

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.203

FAO-M-95-2008
Decided on : 4th February, 2016

Gurdial Singh

.... Appellant

VERSUS

Amarjit Kaur @ Poonam @ Munna

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE LISA GILL

Present: **Mr. Anil Chawla, Advocate**
for the appellant.

RAJIVE BHALLA, J. (Oral)

The appellant-husband challenges judgment and decree dated 21.01.2008, passed by the District Judge, Amritsar, dismissing his petition for declaring his marriage to the respondent null and void.

Counsel for the appellant submits that the fact that respondent was already married to Mukhtiar Singh at the time of her marriage to the appellant, has been proved by the depositions of the appellant and two other witnesses who have also deposed that the respondent was already married to Mukhtiar Singh at the time of her marriage to the appellant. The mere fact that the appellant has not produced any documentary evidence, cannot be a ground to dismiss the petition, particularly when the respondent-wife has not come forward to controvert the pleadings or the evidence.

No one is present on behalf of the respondent.

We have heard counsel for the appellant, appraised the impugned judgment but are not inclined to accept the appeal.

The appellant filed a petition under Section 11 of the Hindu

Marriage Act, 1955, praying that as at the time of their marriage the respondent was already married to one Mukhtiar Singh their marriage be declared a nullity. The appellant also alleged that the respondent had given birth to two children from her marriage to Mukhtiar Singh. The respondent did not put in appearance and was proceeded against ex-parte.

The appellant examined himself and two other witnesses, in support of his allegation and adduced a writing Mark A, alleged to be a divorce between the parties. The trial Court has after considering the matter in its entirety, dismissed the petition by holding as follows:-

'7.Although, oral evidence of PW1, PW2 and PW3 regarding subsistence of marriage between the respondent and Mukhtiar Singh is unchallenged and unrebutted, yet, the same having not been corroborated by any documentary evidence must be repelled as PW-2 and PW-3 were not present at the time of alleged marriage of respondent with alleged Mukhtiar Singh. Even, no voter list or ration card has been placed on record to prove that respondent was ever residing with Mukhtiar Singh as his legally wedded wife. Even, the birth certificates of alleged children; namely Kawaljit Kaur and Kuldeep Kaur, having been born out of the wedlock between the respondent and Mukhtiar Singh, have not been brought on record to prove that respondent and alleged Mukhtiar Singh were their parents.

8. So, in this view of the matter, it is arduous to hold that the respondent was legally wedded wife of Mukhtiar Singh before her marriage with the petitioner, which has been sought to be declared nullity through te instant petition. So, marriage between the parties, herein, could be held in transgression in section 5 (i) of the Act, only if the valid marriage of respondent with Mukhtiar Singh would have been proved. An agreement mark-A, which has been described as divorce deed in consequential to the petitioner as this agreement cannot be said to be a decree of divorce. Even the signatories, thereof, were required to be examined and pristin, thereof, should have been proved to prove the valid marriage between the respondent and said Mukhtiar Singh. So, in these circumstances, the marriage between the parties cannot be declared nullity, as prayed.'

A perusal of the aforesaid findings reveal that apart from his oral deposition and depositions by his witnesses the appellant has not adduced any documentary evidence, like a voter list, ration card or even a birth certificate of the children, that could conclusively prove that the respondent was already married on the date of her marriage to the appellant. The alleged agreement Mark A, has not been proved by examining the witnesses and even otherwise is a suspicious document that was rightly rejected by the trial Court. In the

absence of any clear and cogent evidence to support his pleading that the respondent was already married, the petition was rightly dismissed. The appellant's arguments that as the respondent was proceeded against ex-parte, his unrebutted pleadings and evidence should be accepted, disregards the fact that the appellant is required to prove his case on the strength of his pleadings and evidence. The absence of any credible evidence to prove the respondent's first marriage the petition has been rightly dismissed.

Consequently, finding no merit, the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

4th February, 2016
jyoti III

(LISA GILL)
JUDGE