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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : August 11, 2016

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MAT.APP.(F.C.) 157/2014

BABITA @ PINKI

..... Appellant

Represented by: Mr.Brajesh Pandey, Advocate

versus

SUNIL SHARMA

..... Respondent

Represented by: Mr.D.K.Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. On March 17, 2016 the Bench hearing the appeal recorded that an important question of law was raised in the appeal and thus appointed Mr.Rajat Aneja, Advocate as the Amicus. On the next date learned Amicus informed the Court that the bindingness and effect of customary divorce had been pronounced upon by the Supreme Court in the decision reported as AIR 1968 SC 142 Gurdit Singh Vs. Angrez Kaur.
2. Learned Amicus does not appear today. In our opinion no question of law arises for consideration in the instant appeal concerning the issue of customary divorce and it appears that the order dated March 17, 2016 was passed without considering the pleadings.
3. Suffice it to state that an issue of custom arises out of the pleadings of

the parties. If a party pleads custom, it has to be pleaded with such particulars as are to be found in Gurdit Singh's case. Either an authoritative digest of customary law has to be cited or witnesses have to be examined. It has also to be established by evidence that the parties belong to a tribe, clan or a social group where said custom is practised and recognized.

4. In the appeal it is pleaded that the appellant and the respondent belong to the Jaat community wherein customary divorce at village panchayats is recognized.

5. The respondent sought annulment of the marriage solemnized between him and the appellant on December 14, 2006 on the plea that as on the date of the marriage the appellant was already married to one Anoop Sharma. Thus it is apparent that as per the respondent clause (i) of Section 5 of the Hindu Marriage Act, 1955 was violated and Section 11 of the said Act was applicable. In the reply filed by the appellant she has not pleaded that the respondent and she belong to the Jaat community and there is a custom in the community to annul marriages through panchayats. She categorically pleaded that her first husband had died much prior to the date when she and the respondent solemnized a marriage on December 14, 2006.

6. Thus, the fact in issue at the trial was : whether Anoop, the first husband of the appellant was alive on December 14, 2006. Since custom was not pleaded nor was there a pleading that the appellant is a member of the Jaat community and she and Anoop got divorced prior to December 14, 2006, obviously said issue was not settled.

7. At the trial the respondent proved Ex.CW-1/1 and Ex.CW-1/B; the latter being the death certificate issued by the competent authority evincing

that first husband of the appellant named Anoop expired on April 21, 2008 i.e. much after the marriage between the appellant and the respondent was solemnized.

8. In that view of the evidence led the learned Judge Family Court has rightly passed the impugned decree against the appellant and in favour of the respondent.

9. No important question of law noted in the order dated April 17, 2016 arises. We are not to decide any issue with reference to the decision of the Supreme Court in Gurdit Singh's case for the reason in said case a custom was pleaded with further pleading that the parties belonged to a class or a group of members where said custom was prevalent and was recognized. Rattigan's Digest of Customary Law was cited as the treatise. Witnesses were cited and examined to prove the custom.

10. In the instant case, as noted hereinabove, the appellant never pleaded that her marriage with her previous husband Anoop had been annulled at a panchayati decision. She never pleaded that the parties belong to the Jaat community where such custom exists. She defended the validity of her marriage with the respondent on the plea that her first husband Anoop was dead when she and the respondent solemnized their marriage. The appellant failed to prove said fact. The respondent proved that Anoop was alive when the appellant and he got married on December 14, 2006. Respondent has successfully proved that Anoop had died on April 21, 2008.

11. The appeal is accordingly dismissed.

12. No costs.

CM No.21036/2014

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 11, 2016
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