

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 35 of 2019

- Brajendra Singh S/o Late Dr. Himmat Singh Aged About 55 Years
R/o Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon
Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Appellant

Versus

- Smt. Renu Singh W/o Brajendra Singh Aged About 49 Years R/o
House No. 07 Of Sharad Kumar Singh, Rajkishornagar, Police
Station Sarkanda, Bilaspur, District Bilaspur Chhattisgarh., District :
Bilaspur, Chhattisgarh

--- Respondent

For Applicant : Mr. J.K. Shastri, Advocate

For Respondent : Mr. Barun Kumar Chakrabarty, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****17/09/2019**

1. This appeal is directed against judgment and decree dated 13.04. 2018 in Civil Suit No. 14-A of 2017 passed by the trial Court by which the plaint has been rejected under Order 7 Rule 11 CPC.

2. Appellant/plaintiff filed suit seeking decree of nullity of marriage on the ground that the defendant is impotent. An application was filed under Order 7 Rule 11 CPC on the submission that earlier plaintiff's suit seeking decree of nullity of marriage was dismissed as barred by limitation and, therefore, fresh suit is barred.

3. Learned trial court taking into consideration the earlier orders and the nature of relief sought in the earlier suit, particularly taking into consideration order dated 17.02.2017, passed in WP (Art 227) No.

739 of 2016, held that fresh suit filed by the plaintiff is barred and, therefore, the plaint was rejected under Order 7 rule 11 CPC.

4. Learned counsel for the appellant made a pointed submission stating that even though the earlier suit of the plaintiff seeking declaration of nullity of marriage was dismissed as barred by limitation, a subsequent suit seeking decree of nullity on the ground of impotency would not be barred and the learned trial court has wrongly invoked provision contained in order 2 rule 2 CPC to reject the plaint under Order 7 rule 11 CPC.

5. Learned counsel for the respondent on the other hand, would argue that earlier the plaintiff had filed suit seeking decree of nullity of marriage on various grounds including the ground of impotency. In that case, an application under Order 7 rule 11 CPC was filed and finally vide order 17.02.2017 the High Court held that the suit was barred by limitation. Therefore, a subsequent suit seeking decree of nullity of marriage on the ground of impotency is not maintainable and the plaint has rightly been rejected under Order 7 rule 11 CPC.

6. A short issue arises for consideration in the present case as to whether the present suit filed by the appellant/plaintiff seeking decree of nullity on the ground of impotency, is barred by law.

7. Earlier round of litigation as reflected from order dated 17.02.2017 of this Court in WP (Art 227) No. 739 of 2016 shows that plaintiff/appellant herein had instituted an application under Section 12 of the Hindu Marriage Act, 1955 for declaring his marriage with the respondent void on the ground that the respondent was suffering from gynaecological problem and she was incapable of conceiving and that marriage was performed suppressing the material fact that

respondent is suffering from gynaecological disorder and is incapable of conceiving. This Court taking into consideration the material on record held that the suit was barred by limitation and the defendant's application under Order 7 rule 11 CPC was allowed.

8. The suit which has now been filed by the appellant/plaintiff again seeks the similar relief based on the same ground that the defendant is impotent. Therefore, the learned Court below has not committed any legality in holding that the suit is also not maintainable and the plaint is liable to be rejected under Order 7 rule 11 CPC. No case is made out. Accordingly the appeal is dismissed. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge