

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.22/2010

Pooja @ Priti W/o Shivaji Gajre
Age 22 years, Occu-Nil
R/o C/o Shri Dagdu Maroti Dhengle
Shivshankar Colony, Aurangabad

.. APPELLANT
[ORIG.RESPONDENT]

VERSUS

Shivaji S/o Ratnakar Gajre
Age 26 years, Occu.Service
R/o Pangra, Post Chitegaon,
Tq. Paithan, Dist.Aurangabad

.. RESPONDENT
[ORIG.PETITIONER]

...

Mr.J.V.Deshpande, Advocate for appellant
Mr.P.K.Chavare, Advocate for respondent

...

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 31/08/2017

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :-

The present respondent/husband had filed Petition for nullity of marriage u/s 12 of the Hindu Marriage Act. The said Petition is allowed. Aggrieved thereby, the wife has filed this Petition.

2] Mr.Deshpande, learned counsel for appellant submits that the only ground on which decree of nullity of marriage is granted, is that at the time of marriage, the appellant was pregnant by some person other than the husband and that he was ignorant about it at the time of marriage. The learned counsel submits that the document, based upon which, such decree of nullity of marriage is granted, is a document Exh.32 that is the certificate issued by Doctor. No original record of the doctor's clinic is produced to substantiate Exh.32. According to the learned counsel, the said document is also not proved in the evidence of the doctor. The doctor has denied the issuance of said certificate to the present appellant. According to the learned counsel, even letters relied by the husband are not proved. The writing and the signatures are denied by wife. Even the application filed by the husband for exhibiting the said documents was rejected. The documents are not exhibited. In view of that, there was no material before the Court to arrive at a conclusion about the present appellant being pregnant by a person other than the husband before marriage. The said finding is perverse.

3] Mr.Chavare, the learned counsel for the respondent submits that Exh.32 has been proved. The doctor is examined to prove the certificate. The doctor has admitted the signature and the writing of

the said certificate. The letters written by the wife herself and the divorce deed produced on record, unequivocally proved the case of the husband. The wife in the said letters and the divorce deed had admitted the factum of her having relations with one Mr.Kavikar. The learned counsel further submits that even the N.C. has been lodged by the wife against Mr.Kavikar. The same also substantiates the contentions of the husband.

4] With the assistance of learned counsel, we have gone through judgment so also the evidence on record.

5] The only ground on which the decree for nullity of marriage is sought by the husband, is that the wife was pregnant from a person other than the husband prior to marriage and the said factum was not within the knowledge of the husband.

6] Though the husband has relied upon the letters allegedly written by the wife so also some of the pages in the note book the same does not appear to have been proved. The wife has denied her writing and signature on the said letters and the note book. The divorce deed also is not admitted by the wife. The application given by the husband for referring these documents to the handwriting expert is also rejected. The said documents are not proved nor they

are exhibited, so as to read them in evidence. In absence of a document being admissible in evidence, on account of it not being proved, the only document, on which the husband can base his case is, Exh.32 a certificate issued by the doctor. Even evidence of the doctor with regard to the said certificate is shaky.

7] When the learned Judge had rejected the application of the husband for referring the document to the hand writing expert, it was expected of the Court to compare the signature and writing and exercise its powers u/s 73 of the Evidence Act. The said exercise has not been done. The learned Judge could have done that exercise so as to arrive at a plausible conclusion. The divorce deed which is sought to be placed on record also falls short of being admissible in evidence, even notary is not examined to prove the same nor the witnesses to the said documents are examined.

8] Considering the fact that the dispute involves matrimonial relations, we think it appropriate to give one more opportunity to both the parties, to prove their case so also the learned Judge to exercise its powers u/s 73 of the Indian Evidence Act.

9] In light of the above, we pass the following order :

I] The impugned judgment and decree is quashed and set aside. The matter is remitted before the Family Court for fresh decision. The parties are at liberty to adduce further evidence, if they so chose to. The learned Judge shall also exercise its powers u/s 73 of the Indian Evidence Act to compare signatures, writing on the document with the admitted signature and writing.

II] The parties shall appear before the concerned Family Court on **25 September 2017**. Considering the fact that the matter is remitted back, the concerned Family Court shall endeavor to dispose of the proceedings expeditiously, preferably within eight months from the date of appearance of the parties. Appeal accordingly partly allowed.

III] Record and proceedings be sent back immediately.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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