

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (Misc) No. 250 of 2018

Smt. Rashmita Patel D/o. Shri Vishikeshan Patel, W/o. Vivekanand Patel, Aged about 25 years, Caste- Mali, R/o. Remta, Barpali, District Bargarh (Orissa), Presently residing at In-front of T.V. Tower, Atarmuda, Raigarh, Chijla, District Raigarh (C.G.)

---- Appellant

Versus

Vivekanand Patel, S/o. Late Shri Motilal Patel, Aged about 32 years, Caste Mali, R/o. Village Bilaigarh 'B' Tahsil Baramkela, District Raigarh (C.G.) at present posted at Tendukona (Bagbahara) District Mahasamund (C.G.)

---- Respondent

For the Appellant :- Mr. K.N. Nande, Advocate
For the Respondent :- Mr. Alok Bakshi and Mr. Chandresh Shrivastava, Advocates

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

Judgement on Board By
Manindra Mohan Shrivastava, J.

24.09.2019

1. This appeal is directed against the impugned judgment and decree dated 06.11.2017 passed by the Family Court, Raigarh in Civil Suit No. F-66 A/2017, by which learned Family Court has granted a decree of divorce by mutual consent.

2. Perusal of the impugned order reveals that the appellant was married to the respondent on 19.04.2016. An application, purporting to be joint application, was submitted before the Family Court on 04.05.2017 seeking decree of divorce by mutual consent, as provided under Section 13B of the Hindu Marriage Act. In that application, it was stated that their marriage was solemnized on 19.04.2016. After marriage, the appellant/wife went to maternal house on 26.04.2016, but thereafter, she did not come back nor resided with her husband. It was pleaded that the parties no longer find themselves in a position to restore marital relationship and have decided, without any pressure and out of their own free will, to part ways towards that end. They have jointly moved application for grant of decree of divorce by mutual consent. After expiry of six months, the learned trial Court recorded the evidence of both the parties and then recorded a finding that the parties have been living separately for one and half year and there is no possibility of restitution of their marital relationship and that marriage is irretrievably broken and that both the parties for that reason, are inclined to break the marital relationship, granted decree of divorce by mutual consent vide impugned judgment and decree dated 06.11.2017.
3. The aforesaid judgment decree, however, has been challenged on the sole ground that the decree has been obtained by fraud, inasmuch as, the appellant/wife never participated in the

proceedings, she never appeared, never signed any pleadings, affidavit etc. and the respondent/husband, in order to somehow get a decree of divorce, presented an imposter who falsely impersonated the appellant before the Court and thus succeeded in his mischievous and fraudulent design to obtain decree of divorce.

4. In the appeal, certain photographs have also been annexed, supported by pleading in the memo of appeal that these photographs are of the period subsequent to the date of passing of decree of divorce which shows that the appellant/wife was in complete dark and not knowing that her husband had already fraudulently obtained decree against her. According to the appellant, she was continuing to reside with the husband and participating in various functions and family activity without knowing that the respondent obtained decree against her.
5. On such allegations of fraud, this Court stayed the *ex-parte* judgment and decree and also directed the Registrar(Vigilance) to conduct an inquiry to find out whether the allegations are prima-facie correct or not. The Registrar(Vigilance), held an inquiry on administrative side and also submitted a report before this Court which also recorded an opinion that the decree appears to have been obtained by fraud behind the back of appellant Rashmita Patel by keeping her in dark.

6. Learned counsel for the appellant would argue that once the report of the Vigilance officer prima facie supports the allegation made by the appellant that the decree was obtained by fraud, the impugned judgment and decree is liable to be set aside, as it is result of fraudulent act not only against the parties appellant but also it is case of fraud upon the Court. Learned counsel for the appellant would argue that even if the joint application was filed before the family Court on 04.05.2017, the order sheets record appearance of the appellant/wife only on 12.07.2017 and in earlier orders dated 09.05.2017 and 21.06.2017, the appellant is shown to be absent and even then, in the margin of order dated 09.05.2017, signature of the appellant appears which prima-facie smacks of interpolation of record. He would further submit that, though, the presence of the appellant is said to have been recorded by the learned Family Court on 12.07.2017, 04.08.2017 and 06.11.2017, the appellant, in fact, never appeared and apparently as an imposter, was brought before the Court to mark appearance as the appellant. Learned counsel for the appellant would further argue that in the inquiry conducted by the Registrar (Vigilance), apart from appellant (witness No. 4), Notary Ramesh Kumar Sharma (witness No.1) has stated that the column relating to identification of the deponent is blank and no signatures of appellant Rashmita Patel was obtained by him in the notary register. It is also submitted that Dushyant Das Mahant (AW-2) advocate has also admitted that respondent

introduced one lady to him as his wife Rashmita Patel. He submits that he does not know the lady. N.C. Vishwal (AW-3) stated that he did not obtain signature of Rashmita Patel and Viveknand Patel. The counselor Smt. Nirmala Mourya (witness No. 7) though states that she had conducted counseling but she does not recognize the parties by their face.

7. Learned counsel for the appellant would further argue that on the basis of such statement and inquiry report and categorical stand taken by the appellant before this Court as is reflected from the records, the appellant never appeared and the respondent succeeded in obtaining decree by impersonating as appellant himself before the Court. He would further argue that the report of handwriting expert collected by the Registrar(Vigilance) also supports the case of the appellant that the signature obtaining in the record does not match the specimen signature of the appellant. On the basis of aforesaid material, it is contented that the impugned judgment and decree is liable to be set aside, having been obtained by fraud. Learned counsel for the appellant relied upon decision in the cases of **Ram Chandra Singh vs. Savitri Devi and Others 2003(8) SCC 319** and that of in the matter of **Sarabjit Singh v. Ms. Gurpal Kaur** decided on 27.07.2012 by the Delhi High Court.
8. Learned counsel appearing for the respondent would argue that the challenge to the decree on the ground that it was actuated by fraud, could not be gone into in an appeal but the proper

course of action permissible under the law for the appellant is to either file a suit seeking declaration that the decree was obtained by fraud or to invoke inherent jurisdiction of the trial Court by moving appropriate application under Section 151 CPC. He would argue that as far as the inquiry report of the Registrar(Vigilance) and the statement recorded therein are concerned, they do not constitute evidence recorded in judicial proceedings before this Court and such a report was obtained by this Court only for the purpose of prima-facie satisfaction regarding such allegations. He would argue that the said report contains statement which were not subjected to cross examination. It is also submitted that as far as the report of handwriting expert is concerned, that could also not be relied upon as it was not collected through the process of the Court and even the concerned handwriting expert has neither been examined nor any opportunity to cross examine was afforded to the respondent. Learned counsel for respondent would further submit that even in the report of Registrar(Vigilance), statement has come that one lady in the name of Rashmita Patel had not only appeared before the counselor but also before the Court. The statements of concerned persons recorded by the Inquiry officer do establish that appearance was made before the counselor as also before the Court by one lady named Rashmita Patel. Relying upon the Supreme Court decision in the matter **Sanjay Singh vs. Garima Singh 1998(8)SCC 375**, he would contend that the issue whether one

who appeared before the Court was the appellant herself or an imposter could be gone into only in a factual inquiry in case the appellant invoke inherent jurisdiction under Section 151 CPC or file a suit seeking declaration that the decree was obtained by fraud. He would argue that as there is serious allegation that the decree is obtained by fraud, there can be no quarrel that the jurisdiction of the Court can be invoked but the matter required an inquiry on judicial side as to whether the decree was obtained by fraud by allowing both the parties to lead their oral and documentary evidence and therefore, proper course of action which has been laid down by the Supreme Court in catena of decision is that the appellant may either file a suit seeking declaratory decree that the decree was obtained by fraud or invoke inherent jurisdiction under Section 151 CPC of the trial Court itself. He also placed for consideration of this Court decisions in the matter of **Smt. Anita v. R. Rambilas AIR 2003 Andhra Pradesh 32** and an order dated 29.08.2018 of Punjab Haryana High Court in the Case of **Nidhi Dhankar vs. Ajit Singh**.

9. We have heard learned counsel for the parties and perused the records.
10. The allegation made by the appellant are quite serious where it has been alleged that the decree has been obtained by playing fraud on the court and by producing an impostar before the Court in the name of the appellant. According to the appellant she never filed any joint application before the Court nor did

she ever appear in any of the proceedings. Counsel for the appellant submits that the appellant never appeared before the Court or the counselor and someone appeared as an imposter before the counselor and the Court by playing fraud.

11. Taking into consideration the seriousness of the allegation, this Court, in order to prima-facie satisfy itself whether the matter requires serious consideration and appropriate order to be passed, directed the Registrar(Vigilance) to hold inquiry and submit a report. The report of the Registrar(Vigilance) also prima-facie support the allegation of fraud. However, faced with such a situation as to what would be the proper course of action to be followed by the appellant, needs to be decided.
12. Certainly, the report of the Registrar(Vigilance), based on an inquiry could not constitute evidence recorded during judicial proceedings. However, when there are serious allegation of fraud having been practiced not only against the party but upon the Court also the Courts can invoke its inherent jurisdiction under Section 151 CPC, as held by the Supreme Court in the case of **Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd. AIR 1996 Supreme Court 2592**, wherein the Lordship in the Supreme Court authoritatively held that when an allegation of fraud is levelled, it cannot be ignored. It was held thus:-

“20. This plea could not have been legally ignored by the Commission which needs to be reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or

orders if they are obtained by fraud as Fraud and Justice never dwell together (*Fraus et jus nunquam cohabitant*). It has been repeatedly said that Fraud and deceit defend of excuse no man (*Fraus et dolus nemini patrocinarari debent*).

21. In *Smith v. East Elloe Rural District Council* 1956 AC 736, the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, *Lazarus Estate Ltd. v. Beasley*, (1956) 1 QB 702, Denning LJ said:

“ No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

22. The judiciary in India also possesses inherent power, specially under Section 151 CPC to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent power are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the construction of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

23. Since fraud affects the solemnity, regularly and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Courts is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. (See: *Benoy Krishna Mukherjee v. Mohanlal Goenka*, AIR 1950 Cal 287; *Gajanand Sha v. Dayanand Thakur* AIR 1943 Patna 127; *Krishna Kumar v. Jawand Singh*, AIR 1947 Nagpur 236; *Devendra Nath Sarkar v. Ram Rachpal Singh*, ILR (1926) 1 Lucknow 341; AIR 1926 Oudh 315; *Saiyed Muhammad Raza v. Ram Saroop*, ILF (1929) 4 Lucknow 562; AIR 1929 Oudh 385 (FB); *Bankey Behari Lal v. Abdul Rahman*, ILR (1932) 7 Lucknow 350; AIR 1932 Oudh 63; *Iekshmi Amma Chacki Amma v. Mammen Mammen*, 1955 Kerala

Law Times 459.) The Court has also the inherent power to set aside a sale brought about by fraud practised upon the Court (Ishwar Mahton v. Sitaram Kumar, AIR 1954 Patna 450) or to set aside the order recording compromise obtained by fraud, (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh AIR 1954 Patna 618; Smt. Tara Bai v. V.S. Krishnaswamy Rao, AIR 1985 Karnataka 270).

13. The aforesaid legal position was further reiterated in a subsequent decision in the matter of **Sanjay Singh v. Garima Singh 1998 (8) SCC 375**. That was a case where in a matter arising out of matrimonial dispute between the husband and the wife, decree of divorce was assailed by filing a suit seeking declaration that ex-parte decree was obtained by fraud and was therefore, null and void as the wife had not appeared in the said suit proceedings for getting her marriage dissolved through the Court. Simultaneously, an application under Section 151 CPC was also filed alleging that the ex-parte decree was null and void. The said application under Section 151 CPC was held as not maintainable and was rejected against which a revision was filed. The High Court decided to exercise its power under Article 227 of the constitution of India. After calling the records and minute examination it came to the conclusion that even assuming that the suit was filed by real respondent- the wife, when the suit had proceeded in hot haste and resulted in an ex-parte decree in a quick succession of events, within a short period of about 1 month and it was case of result of complete non-application of mind on the part of the learned trial Judge, reflected a clear case of fraud. A finding was also recorded that

apparently the decree was obtained by getting an impostor to file the application. The Supreme Court noticed that the findings of the High Court which was reached upon perusal of the case was based on certain well-established and indisputable facts and circumstances revealed from the record itself which was noted in para-6 of the aforesaid judgment. Upon considering aforesaid aspects and that the findings based on certain peculiar features and shocking events reflected from the records, it was observed thus:-

“ 6.Under these circumstances it was observed that in this case even if it is assumed that the real Garima Singh filed the suit in question, the petition was clearly collusive and the decree had been granted without application of mind. Consequently, on this finding alone the application under Section 151 CPC was required to be allowed and is rightly allowed by the learned Single Judge of the High Court. Hence the ex-parte decree also must be held to be rightly set aside.

14. However, a note of caution was added that no further finding was required to be given as to whether the other party was real plaintiff or the appellant, by putting forward an impostor, got the decree of divorce it was observed as below:-

“ 7.....However, in our considered view, no further finding was required to be given as to whether the respondent was the real plaintiff or the appellant by putting forward an impostor got passed the decree of divorce for dissolution of marriage. That finding was not required to be arrived at by the High Court as it depended upon investigation of facts which could not be conclusively established from the record as then existing. Once the conclusion was reached that the ex parte decree was required to be set aside even on the assumption that the real plaintiff had also colluded with the defendant for snatching a decree of divorce, no further finding about the

alleged impersonation of the respondent by somebody else was rendered necessary. Consequently, we vacate the finding about the appellant getting the suit filed by an impostor. We leave that question open for consideration by the trial court in remanded proceeding if at all that necessity arises.

15. From the aforesaid observation it is clear that the Supreme Court upheld interference by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, based on the peculiar features of the case obtaining on hand that even if it is assumed for argument sake that it was not a case of impostor, otherwise also the judgment decree was passed in hot haste and virtually a decree was snatched from the Court in a collusive manner. At the same time, the Supreme Court also made it clear that the aspects as to whether the other party had actually appeared or whether an impostor was produced to procure a decree would depend upon the investigation of fact which could not be conclusively established from the records as then existed.
16. In yet another decision of the Supreme Court in the case of **Hamza Haji v. State of Kerala 2006(7) SCC 416**, scope and ambit of jurisdiction to hold inquiry, in exercise of its inherent jurisdiction on the face of allegation of playing fraud, was examined as below:-

“10. It is true, as observed by De Grey, C.J., in *Rex v. Duchess of Kingston* that:

“ 'Fraud' is an intrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice.

Lord Coke says it avoids all judicial acts ecclesiastical and temporal".

11. In *Kerr on Fraud and Mistake*, it is stated that:

"In applying this rule, it matters not whether the judgment impugned has been pronounced by an inferior or by the highest Court of judicature in the realm, but in all cases alike it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud."

12. It is also clear as indicated in *Kinch Vs. Walcott* that it would be in the power of a party to a decree vitiated by fraud to apply directly to the Court which pronounced it to vacate it. According to Kerr;

"In order to sustain an action to impeach a judgment, actual fraud must be shown; mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

(See t7th Edn. Pp 416-417)

13. In *Corpus Juris Secundum*, Vol. 49, para 265, it is acknowledged that, "Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgements".

In paragraph 269, it is further stated,

"Fraud or collusion in obtaining judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action.

It is also stated:

"Fraud practiced on the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair".

14. In *American Jurisprudence*, 2nd Edition, Vol. 46, para 825, it is stated,

"Indeed, the connection of fraud with a judgment constitutes one of the chief causes for interference by a court of equity with the operation of a judgment. The power of courts of equity in granting

such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the courts of common law.

Where fraud is involved, it has been held, in some cases, that a remedy at law by appeal, error, or certiorari does not preclude relief in equity from the judgment. Nor, it has been said, is there any reason why a judgment obtained by fraud cannot be the subject of a direct attack by an action in equity even though the judgment has been satisfied."

15. The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision therefore gives jurisdiction and authority to a Court to consider and decide the question whether a prior adjudication is vitiated by fraud. In *Paranjpe Vs. Kanade* ILR 6 BOMBAY 148,

"it was held that it is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud.

16. In *Lakshmi Charan Saha Vs. Nur Ali* ILR 38 Calcutta 936,

" The jurisdiction of the Court in trying a suit [questioning the earlier decision as being vitiated by fraud,] was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree.

17. In the case of *Sarabjit Singh v. Ms. Gurpal Kaur*, the aforesaid principle were noted by the High Court to reach to the conclusion that in a case where a judgment and decree is sought to be assailed on the ground that it has been obtained by playing fraud, the Court which passed the decree has inherent jurisdiction and power under Section 151 CPC to make an inquiry and take decision on such an allegation and an argument that after passing the judgment and decree the trial

Court had become functus officio, was repelled. Aforesaid decisions have settled legal position that where a judgment and decree of the Court is assailed on the ground that it was obtained by fraud, inherent jurisdiction of the Court which passed the decree can always be invoked at the instance of aggrieved party and it would be within the jurisdiction of the Court to hold an inquiry to find out whether fraud was practiced on the court or merely on the party.

At the same time, as has been held in the case of Sanjay Singh v. Garima Singh (supra), a superior Court exercising supervisory jurisdiction may examine from the record of the case whether the order of the Court is so apparently collusive and passed in hot haste that interference is warranted, even if it was assumed that it was not a case of impostor but the real party had actually appeared in the case. Whether it was a case where an impostor was produced before the Court and by practicing fraud, court proceedings were abused, would be a matter of inquiry for which purpose the inherent jurisdiction of the concerned Court which passed the decree/order could be invoked by the party.

18. In the ultimate analysis, we find that whenever a party is aggrieved by a judgment and decree on the ground that it was obtained by fraud, its remedy would be either to file a suit seeking declaration that the decree was obtained by the other party by playing fraud on the party. Where the allegation of fraud is not only against the aggrieved party but is also an

allegation constituting a fraud upon the Court, inherent jurisdiction of the Court can always be invoked to set at naught an order or judgment and decree which is outcome of fraud practiced upon the Court.

19. Though, in the present case having gone through the material, prima-facie case of fraud appears in view of the report of Registrar(Vigilance), it would be legally impermissible for us to allow the report to be treated as an evidence in the present proceedings.

Applying the ratio of the judgment in the case of Sanjay Singh v. Garima Singh (supra), we minutely examined the record of the case to fine out whether a similar finding could be reached as was in that case so as to say that without going into the aspect whether it was a case of impostor, judgment and decree could not be sustained in law. We find that in the present case, though, there are certain indications, yet in order to reach to a definite conclusion, investigation into the fact would be necessary which can best be done by the same court, upon invocation of its inherent jurisdiction under Section 151 CPC. The records do indicate and we feel concerned, to see that despite an order recorded in the order sheet on 09.05.2007 on two occasions on the same day, wherein the appellant is shown to be absent, in the margin of the order sheet, it bears the signature of the appellant. This clearly shows that after the Court passed the order in order sheet, someone signed the

order sheet. Whether it was the appellant or whether it was an impostor would again be a matter of inquiry.

We also notice that during inquiry made by Registrar(Vigilance), a report of the handwriting expert was also obtained which also creates doubt and shows that the appellant's allegations are serious and require a proper investigation into the fact and cannot be brushed aside as frivolous. We would not comment upon the same because that was obtained in inquiry by the Registrar(Vigilance) and the other party did not have opportunity to rebut the same and even handwriting expert was not examined. True it is that in all cases, it is not necessary to examine the handwriting expert and opinion with sufficient corroboration can be relied upon in view of the provisions contained in Section 45 and 73 of the Evidence Act, we leave it to be dealt with in the inquiry that may be held by the concerned trial Court itself.

We notice that 21.06.2017 onwards, appearance was made by both the parties and even the statement was recorded by the learned Family Court. Not only this, even the counselor report was also placed before the Court. We find that statements of lawyer, counselor and even Presiding Officer have been recorded by the Registrar(Vigilance) and it places two different pictures. According to one version, the appellant did not participate and she never filed any application whereas regarding other material, she filed application and appeared before the counselor and also appeared before the Court to

depose. This requires a detailed investigation into fact which cannot be done here.

20. Though, learned counsel for the respondent submits that the plaintiff could have only resorted to remedy of seeking a declaratory decree, relying upon the verdict in the case of **Smt. Anita v. R. Rambilas AIR 2003 Andhra Pradesh 32**, having noticed that the allegation in the present case are of playing fraud upon the court, in view of the settled position which were examined and the law laid down by the Supreme Court in catena of decisions, the appellant would certainly have the remedy of moving application under Section 151 CPC, invoking inherent jurisdiction of the learned Family Court which passed the decree.

Where a judgment and decree passed in a divorce matter were challenged by the wife on the ground that the decree has been obtained by fraud and she never appeared before the Court, as the order passed in the case of **Sarabjit Singh v. Ms. Gurpal Kaur** reveals, the High Court directed the party to move the concerned trial Court itself by filing application under Section 151 CPC. Similarly, in another case of **Nidhi Dhankar vs. Ajit Singh**, a Division Bench of Punjab and Haryana High Court also issued similar directions as below:-

“ In view of the above said circumstances, we are of the considered opinion that it will be a question of law and fact to determine whether the mutual decree of divorce had been obtained by playing fraud on the Court, as

per the circumstances mentioned in the appeal. The appellant is relegated to the alternative remedy of filing an application before the lower Court as per law laid down in the aforesaid judgments and seek the setting aside of decree of divorce by approaching the same Court which had passed the decree on 16.4.2018. It is ordered that in 3 of 5 case application for setting-aside the judgment and decree dated 16.4.2018, is filed within a period of one month from today, the same shall be entertained and decided by the lower Court after giving an opportunity to the respondent, in accordance with law. It is further directed that the lower Court shall make earnest endeavour to decide the application expeditiously, preferably within a period of six months after the receipt of response from the respondent. The judgment and decree dated 16.4.2018 will remain inoperative during the pendency of the application.

21. Upon detailed analysis of the legal and factual position on record, though, we did not consider the present to be a case to set aside the judgment and decree because whether impostor appeared or not, would require detailed inquiry and cannot be gone into here. Nevertheless, the remedy of the appellant would be to invoke the inherent jurisdiction of the learned Family Court by moving suitable application under Section 151 CPC.

22. In the result, we are inclined to hold that the appellant is entitled to invoke inherent jurisdiction of the Family Court which she may exercise by moving appropriate application under Section 151 CPC by giving complete details and all materials

which are in her hand and also lead appropriate oral and documentary evidence to satisfy the Court that she never appeared and it was an impostor who was brought by the respondent to appear before the court. Equally, it would be open for the respondent to rebut the same by leading oral and documentary evidence. We further direct that the Family Court shall obtain proper scientific report including handwriting expert report in the matter. The handwriting expert report which has been placed before this Court along with the report of the Vigilance Officer may be tendered in evidence by the appellant before the Court below in support of her case that she never appeared before the Court below.

Learned Court below shall hold inquiry in the matter and finally decide the matter within a period of 8 weeks and shall not grant unnecessary adjournment to any of the parties.

23. Taking into consideration that in the case of Nidhi Dhankar vs. Ajit Singh(supra) a protective order was also given, we are inclined to order that the judgment and decree of divorce shall not be given any effect. However, it will all be subject to final decision that may be taken by the Family Court. The protective umbrella is subject to the condition that if the appellant does not file application under Section 151 CPC before the Court below within 45 days from today, protection shall lose its efficacy.

24. Learned counsel for the respondent submits that the observation made by this Court in this case may influence the inquiry. It is made clear that the observations are prima-facie in nature and the learned Family Court shall decide the matter after due and proper inquiry and by adverting to the oral and documentary evidence as may be collected by it in proceedings initiated upon filing of application under Section 151 CPC before it.

25. We also direct that the Principal Judge, Family Court Raigarh, shall itself deal with the matter upon filing application under Section 151 CPC.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge