

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 137 of 2012

Jagat Pal Singh, Aged about 56 years, S/o. Late R.D.Singh, R/o. Ma Malti Bhavan, Opposite Vikram Super Bazar, Vidya Nagar, P.S. Tarbahar, Tahsil and District Bilaspur (C.G.)

---- Appellant

Versus

Sadhana Jana D/o. Late Adhir Chandra Jana, Aged about 54 years, Gali No. R-2 Vinoba Nagar, Near Gayatri Mandir, P.S. Tarbahar, Tehsil and District Bilaspur (C.G.)

---- Respondent

For the Appellant :- Mr. Sunil Soni, Advocate
For the Respondent :- Mr. C.K. Kesharwani, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

05.08.2019

1. This appeal is directed against the impugned judgment and decree dated 25.09.2012 passed by the Family Court, Bilaspur in Civil Suit no. 197-A/ 2011 by which, the appellant's suit has been dismissed both as barred by limitation and *res-judicata*.
2. The appellant filed a suit seeking a decree of nullity of marriage under Section 12(i)(c) on the pleading, inter-alia, that the respondent had practiced fraud upon him and suppressed many

material informations at the time of solemnization of the marriage, which was solemnized on 27.02.2004. According to the plaint allegation, the appellant came to know that the bio-data of respondent/wife which was sent to him, did not disclose the true fact and the appellant was defrauded with regard to qualification, caste, date of birth, status of the family and also the occupation of respondent's brother. Further pleadings were that when the appellant collected various information, documents and evidence, he was satisfied that she has been subjected to fraud in order to somehow ensure that the appellant marries with the respondent. On this pleading and cause of action the appellant filed a suit seeking decree of nullity of marriage under Section 12(i)(c) of the Hindu Marriage Act.

3. The respondent contested the suit by filing the written statement pleading that the allegation of so called fraud are not correct. Every information given in the bio-data by the respondent/wife was true and there was nothing to suppress. Respondent/wife specifically pleaded that the appellant, while giving an advertisement inviting offer of marriage, had clearly stated that there is no bar of caste. Further the respondent, in their pleading, stated that the respondent was a medical practitioner and she had a very sound family back ground which was correctly stated in the bio-data. The information regarding occupation of her brother was also factually correct and there is no falsehood.

4. Learned Family Court framed two preliminary issues. The first was whether the suit is within limitation and the second was whether the suit is barred by *res-judicata*.
5. On the first issue, learned family Court found that the appellant's pleading that he came to know about the fraud and it was detected only recently, just before filing of the suit, is not correct because, earlier the appellant had filed a suit seeking decree of divorce on 14.10.2009. In that case, in the plaint, it was clearly pleaded by the appellant that the respondent had practiced fraud upon him on those ground which was stated in the suit filed in the present case. On that basis, learned family Court recorded a finding that the alleged fraud, even according to the appellant was known to him at least on 14.10.2009, when the first suit seeking decree of divorce was filed. Therefore, the learned family Court held that the suit was barred by limitation, in view of provisions contained in section 12 sub-section 2 of the Hindu Marriage Act.
6. On the issue of *res-judicata*, learned family Court relying upon earlier decision of this High Court in the case of **Smt. Maya Tiwari v. Ajay Alias Baba Shukla, 2008(2) CGLJ 406**, held that when the appellant had filed earlier suit, he had raised this very issue also in that suit only a decree of divorce on the ground of cruelty was granted. On this basis, learned family Court held that the subsequent suit on those very basis and foundation was barred by *res-judicata*.

7. Learned counsel for the appellant has made two fold submissions.

Firstly, on the issue of limitation, learned counsel for the appellant would argue that even if it was to be accepted on the face of it that while filing earlier suit for grant of decree of divorce on 14.10.2009, the appellant had disclosed that fraud was practiced upon him, he could have filed a suit within one year when complete information with regard to fraud practiced upon him, came to his knowledge, after collection of material evidence in that regard. He would argue that as far as provision contained in section 12 sub-section 2 is concerned, it does not provide a period of limitation as such, but it only bars suit after expiry of the period of one year, from the date, fraud is detected. According to him, this detection of fraud would not complete until complete material evidence in support of fraud is collected and comes into the hands of the appellant/plaintiff.

The second submission is that, even though, in the first suit, their pleading that the appellant was subjected to fraud by the respondent/wife, the appellant actually did not seek any decree of nullity of marriage on the ground that the marriage was voidable at his option on account of fraud practiced upon him. He would submit that there was no issue framed on this ground and the issues were framed in the earlier suit were only relating to alleged cruelty.

8. On the other hand, learned counsel for the respondent supports the judgment and decree and submit that in view of reasons assigned by the learned family Court, the suit is not only clearly barred by limitation but also barred by *res-judicata*.
9. We have heard learned counsel for the parties and perused the record.
10. After perusing the record and the impugned judgment of the learned family Court, we find that the plaintiff's suit was not maintainable and barred under sub-section 2 of Section 12 of the Hindu Marriage Act for the reason which are stated infra.
11. It is pleaded by the appellant/husband that in the month of December 2010, the respondent practiced fraud upon him while giving her bio data mentioning all her details relating to her caste, age, family status, occupation of her brother etc. Having framed the issues, the learned family Court, on the first issue of limitation, held that the suit was barred under Section 12 (2) of the Hindu Marriage Act because the factum of alleged fraud was already known to the plaintiff since long. It is not in dispute that the plaintiff had filed a suit earlier on 14.10.2009, seeking a decree of divorce on the ground of cruelty against the respondent/wife. In that suit, the plaintiff had made a very categorical averment that the respondent had practiced fraud upon the appellant as she did not correctly disclose her caste, date of birth, status of family and the occupation of her brother. Therefore, apparently, at least from 14.10.2009, the alleged

fraud according to the plaintiff was disclosed to him. It is, therefore, clear that on plaintiff's own showing alleged fraud was detected on 14.10.2009 when he filed the suit. In this case, where the appellant has sought decree declaring the marriage to be void and be annulled by a decree of nullity on the ground that the consent of the appellant/plaintiff was obtained by fraud, which came to the notice of the appellant/husband on 14.10.2009, the petition was required to be presented within stipulated period to be reckoned from the date of fraud being detected or discovered.

12. The relevant provisions in this regard, as contained in Section 12 (2) reads thus:-

“ (2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause(c) of sub-section (1), shall be entertained if-

(i) the petition presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered, or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered.

(b) xxxxxxxx xxxxxxxx xxxxxxxx .

13. Reading of the aforesaid provision clearly reveals that no petition for annulling a marriage on the ground specified in

Section 12 (2)(a)(i) shall be entertained, if the petition is presented more than one year after the fraud has been discovered. Thus, where a decree of nullity of marriage is sought on the ground as enumerated in Section 12 (2)(a)(i) of the Hindu Marriage Act, the suit will have to be filed within a period of one year from the date the fraud has been discovered. In the present case, apparently, the discovery of this fact, on appellant's own showing, had taken place on 14.10.2009, when the first suit seeking decree of divorce was filed by the appellant against the respondent/wife. If the period of one year is to be reckoned from 14.10.2009, the appellant was required to file suit seeking decree of nullity on the ground of fraud on or before 14.10.2010, whereas in the present case, the suit has been filed as late as on 13.06.2011.

14. The submission of learned counsel for the appellant that the word 'discovered' as occurring in section 12(2)(a)(i) of Hindu Marriage Act has to be rationally construed and interpreted to mean that it not only includes discovery of fraud but also all material evidence to prove fraud does not amount acceptance. There is nothing in the said provision to warrant such interpretation to be made that the discovery should not only be of fraud but each and every material evidence to prove fraud. The legislature clearly provides that no petition for annulling a marriage would be entertained, if it is filed more than one year after fraud has been discovered and therefore, the date of discovery of fraud and not any subsequent date of collection of

material evidence to prove fraud is relevant for the purposes of computing the period of one year. Apparently the appellant's suit was barred under Section 12 (2)(a)(i) of the Hindu Marriage Act. In view of the above, we need not decide the other issue in this case, as the suit is found to be barred by limitation. Therefore, this appeal fails and is hereby dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge