned Trial Judge has noted that as per the School Records, the birth of the appellant is shown as 02.03.1968. The learned Trial Judge, after appreciating the evidence

on record, has come to the conclusion that the respondent has proved that the consent was obtained by mistake of the status of age and consequently, decreed the suit and declared that the marriage solemnized between the appellant and the respondent on 19.06.2009 is null and void and granted the consequential reliefs. The learned Lower Appellate Court, while disposing of the Regular Civil Appeal No. 202/2012, by the Judgment dated 08.04.2013, has analysed the evidence on record and even taking note of the evidence of all the witnesses, has found that the evidence on record clearly indicate that the appellant made a false representation with respect to her age as 30 years at the time of the declaration of the marriage before the Civil Registrar when, in fact, was born in the year 1968. The learned Judge also found that the consent to the marriage was based on the declaration of the status of the appellant as regards to her age given by her, which was later on known to be false and, therefore, the consent of the respondent for the marriage was by mistake/misrepresentation and, accordingly, dismissed the appeal preferred by the appellant. Article 18 of the Law of Marriage as a Civil Contract provides that the marriage in which the consent is proved to have been caused by mistake is voidable. In the present case, the respondent, on the basis of the evidence on record, has established that the status of age furnished by the appellant at the time of the marriage was false and, as such, the consent of the respondent has been proved to have been caused by mistake and misrepresentation. I find no infirmity in the findings of the Courts

below which would call for interference by this Court under Section 100 of the Civil Procedure Code, as there is no perversity in such findings arrived at by the Courts below.

6. For the aforesaid reasons, I find no merit in the above appeal which stands, accordingly, rejected.

F. M. REIS, J.

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