

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 130 of 2016

- Smt. Bhojmati @ Sushila Sahu W/o Ishwar Prasad Sahu, Aged About 35 Years D/o Premshankar Sahu, R/o Village Jatri, Post Jatri, Tahsil Pussour, District Raigarh Chhattisgarh.....Non Applicant.

---- Appellant

Versus

- Ishwar Prasad Sahu S/o Parasram Sahu, Aged About 38 Years R/o Village Kirari (D), Tahsil Dabhra, District Janjgir Champa Chhattisgarh.....Petitioner.

---- Respondent

For Appellant :- Shri K.P. Sahu, Advocate.

Hon'ble Shri Prashant Kumar Mishra &

Hon'ble Smt Rajani Dubey, JJ.

Order on Board

By

Prashant Kumar Mishra, J

17/05/2019

1. The appeal is posted for hearing on Application for Urgent Hearing, however, respondent has not entered appearance despite service of notice, therefore, we have finally heard the appeal with the consent of learned counsel for the appellant.

2. In this appeal the challenge is to the decree for Restitution of Conjugal Rights passed by the trial Court in exercise of power under Section 9 of the Hindu Marriage Act, 1955 (in short 'the Act, 1955').
3. Parties were married in 1995. They have two children out of the wedlock but the first baby boy died immediately after birth, the second issue, a baby girl, named Savitri is presently residing with the appellant. It is the respondent's case before the trial Court that after birth of the second child the appellant was detected with Sickel Cell disease and was not keeping good health. She left the marital house about 10 years back and despite repeated effort of the respondent she did not join the marital chord.
4. Appellant/wife contested the suit on submission that when she fell ill after birth of second child, her husband did not attend her properly nor made arrangements for her treatment. When her ailment aggravated, her husband left her in her parental house and stopped taking care of her. During this period, husband performed second marriage with one Geeta Sahu.
5. Materials available in record would indicate that appellant's application under Section 125 Cr.P.C. was allowed by the Family Court, Raigarh on 25th February, 2015 with clear finding in Para 11 that the wife has sufficient justifiable

reason to live separate from her husband. This aspect of the matter has not been considered by the Family Court in the present impugned order. Moreover, appellant has also filed documents before us in the form of vaccination slip of the baby born out of the association of respondent Ishwar Prasad Sahu with Geeta Sahu in respect of whom appellant has made allegation that she is the second wife of respondent during subsistence of his first marriage with the appellant. This document was not available before the trial Court during the trial of respondent's application under Section 9 the Act, 1955.

6. For the above stated reasons, we are of the considered opinion that the trial Court's order allowing respondent's application under Section 9 of the Act, 1955, deserves to be set aside as the same has been rendered without appreciating the important evidence in respect of order under Section 125 Cr.P.C. and other documents which came to the light subsequently, which has bearing over the findings in respect of respondent's second marriage. If the said aspect is considered appropriately, it may affect the decision, therefore, the matter deserves to be dealt afresh by the trial Court.
7. Accordingly, the impugned order and decree are set aside and the matter is remitted back to the trial Court for decision

afresh.

8. It is made clear that the trial Court shall frame specific issue regarding the performance of marriage by respondent Ishwar Prasad Sahu with Geeta Sahu and shall also consider the effect of order passed on 25th February, 2015 by the family Court, Raigarh allowing the appellant's application under Section 125 Cr.P.C.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

Ankit