

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1461 of 1997 (O&M)

Date of decision : 11.9.2019

...

Shanti Devi

.....Appellant

vs.

Ashok Kumar

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Ms. Dhivya Jerath, Advocate for the appellant.

...

H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff - Ashok Kumar had brought a suit against defendant - Shanti Devi seeking a declaration that defendant is not legally wedded wife of the plaintiff, in addition to that craving for grant of permanent injunction, restraining the defendant from proclaiming/declaring herself to be legally wedded wife of the plaintiff.

As per case of the plaintiff, he is running a flour mill at Sodal Road, Jalandhar and commands a good reputation and influence in the society. About six months prior to filing of the suit, the defendant came to the flour mill of the plaintiff to buy goods and thereafter left. After a few days, she came alongwith her mother to the flour mill of the plaintiff and mother of the defendant requested the

plaintiff to marry her daughter. But the plaintiff told her that she should discuss the matter with his parents, who were the only persons to decide about marriage of the plaintiff. The defendant and her mother felt offended and they threatened to teach a lesson to the plaintiff. After a few days, defendant started proclaiming in the locality that she is legally wedded wife of the plaintiff and plaintiff was not keeping and maintaining her. She even tried to enter house of the plaintiff, telling the respectables in the presence of other persons that she is legally wedded wife of the plaintiff and she would reside in his house. On 12.1.1990, parents of the defendant alongwith some unknown persons attacked house of the plaintiff, in order to make him agree to keep the defendant in his house as his legally wedded wife. The plaintiff moved an application to the police. The police rather initiated security proceedings under Section 107/151 Cr.P.C. against the plaintiff. Feeling aggrieved by such attitude and conduct of the defendant and her family members, the plaintiff brought the suit in question.

On being given notice, the defendant appeared and filed written statement, contesting the suit, taking up preliminary objections that the suit is not maintainable; that the defendant is legally wedded wife of the plaintiff, in as much as marriage between them was solemnized on 29.11.1987 according to Hindu religious rites and ceremonies in the presence of respectables of both the parties at Baba Lal Dayal Mandir, Partap Bagh, Jalandhar City and the marriage still subsists. Dowry worth Rs.30,000/- was given at that

time, however, the plaintiff was not satisfied with said dowry articles and was grumbling that refrigerator and T.V. Set and huge cash had not been given in the dowry. Therefore, the defendant was maltreated and turned out of the matrimonial home by the plaintiff on 29.4.1988. The suit has been filed by the plaintiff with malice in order to avoid his liability to pay her maintenance. According to the defendant, plaintiff's sister Kailash Rani is married with Viney Kumar son of Darshan Dayal, Depot Holder in Qazi Mohalla, Jalandhar City, who was mediator for the marriage. Father of the defendant has already died. Her mother is an aged woman. Therefore, the allegations levelled by the plaintiff against the father and mother of the defendant with regard to they having attacked his house are false and frivolous. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

No replication was filed by the plaintiff.

From the pleadings of the parties, following issues were framed vide order dated 28.11.1990:-

1. Whether the plaintiff is entitled to the declaration and injunction prayed for ? OPP
2. Whether the suit, as framed, is not maintainable ?
3. Whether the suit is false and frivolous, as alleged? OPD
4. Relief.

Parties led evidence in support of their respective claims.

In order to prove his case, plaintiff Ashok Kumar examined himself as PW-1 and further examined Harbans Lal Thakur as PW-2,

Anaib Singh as PW-3, Darbari Lal as PW-4, Lakhwant Singh as PW-5 and thereafter closed his evidence.

On the other hand, the defendant herself stepped into the witness box as DW-1 and examined Puran Nath as DW-2, Ashok Kumar as DW-3, Ramesh Kumar brother of the defendant as DW-4, Raj Kumar Sehgal as DW-5, Tilak Raj as DW-6 and Mohan Lal as DW-7. DW Gopal Dass was given up by the defendant as having been won over by the plaintiff and thereafter she closed her evidence

The plaintiff did not lead any evidence in rebuttal.

After hearing the arguments, Sub-Judge Ist Class, Jalandhar, decided issues No. 1 to 3 against the plaintiff and in favour of the defendant. Consequently, suit of the plaintiff was dismissed with costs, vide judgment and decree dated 29.10.1994.

The plaintiff felt aggrieved and preferred an appeal before District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 3.5.1997 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff, granting him a declaration that respondent – defendant is not a legally wedded wife of the appellant-plaintiff and by way of permanent injunction respondent was restrained from proclaiming herself as legally wedded wife of the appellant.

Now, it was turn of the defendant to feel aggrieved and she has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the plaintiff-respondent,

who had appeared through counsel. Subsequently, counsel for the plaintiff-respondent stopped putting in appearance.

I have heard learned counsel for the appellant, besides going through the record.

The trial Court by not appreciating the legal and factual position properly and by mis-appraisal of the evidence, had dismissed the suit filed by the plaintiff. As per facts of the case, it was for the defendant to prove that a legal and valid marriage had taken place between the parties and she was legally wedded wife of the plaintiff. She had failed to establish that fact on record. The trial Court has not given valid reasoning for rejecting version of the plaintiff.

Learned Additional District Judge, has observed that since the suit was instituted by the appellant, initially onus was upon him to show that he was not married with the respondent and to discharge that onus he had got his own statement recorded as PW-1, besides examining Harbans Lal Thakur son of Tek Chand as PW-2, Anaib Singh as PW-3 and further Budh Ram as PW-4 and Lakhwant Singh son of Khazan Singh as PW-5. Darbari Lal father of the appellant had denied that any marriage had taken place between the plaintiff and the defendant. Whereas Lakhwant Singh appearing as PW-5 had stated that on 12.1.1990, the respondent alongwith her mother, brother and certain other persons had came to the house of the appellant and insisted that the respondent be rehabilitated by the appellant in his house, while the appellant and his father were denying any relationship of the respondent with the appellant. Consequently, the

respondent and the persons accompanying her went away leaving a threat to kill the appellant and his family members.

In rebuttal the defendant -respondent had appeared as DW-1 and in addition to that she had examined other witnesses. The Additional District Judge has noted that since the appellant had denied his marriage with respondent and had led evidence to find support, the onus stood shifted to the respondent to dispel the assertion of the appellant. Referring to the legal position, in light of the case law, the Additional District Judge has observed that it cannot be inferred that performance of 'Saptapati' is not essential part of the rights and ceremonies to be performed for a valid Hindu Marriage and in the present case since no specific custom prevalent in the community of the parties has been alleged or proved, it was incumbent upon the defendant to prove that ceremony of 'Saptapati' had been performed at the time of her alleged marriage with the plaintiff. However, she had failed to lead any evidence in that respect. She had not bothered to examine Pandit Gopal Dass, whose name had cropped up during the evidence adduced by her having performed the rituals rather Pandit Gopal Dass was given up for the reason that he was siding with the plaintiff. In that way, the best evidence with regard to performance of necessary religious ceremonies was withheld by the defendant and even if the priest who had performed the marriage had been won over by the plaintiff, he could have been examined as a witness and if he had not supported the case of the defendant then he could have been got declared hostile and subjected

to cross examination in order to elicit the truth. Therefore, from the evidence adduced by the defendant no conclusion could be drawn that any ceremony had actually been performed with regard to the marriage of the respondent with the appellant.

Secondly, no effort was made by the respondent to get the record from Baba Lal Dayal Mandir produced to show that any permission was obtained for holding of marriage function there or any marriage ceremony had been performed on that date in the said temple.

Lucky Kohli, photographer, having photo studio in Partap Bagh, who is stated to have taken photographs at the time of alleged marriage between the parties was also not examined.

The cook engaged for the preparation of food for marriage party at Baba Lal Dayal Mandir was not made to stand in the witness box. The tent and furniture provider was also not examined.

The assertion of the defendant that after her marriage with the plaintiff she had remained in the house of the plaintiff for about six months does not find corroboration. In her cross-examination, she stated that she did not know any of the neighbours of the appellant who had been visiting them. She also expressed her inability to tell their names. She had stated that after the marriage she and plaintiff had never attended any function together. That leads to an inference that the defendant had never resided with the appellant after the alleged marriage. Therefore, no presumption about the marriage could be drawn.

Learned Ist Appellate Court has observed that ingredients of valid marriage in terms of Section 7 of the Hindu Marriage Act, 1955, are not established. Therefore, respondent-defendant could not be held to be legally wedded wife of the appellant – plaintiff.

In addition to the factors stated by learned Additional District Judge, some more things travelling against the case of the defendant are that no marriage invitation cards were proved in evidence; that no bill, receipt or cash memo with regard to purchase of any dowry article alleged to have been given at the time of marriage, were placed on record.

Thus, I find that judgment and decree passed by learned Additional District Judge, Jalandhar, is based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Learned Additional District Judge, Jalandhar, has rightly set aside the judgment and decree passed by the trial Court, which were not legally sustainable. No interference in judgment and decree passed by the Additional District Judge, Jalandhar, is called for in the Regular Second appeal.

No substantial question of law arises in the present appeal.

Accordingly, the appeal stands dismissed.

11.9.2019
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No