

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 442 OF 2018
WITH
CIVIL APPLICATION NO. 803 OF 2018

Rajeshkumar Gurubachanlal Manchanda .. Appellant
Vs.
Smt.Nanda Vijaykumar Manchanda and ors. .. Respondents

Mr.Ashok B.Tajane, for the Appellant.
Mr.Prasad P. Kulkarni, for the Respondent No.1.
Mr.Pratik B.Rahade, for Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : 24th JULY, 2019

P.C. :

. Heard learned Counsel for the appellant. The appellant is the original defendant No.1. The plaintiff claims to be the wife of the Vijaykumar who was real brother of defendant No.1 - Rajeshkumar. It is the case of plaintiff that she got married with Vijaykumar on 11/01/1990 at Arya Samaj Mandir at Hyderabad. The marriage certificate was produced which bears the signature of Purohit Veerbhadra Shastri, Secretary

N.P.Ganeshrao and President Manoharlal Maheshwari. Vijaykumar died on 17/10/2003. It is the case of the plaintiff that the properties in question of which partition is sought are joint family properties. She therefore claims the share in the suit properties. The Courts below held that the plaintiff was the legally wedded wife and now widow of deceased Vijaykumar. It is further held by the Courts below that the properties described in plaint paragraph 1A to 1E are joint family properties of deceased Vijaykumar, defendant No.1 - Rajeshkumar and their father Gurubachanlal.

2. Learned Counsel for the appellant submitted that the Courts below have committed an error in arriving at the finding that plaintiff performed valid marriage with Vijaykumar. According to him, relying upon Section 5 & Section 7 of Hindu Marriage Act, 1955 (for short Act), he would submit that the necessary marriage ceremonies for constituting a valid marriage are not performed. Therefore, the marriage is void. He further invited my attention to Section 5(b) of the Act for supporting his

submission that as Vijaykumar was admittedly handicapped and was on wheelchair, he was unfit for marriage and procreation of children. In support of his submissions, he relied upon the provisions of the Arya Marriage Validation Act, 1937 to contend that the said provisions are not applicable to the present case as the plaintiff in her plaint did not make any averment to the effect that she is Arya Samajist. According to him, therefore Arya Marriage Validation Act, 1937 will have no application.

3. Learned Counsel for the appellant would contend that the properties in question are self acquired properties of defendant No.1. According to him, the evidence on record has not been appreciated in the proper perspective by the Courts below to arrive at the finding that properties are joint family properties.

4. Learned Counsel would rely upon the decision of the **High Court of Allahabad dated 18/03/1994 in the case of Urmila Vs. State of Uttar Pradesh in Criminal Revision 1148**

of 1992 and the decision of the High Court of Uttarakhand at Nainital dated 15/04/2013 in Writ Petition (PIL) No. 46 of 2012 in case of Anant Naithani Vs. State of Uttarakhand and ors. to contend that the certificate issued by Arya Samaj Mandir has no legal effect except a certificate given by the person issuing the certificate of marriage that he was a witness to the marriage.

5. Learned Counsel for the respondents on the other hand supported the findings of the Courts below. The plaintiff examined herself and deposed that her marriage was solemnized with Vijaykumar on 11/01/1990 in Arya Samaj Mandir. She did not dispute that Vijaykumar was handicapped and he was wheel chair bound. Shri M.P. Shriramchandara - P.W.2 who is the Manager of the Arya Samaj Mandir since 1986 deposed that the marriage of Nanda and Vijaykumar was solemnized on 11/01/1990 at Arya Samaj Mandir. He filed documents of marriage i.e. two application forms and two counterfoils of marriage certificate. He deposed that marriage certificate bears

signature of Purohit Pandit Veerbhadra Shastri, Secretary N.P.Ganeshrao and President Manoharlal Maheshwari. The witness stated that marriage was performed as per Vedic rites according to Arya Marriage Validation Act, 1937.

6. Another witness was B.Rajmallaya - P.W.3 who deposed that he was present at the time of marriage. Exhibit 99 which is an application moved by Vijaykumar and Nanda bears the signature of B.Rajmallaya – PW3. The marriage certificate bears photographs of Vijaykumar and Nanda. Even certificate is issued by Medical Officer at Government Hospital at Hyderabad - Exhibit 100 to certify that Vijaykumar was found physically fit on the date of marriage. The documentary evidence in the form original copy of ration card at Exhibit 151 issued in the name of Vijaykumar and family members mentions the name of plaintiff as wife of Vijaykumar. On the basis of these materials, the Courts below came to the conclusion that marriage of the plaintiff with Vijaykumar is a valid marriage. In these circumstances, in view of the provisions of the Arya Marriage

Validation Act, 1937, marriage solemnized could not be said to be invalid. In any case, the Courts below have concurrently found that the plaintiff has performed a valid marriage and she is legally wedded wife of Vijaykumar.

7. Insofar as the contention of the appellant - original defendant No.1 that properties in question are self acquired property of defendant No.1, it would be material to note the admissions given by the defendant No.1 himself during the course of cross examination. The said admissions noted in paragraphs 36 to 41 & other documents considered by trial Court reads thus :

“36. Rejesh Manchanda was subjected to cross examination wherein he gave certain important admissions. He admitted that he himself, his brother Vijay and parents were residing together. They were having joint family. Father was looking after the business in his life time. He admitted that he himself and brother started hotel business in the property of hotel blue Star and they both were having 50% share each in the land and the hotel business. It is further admitted by him that hotel Sher-e-punjab was started prior to his birth. After the demise of his father the hotel business was continued by mother Nirmalabai and one Mohini Rameshchandra Agrawal and after some time it was transferred in the name of his wife Rati. He also admitted that onwards 2007 license of hotel Sher-e-punjab is in the joint name of his wife and he himself. He also admitted that hotel Sher-e-punjab which was started by his father is the business of his joint family. He also admitted that he had purchased the land from the funds

which he has earned from hotel business.

37. The long list of admissions continued when Mr.Rajesh Manchanda admitted his sons are not having any source of income and he had purchased some properties in the names of his sons out of the income from hotel business. According to him, after the death of Vijaykumar he has sold his Maruti Van and during the lifetime of brother Vijay, there was no written partition between himself and brother Vijay.

38. Exh.115 and 116 are the extract of shop license. They indicate that Sher-e-punjab Khanawal, was registered with the shop inspector at Sr.No. 26 of the 1962 dated 14/12/1962. Business is started at 766 South Kasba Peth. After Gurubachanlal, name of Nirmalabai was mutated in place of owner of the establishment and presently, it is in the name of Rajesh Manchanda i.e. defendant No.1 and his wife Rati Rajesh.

39. Exh.124 shows that excise liscence of hotel Sher-e-punjab was in the name of Gurubhachanlal Daulat Manchanda and Rameshchandra Agrawal. By order dated 23/11/1983 by Collector of Excise it was transferred in the name of Nirmalabai Manchanda and Mohini Agrawal.

40. Exh. 123 is Excise License for Beer Bar. It is dated 09/02/1993. Establishment is in partnership and names of partners are Smt.Nimalabai Gurbachanlal Manchanda as well as Mohinibai Rameshchandra Agrawal. Again in the year 1999 the partners were changed and Nirmalabai Gurubachanlal Manchanda and Rati Rajesh Manchanda and same is depicted in Exh.125.

41. Exh.126 is license for the sale of Foreign Liquors at Hotel Sher-e-punjab and it is in the name of Nirmalabai Gurubachanlal Manchanda and partners. It is renewed from time to time.”

8. In this view of the matter, I do not see any reason to interfere with the concurrent findings of fact recorded by the Courts below.

9. Even insofar as the contention of the learned Counsel for the defendant No.1 that Vijaykumar had bequeathed undivided share in the suit property in favour of the defendant No.1 by registered Will dated 16/08/2002 has been negated by the Courts below by holding that defendants have not examined any witness of the said Will and the said Will therefore could not be proved. I see no reason to interfere with the concurrent finding of the fact. The Appeal does not involve any substantial question of law. The Second Appeal is dismissed. In view of dismissal of Second Appeal, Civil Application stands disposed of.

(M.S.KARNIK, J.)