

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 07/04/2017****Judgment delivered on 26/04/2017****FAM No. 26 of 2015**

- Smt. Meenal Sahu D/o Shri Ravi Shanker Sahu, Aged about 23 Years, R/o Maa Sharda Niwas, Shyam Nagar, Raipur, Civil & Revenue District Raipur (C.G.)

---- Appellant**Versus**

- Krishna Kumar Sahu S/o Late Shri Vasudev Sahu, Aged about 25 Years, R/o Near Adarsh School, Kailash Nagar, Beergaon (Urla) Raipur, Distt. Raipur (C.G.)

---- Respondent

For Appellant	:	Shri Syed Imtiaz Ali, Advocate.
For Respondent	:	Shri Adil Minhaj, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****(CAV) Judgment by Shri R.C.S. Samant J.**

1. This appeal has been preferred against the judgment dated 15-01-2015 passed by First Additional Principal Judge, Family Court, Raipur (C.G.) in Civil Suit No.103-A/2010 by which a decree passed declaring the marriage between the appellant and the respondent null and void.

2. The respondent filed an application under Section 11 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') seeking relief of declaration of nullity of marriage between the respondent and the appellant. It was stated that the marriage of the parties was solemnized on 12-12-2009 in accordance with Hindu Customary Rites. The respondent came to know that the appellant was already married to a man namely, Ramayan

Suryawanshi on a previous date 18-11-2009. Thus, fraudulently concealing the fact of previous marriage, the appellant entered into another wedlock with the respondent which is clearly prohibited under Section 5 (1) of the Act of 1955. Hence, this marriage is nullity under Section 11 of the Act of 1955. On these grounds, the relief of declaration was sought to declare the marriage dated 12-12-2009 between the respondent and the appellant as nullity.

3. The appellant in reply, has denied that any previous marriage was performed by her with Ramayan Suryawanshi on 18-11-2009. Further, denied the allegation of fraudulently concealing the fact of earlier marriage. It is specifically stated by her that it was Ramayan Suryawanshi who fraudulently performed the marriage with the appellant in Arya Samaj and soon after that she came to know that Ramayan Suryawanshi was already married and he had the living spouse. The marriage between Ramayan Suryawanshi and another has been declared a nullity by the Principal Judge, Family Court, Raipur in Civil Suit No.104-A/2011 by the judgment and decree dated 25-11-2011. Denying all other allegations in pleadings in the application, she has stated that out of wedlock with respondent, a male child has born on 11-10-2010. It was prayed that the application under Section 11 of the Act of 1955 be rejected.

4. The trial Court framed issues and after affording opportunity of hearing to the parties, passed the judgment dated 15-01-2015 by giving a finding that the appellant fraudulently concealed the fact of her previous marriage and entered into wedlock with the respondent on 12-12-2009. Further, it was held that the marriage dated 12-12-2009 between the parties is in contravention to the provisions under Section 5(1) of the Act of 1955. On the basis of these findings, the marriage between the parties

was declared a nullity.

5. The grounds in the appeal are these, that the finding in the impugned judgment by learned trial Court is perverse and contrary to the provisions of law. The Court below has failed to appreciate the evidence in its proper perspective. The previous marriage of the appellant was declared nullity on 25-11-2011 by the Family Court itself proves that the alleged marriage between the appellant and Ramayan Suryawanshi was non-existent in the eyes of law. Under these circumstances, the marriage dated 12-12-2009 was a valid marriage. Prayer has been made to set aside the impugned judgment and decree of the Family Court, Raipur.

6. It is submitted by learned counsel for the appellant that it is a fact that marriage between the appellant and one Ramayan Suryawanshi was solemnized prior to the marriage dated 12-12-2009 with the respondent. The provisions of Section 5 (1) read with Section 11 of the Act of 1955 clearly demonstrate that the marriage between the appellant and Ramayan Suryawanshi was non-existent in the eyes of law. Hence, the decree declaring the marriage nullity was just a formality. When the marriage is nullity and non-existent from its beginning in such a case, the second marriage performed by the appellant does not suffer from any illegality as the second marriage is not affected by the bar under Section 5(1) of the Act of 1955.

7. It is submitted by learned counsel for the respondent that the appellant has clearly admitted that earlier marriage was in existence on the date when the marriage between them was performed on 12-12-2009, which itself is sufficient reason for passing the decree of nullity in favour of the respondent. The judgment and decree of the trial Court does not suffer from any infirmity.

8. There is no need to appreciate and evaluate the evidence adduced by both the parties, as this fact is admitted that appellant had entered into a marriage relationship with one Ramayan Suryawanshi on 18-11-2009. On discovering the fact that Ramayan Suryawanshi was already married had his spouse leaving, a civil suit was filed by the appellant before the Principal Judge, Family Court, Raipur and the marriage between the appellant and Ramayan Suryawanshi was declared a nullity by judgment and decree dated 25-11-2011. Taking relevant dates into consideration, it is clearly made out that the marriage between the appellant and the respondent was performed on 12-12-2009, when the earlier marriage of the appellant was subsisting till it was declared a nullity on 25-11-2011.

9. In such a case where a marriage is annulled by a decree of nullity whether Section 15 of the Act of 1955 shall be applicable or not? is a question. The provision under Section 15 of the Act of 1955, is as under:

“15. **Divorced persons when may marry again** .- When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

10. This question was dealt with by Supreme Court in the matter of **Smt. Lata Kamat Vs. Vilas**; reported in **1989 (2) SCC 613**. Para 9 of the judgment as follows:

“9. The decision of the High Court on which reliance is placed by courts below and the learned counsel for the respondent are :
(i) Mohanmurari, (ii) Jamboo Prasad Jain and (iii) Pramod Sharma. In none of these decisions the impact of the right of appeal occurring in Section 15 in view of the language of Section

28 where the right of appeal is conferred, has been considered. In our opinion, therefore the view taken by the High Court is not correct. What does Section 15 mean when it uses the phrase 'has been dissolved by decree of divorce'? It only means where the relationship of marriage has been brought to an end by intervention of court by a decree, this decree will include a decree under Section 11, 12 or 13 and therefore the view taken by all the courts below is not sustainable. The contention of learned counsel for the appellant has to be accepted so far as this question is concerned."

11. Thus, it is very well settled that the marriage dissolved by decree of divorce is not limited to a decree of divorce under Section 13 of the Act of 1955. It also includes the decree of nullity of marriage passed by a Court under Section 11 of the Act of 1955. The Family Court exercises its jurisdiction under Section 7 of the Family Courts Act, 1955 in which it is clearly provided that a Family Court shall exercise all the jurisdiction exercisable by the District Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation given in the provision under Section 7 of the Act. In this manner, as per principle that a party cannot derive any benefit from his own wrong committed by himself, the appellant cannot get any benefit in this case.

12. As held in **Lata Kamat Vs. Vilas (supra)** even in cases of a marriage being nullity under Section 11 of the Act, the restriction in performance of another marriage under Section 15 of the Act of 1955 is equally applicable which clearly indicates that just by filing an application under Section 11 of the Act of 1955 seeking a declaration of nullity of a marriage being in contravention of Section 5 of the Act, 1955 does not give

any entitlement to the parties to perform another marriage, during the pendency of the case and also until the decree of nullity is passed in favour of the party who is the plaintiff in the case. Further, a decree of nullity of marriage in favour of the plaintiff by itself does not give any entitlement for re-marriage unless the conditions required to be satisfied under Section 15 of the Act of 1955.

13. This is the case where neither of the conditions required to be satisfied under Section 15 of the Act of 1955 were present when the marriage dated 12-12-2009 was performed. Hence, the marriage dated 12-12-2009 performed between the parties was manifestly illegal and was not a marriage in the eyes of law. The decree of nullity passed by the Court below does not suffer from any infirmity. We are of the considered view that this appeal is devoid of merits. Hence, it is dismissed. No order as to costs.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.C.S. Samant)
Judge