

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.411 of 2002

1. Niranjana Kumar, minor son of Anup Singh under guardianship of father, natural guardian and next friend namely, Anup Singh
2. Anup Singh son of Durga Singh (representing his minor son Niranjana Kumar above named)
both are residents of village- Kurkihar, P.S.- Wajirganj, District- Gahya
... .. Appellants

Versus

1. Pinki Kumari major daughter of Ghuti Singh under the natural guardianship of Ghuti Singh her father as well as next friend.
2. Ghuti Singh son of Late Lakhu Singh,
Both resident of village- Kaithi, P.S.- Hasua, District- Nawadah.
... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Narendra Kumar, Advocate
For the Respondent/s	:	Mr. Sri Kamala Prasad Roy, Advocate
		Mr. Satya Ranjan Singh, Advocate
		Mrs. Seema Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date : 30-10-2017

This appeal has been filed against the judgment and order dated 10.10.2002 passed by Shri Shiva Shankar Sharma, the then learned Ist Additional Sessions Judge, Nawadah in Matrimonial Case No. 36 of 2002 on the ground that issue no. (i) and (v) were not pressed by the parties but in spite of that the learned court below has decided the same against the plaintiff holding that the case as filed is not maintainable as the same was filed after one year from the date of alleged marriage and as such in view of the embargo put by Sub-Section 2 (a) (i) of Section 12 of the Hindu



Marriage Act the suit was not maintainable as no petition for annulling the marriage (a) on the ground specified in clause (c) of Sub-Section (I) shall be entertained if (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered.

Heard learned counsel for the appellants as well as learned counsel for the respondents.

On behalf of appellants it is submitted that the learned court below has failed to consider that earlier the suit was filed in the court of District Judge, Gaya bearing Title Suit No. 18 of 1998 on 12.05.1998 itself but the same was returned for presentation in the court having jurisdiction and thereafter, it was filed in the court of District Judge, Nawadah on 27.05.1999 with the same relief. The learned court below has stated this fact in paragraph 2 of the judgment but failed to consider the same. Learned counsel for the defendants has not pressed that issue, resulting, the same was not answered by the learned counsel for the applicants but in spite of the hard fact that the alleged marriage was solemnized on 29.04.1998 and the suit has already been filed on 12.05.1998 i.e. within one year of the alleged marriage, and, as such, the suit was maintainable and the applicant was entitled to get the decree as claimed. Other issues have been decided in favour of the plaintiff



against which no cross-appeal has been filed and as such in view of the admitted position that earlier the suit was filed on 12.05.1998 in the court of District Judge, Gaya bearing Title Suit No. 12 of 1998 the suit filed by the plaintiff was maintainable and the plaintiffs were entitled to get the decree as claimed.

Learned counsel for the respondents, on the other hand, submits that issues no. (i) and (v) were not pressed and learned lawyer of the applicant has not pressed those issues and as such the learned court below at his own accord decided the same. Learned counsel for the respondents does not dispute that earlier this suit was filed in the court of District Judge, Gaya bearing Title Suit No. 18 of 1998 on 12.05.1998 itself. It is also admitted that no cross-appeal has been filed.

Having considered the submissions urged at the Bar, going through the impugned judgment and records, I am of the considered opinion that issues no. (i) and (v) were wrongly decided by the learned court below. Admittedly, the alleged marriage was performed on 29.04.1998 and the suit has already been filed in the court of District Judge, Gaya on 12.05.1998 itself and as such the suit filed was maintainable and the applicant was entitled to get the decree as claimed.



In the result, the decree of nullity is granted by declaring the marriage of Niranjana Kumar with Rinki Kumari void and accordingly, the impugned judgment and order is set aside and this appeal stands allowed but, under the circumstances, without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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