

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1100 of 2018

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Binita Sinha D/o Rajkishore Prasad Singh Resident of Janki Nagar, N.H. 31,
P.s.- Deepnagar, distt.- Nalanda ... Appellant

Versus

Brajbhushan Sinha S/o Shiv Prasad Sinha Resident of Mangal Sthan, P.s.-
Laheri, Distt.- Nalanda ... Respondent

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Appearance :

For the Appellant	:	Mr. Sandeep Kumar, Advocate Mr. Rohit Raj, Advocate Miss. Shradha Banka, Advocate
For the Respondent	:	Mr. N.K.Agrawal, Senior Advocate and Mr. Prakash Chandra Agrawal, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 17-01-2020

Heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondent and with the consent of both the parties, this appeal is being disposed of on admission stage itself.

2. Admittedly, appellant is second wife of the respondent and she is aggrieved by the impugned judgment dated 30.11.2018, passed by the learned Principal Judge, Family Court, Nalanda at Biharsiarif in Matrimonial Case No. 26 of 2006, by which and whereunder the learned Principal Judge, Family Court declared the marriage of appellant and respondent null and void.



3. The respondent brought the above stated Matrimonial Suit No. 26 of 2014 for declaration of his marriage with the appellant as null and void on the ground that his marriage was solemnized on 18.4.1980 with Ratnasheela Sinha, who happens to be a medical practitioner. The respondent further claimed that the appellant was working with his wife and on 12.6.2012, the family members of the appellant forcibly got solemnized the marriage of the respondent with the appellant. The respondent further claimed that subsequently, he came to know that the appellant earlier got solemnized her marriage with one Jitendra Prasad Sinha. But, subsequently after taking money she divorced the aforesaid Jitendra Prasad Sinha. However, the respondent accepted that one girl was born from his second marriage with the appellant.

4. The appellant appeared before the learned Principal Judge and filed her written statement accepting this fact that prior to the marriage with respondent, she was aware of this fact that the respondent was already married with Dr. Ratnasheela Sinha and due to Leukoderma to his first wife, the respondent solemnized his second marriage with the appellant.

5. Learned Principal Judge, on the basis of pleadings of the parties, framed several issues and after taking evidence of



both the parties, passed the impugned judgment and decree dated 30.11.2018, which is under challenge.

6. The impugned judgment goes to show that it is admitted case of the appellant that at the time of her marriage with respondent, the respondent had his first wife who was alive at the time of solemnization of her marriage with the appellant and aforesaid fact was in her knowledge.

7. Section 5 of the Hindu Marriage Act, 1955 reads as follows:-

5. Conditions for a Hindu Marriage.- *A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:--*

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party,-

(a) is incapable of giving a valid consent of it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity

(iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

8. The bare perusal of the aforesaid provision goes to show that a marriage may be solemnized between any two



Hindus if neither party has a spouse living at the time of the marriage. Furthermore, Section 11 of the Hindu Marriage Act, 1955 says that any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Hindu Marriage Act, 1955. Therefore, we find that the learned Principal Judge has rightly held that the marriage of the appellant and the respondent was null and void as the marriage between appellant and respondent was solemnized in contravention of section 5 (1) Hindu Marriage Act, 1955 and therefore, there is no scope for this Court to interfere into the impugned judgment.

9. However, in course of hearing, learned counsel appearing for the appellant submits that this Court should make some provision for the benefit of the daughter of the parties, because even if the marriage of appellant and the respondent is null and void, then also the aforesaid nullity does not affect the right of the daughter of the appellant. It is true that even the marriage of the parties is null and void, then also the right of daughter of the parties is not going to be affected but in the



present case we are not in a position to make any provision for the daughter of the parties and, therefore, we are not going to make any observation in this regard. However, the daughter of the parties may take legal recourse against the parties, if she thinks so.

10. Accordingly, on the basis of the aforesaid discussions, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	
CAV DATE	Not applicable
Uploading Date	03.02.2020.
Transmission Date	Not applicable

