

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 24.04.2018

Pronounced on 25.04.2018

First Appeal (M) No. 155 of 2017

- Smt. Anjali Nagwani W/o Manish Kumar Nagwani, Aged About 26 Years R/o C/o Anil Rochlani, V I P Colony, Patpar Road, Bhatapara, P.S. And P. O. Bhatapara, District Balauda Bazar, Chhattisgarh.

---- Appellant

Versus

- Manish Kumar Nagwani S/o Shree Omprakash Nagwani, Aged About 28 Years R/o Matadevalaya Road, Bhatapara, P. S. And P. O. Bhatapara, District Balauda Bazar, Chhattisgarh.

---- Respondent

For Appellant : Shri Manoj Paranjpe, Advocate

For Respondent : Shri Rajendra Tripathi, Advocate

SB : Hon'ble Shri Justice Sharad Kumar Gupta

CAV Judgment

1) Challenge in this appeal is levied to the judgment and decree dated 19.07.2017 of the Additional District Judge, Bhatapara, CG passed in HMA Case No. H01/2014, whereby and whereunder he allowed the petition of respondent- husband filed under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') against appellant- wife.

2) This is admitted by appellant that her marriage was solemnized with respondent on 06.08.2011 at Vishwamata Gaytri Trust, Jagdalpur in accordance with Hindu rites and rituals, she had signed on some blank papers and stamp, she was in

Visakhapatnam along with him, he was taken in custody by police officials at Raipur, now, she is living separately from respondent.

3) In brief, the respondent's case is that there was a love affair between him and her. She has withdrawn his company without any reasonable cause.

4) In nutshell, the appellant's case is that aforesaid marriage was performed by playing cheating and fraud by respondent, her signature was taken forcibly. He has no right to file this application against her.

5) After the conclusion of trial, trial Court passed aforesaid judgment and decree. Being aggrieved appellant preferred this appeal.

6) Shri Manoj Paranjpe, counsel for appellant, strenuously argued that the trial Court has not properly appreciated the evidence in correct perspective, burden of proof lies upon respondent. Marriage is voidable. Thus, the impugned judgment and decree of the trial Court deserve to be set aside.

7) Shri Rajendra Tripathi, counsel for respondent argued that impugned judgment and decree are in accordance with law and based on legally admissible evidence. Thus, no interference is called for by this Court. Thus, appeal may be set aside.

Points for determination :-

The following points are there for determination in this case :-

(1) Whether appellant is a legally wedded wife of respondent ?

(2) Whether appellant has without reasonable excuse withdrawn from the society of respondent?

(3) Relief and costs.

Point for determination No.1 - Findings with reasons :-

8) AW1 Manish Kumar Nagwani says in para 2 and 3 of his statement given on oath that there was a love affair between him and appellant. He and she had gone voluntarily at Jagdalpur.

9) AW2 Smt. Poonam Nagwani and AW3 Om Prakash Nagwani who are the parents of respondent say in para 2 of their statements given on oath that there was a love affair between respondent and appellant.

10) Appellant has not given any suggestion to AW1 Manish Kumar Nagwani, AW2 Smt. Poonam Nagwani, AW3 Om Prakash Nagwani during their cross examination that, allegedly respondent had played fraud, cheating regarding the marriage, he had obtained the signature of appellant forcibly.

11) This is not the appellant's case that before or after the marriage she had not told about alleged fraud, cheating and taking forcible signature, to any person or concerned person of aforesaid trust on account of such ground.

12) Appellant has not led evidence to support her aforesaid allegation, she had no courage to appear in the Court as witness in witness box.

13) Looking to the aforesaid facts and circumstances of the case, this Court believes on aforesaid statements of AW1 Manish Kumar Nagwani, AW2 Smt. Poonam Nagwani, AW3 Om Prakash Nagwani in this reference that, the marriage was solemnized with free consent, wish and will of appellant.

14) It would be pertinent to mention the provisions of Section 12(1)(c) of the Act, 1955 which reads as under:-

“12. Voidable marriages - (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a)....

(b)...

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or...

(d)...”

15) In the matter of **Gajara Naran Bhura v Kanbi Kunverbai Parbat {AIR 1997 Guj. 185}**, the Hon'ble High Court of Gujrat has laid down the judicial precedent, relevant portion of para 6 is reproduced below :-

“6.....As a matter of fact sub-clause (c) of Section 12 (1) only given an option to the minor contracting party to avoid a marriage by a decree of nullity. Section 12 does not declare the marriage to be void. It only gives an option to concerned

party to get a decree for annulment of such marriage by exercise of option to avoid the marriage on condition aforesaid. Without obtaining a decree of nullity, plea of nullity of marriage could not be taken by the concerned party in defence to a claim for maintenance.”

16) In the matter of **Banshidhar Jha v. Chhabi Chatterjee {AIR 1967 Pat. 227}** the Hon'ble Division Bench of the High Court of Patna has laid down the judicial precedent, relevant portion of para 4 is reproduced below :-

“4.A voidable marriage remains valid and binding and continues to subsist for all purposes unless a decree is passed by the court annulling the same on any of the grounds mentioned in Section 12.....”

17) In the case in hand, this is not the appellant's case that any competent civil Court allegedly has annulled the aforesaid marriage by a decree of nullity on any of the grounds mentioned in Section 12 of the Act, 1955.

18) If for the sake of argument it is deemed that the marriage was allegedly voidable, though this Court does not find so, then looking to the aforesaid facts and circumstances, judicial precedents laid down in *Gajara Naran Bhura (Supra)* and *Banshidhar Jha (Supra)*, the marriage remains to be valid and continues to subsist for all purposes.

19) After appreciation of the evidence discussed herebefore this Court finds that, appellant is legally wedded wife of respondent. Thus, this Court decides point for determination No. 1 accordingly.

Point for determination No.2 - Findings with reasons :-

20) This has been earlier decided that appellant is legally wedded wife of respondent.

21) Appellant failed to show that she is living separately from respondent allegedly due to some just, sufficient and reasonable grounds.

22) After appreciation of the evidence discussed herebefore, this Court finds that appellant has without reasonable excuse withdrawn from the society of respondent. Thus, this Court decides point for determination No. 2 accordingly.

Point for determination No.3 - Findings with reasons :-

23) After the complete appreciation of the evidence discussed herebefore this Court finds that appeal is devoid of merits and deserves to be set aside. Thus, impugned judgment and decree of the trial Court are affirmed and appeal is dismissed.

24) Appellant shall bear her own costs as well as costs of respondent.

25) A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
JUDGE