

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 120 of 2015

1. Smt. Mochi Aged about 47 years, W/o. Late Anando, By Caste Odiya,
2. Sudarshan, Aged about 28 years, S/o. Late Anando,
Both R/o. Godripara, Chirmiri, Thana Chirmiri, Tahsil Khadgawa,
District Koriya (C.G.)

---- Appellants

Versus

1. Chief General Manager, South Eastern Coalfield Ltd. Chirmiri Area, G.M. Complex, Maliviya Nagar, Pondi, Tahsil Baikunthpur, District Koriya (C.G.)
2. General Public

---- Respondents

For the Appellants :- Mr. Parag Kotecha, Advocate

For the Respondents :- Mr. Atul Kesharwani, Advocate

appears on behalf of

Mr. V.R. Tiwari, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By

Manindra Mohan Shrivastava, J.

24.02.2020

1. This appeal is directed against the impugned judgment and decree dated 08.07.2015 passed by the Family Court, by which, the suit of the plaintiffs has been partly decreed. While granting a

declaration in favour of the appellants/plaintiff No.1 Smt. Mochi that she is legally wedded wife of deceased Anando, the trial Court dismissed the suit insofar as, declaratory relief was sought that Sudarshan is son of late Anando.

2. A suit seeking declaration of status of the appellant No. 1 Mochi as wife and appellant No. 2 Sudarshan as son of late Anando was filed on the pleadings inter-alia that the appellants are permanent residence of Godripara, Police Station Chirmiri. According to the plaintiff, appellant No.1 was permanently residing with her husband Anando and son Sudarshan, the plaintiff No. 2. Her husband was working as permanent General Majdoor and posted in SECL Chirmiri area, NCPH Colliery. Anando died on 15.4.2010. An application for grant of compassionate appointment to the dependent of deceased Anando was made, upon which, the plaintiffs were required to obtain declaratory decree from the Court of competent jurisdiction that appellant No. 1 Mochi is the legally wedded wife and appellant No. 2 Sudarshan is the legitimate son and therefore, the decree is being prayed for.

3. The defendants/respondent, however, resisted the claim of the plaintiffs that in none of the records of late Anando, maintained by the office of the respondent, Mochi has been declared to be legally wedded wife and Sudarshan as son, and therefore, claim was denied.

4. Sole issue framed by the learned trial Court was whether the plaintiff No.1 Mochi is the wife of late Anando and whether Sudarshan is the son of late Anando. After allowing the parties to

lead oral and documentary evidence, learned trial Court recorded a finding and partly decreed the suit.

5. Insofar as relief of declaration of status of plaintiff No.1 Mochi is concerned, learned trial Court granted a decree by declaring that Mochi was the legally wedded wife of late Anando. However, for want of clinching evidence, the learned trial Court refused to grant declaration that Sudarshan was the son of Anando. It is against this part of the judgment and decree that present appeal has arisen.

6. Learned counsel for the appellants would argue that learned trial Court, while deciding issue with regard to the parentage of appellant Sudarshan, has not appreciated pleading as well as oral and documentary evidence on record in the light of provision contained in Section 112 of the Evidence Act. He would submit that not only Mochi (PW-1) but Sudarshan (PW-2) as also two other worker of colliery, namely, Kaliya PW-3 and Kangaroo PW-4 have stated in their evidence that Mochi was the legally wedded wife of late Anando and Sudarshan was their son. He would submit that learned trial Court ought to have applied the provision of section 112 of the Evidence Act to hold that once the fact that Sudarshan was given birth by Mochi was proved and that he was born on 09.08.1985, the presumption of legitimacy was required to be drawn without searching for any other evidence of oral or documentary in nature in that regard. He would submit that learned trial Court disbelieved the evidence as if the plaintiffs were required to lead evidence with regard to legitimacy whereas under the

law once the factum regarding birth of Sudarshan during subsistence of marriage of Mochi with Anando is proved, there is no legal requirement of proving other facts. It was the burden of the defendant to lead evidence in rebuttal of that presumption. In support of his submission, learned counsel for the appellants placed reliance upon **AIR 1978 SC 1557 Badri Prasad v. Dy. Director of Consolidation and others, AIR 2009 Kerala 173 Laila and Anr. vs. Muhammedali** and **(1996)AIR (SCW) 3489 Chowdegowda alias Dorji(dead) by LRS and others vs. C. Nagaraju and others.**

6. Per contra, the submission of learned counsel for the respondent is that in the present case, the plaintiffs have failed to prove the date on which, Sudarshan was born and the date on which marriage between Mochi with Anando was solemnized. According to him, these facts are required to be proved by leading clinching evidence and presumption of legitimacy under Section 112 of the Evidence Act could be drawn only when the aforesaid two facts are proved by clinching and reliable evidence. He would argue that the plaintiffs have not led any specific oral and documentary evidence with regard to the date of birth of Sudarshan. Neither the certificate of birth was issued from any competent authority or Kotwari Register, nor any entries made in the School Register at the time of admission of Sudarshan in the school have been filed. The Court below has observed that Sudarshan puts his signature in english, meaning thereby that he well educated. But even then, the best evidence in that regard was not led. It is next submitted that even if,

decree has been granted that Mochi was legally wedded wife of deceased Anando, there is no evidence led by the appellants to prove the date on which, the marriage was solemnized, therefore, in the absence of proof of these two facts, the twin requirements of section 112 of the Evidence Act are not made out and therefore, no presumption could be granted. He would further argue that in the application for grant of employment to Sudarshan, name as Anando and Kaliya both have been mentioned and in the same application, while before the name of Anando, "late" has been mentioned, before the name of Kaliya, name has been mentioned. Mere oral evidence that Kaliya and Anando is the name of one and the same person is not enough to prove identity. This could be proved only by the parents, brother, sister or other relative of Anando but none has been examined.

7. We have heard learned counsel for the parties and perused records.

8. The plaintiffs sought two declaratory reliefs, one was that plaintiff No.1 Mochi be declared as legally wedded wife of deceased Anando. The second relief sought was that Sudarshan be declared as legitimate son of late Anando.

9. The learned trial Court has granted the first relief and consideration in this appeal is confined only to the second aspect as to whether the Court below committed any error of law or fact in holding that plaintiff failed to prove that Sudarshan was the legitimate son of late Anando.

10. In the entire plaint, neither the date on which the marriage between Mochi and Anando was held, has been stated nor the date on which, the place where Sudarshan was born.

In the evidence of the plaintiff No.1 Smt. Mochi, she has not stated the date on which, her marriage was solemnized with late Anando. She has not even stated the date on which, Sudarshan was born. Sudarshan himself does not state the date on which he was born. (PW-3) Kaliya and (PW-4) Kangaroo have also failed to state the date of marriage or the date on which, Sudarshan was born.

11. The plaintiff did not lead any clinching evidence with regard to the date of birth of Sudarshan. Neither any birth certificate issued by any competent authority of the State nor entries made in Kotwari Register of the place where Sudarshan was born nor school certificate or Dakhil Kharij Register have been led in evidence. The plaintiff witnesses have even failed to state the place where Sudarshan was born. The learned trial Court has rightly observed that as Sudarshan is putting his signature in english, he appears to be a literate person. If that be so, non production of any school records or certificate of date of birth issued by any competent authority or non production of Kotwari Register, leaves the court to conclude that the plaintiff failed to prove the date on which Sudarshan was born.

12. The submission of learned counsel for the appellants that a suggestion was given to defendant witnesses that Sudarshan was born on 09.08.1985 should be taken as sufficient evidence of proof

of the fact, cannot be accepted. Neither Sudarshan nor Mochi have anywhere stated in their oral evidence as to the date on which Sudarshan was born.

13. True, it is that learned trial Court has granted a decree in favour of the appellant wife Mochi that she was legally wedded wife of deceased Anando. However, the date on which, the marriage was solemnized, has neither been pleaded nor proved. The declaration of the Court therefore that Mochi is legally wedded wife of late Anando, could not, ip so facto lead to conclusion that plaintiff Sudarshan was born during subsistence of marriage of Mochi with late Anando.

14. Section 112 of the Evidence Act laydowns rule of conclusive proof of legitimacy as below:-

“112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten”.

15. Conclusive proof that a person is legitimate son would arise only when the fact, when such person was born during the

continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution is proved. Only upon proof of those facts, the presumption of legitimacy can be drawn as conclusive proof in that regard. The provision cannot be read to mean that there will be a conclusive presumption of the fact of a person being born during subsistence of the marriage. In the absence of there being any evidence with regard to the date on which, Sudarshan was born, it cannot be held proved that Sudarshan was born during the subsistence of marriage of Mochi with Anando. Even if we accept the submission of learned counsel for the appellants that in the year 1984, deceased Anando had declared Mochi to be his wife, there is no evidence that during subsistence of marriage, even if, the marriage is treated to be have been solemnized in the year 1984, Sudarshan was born. Therefore, in the absence of proof of the fact that Sudarshan was given birth by Mochi during subsistence of her marriage with Anando, the presumption under Section 112 is not available. The decision which have been cited at the bar are distinguishable on facts because in those cases, only upon proof of fact of birth during subsistence of a valid marriage, the Courts, interpreting scope and ambit of section 112 of the Evidence Act, drew presumption.

16. The learned Court below has noticed that while moving an application for grant of compassionate appointment, in the same application, two different names have been mentioned, one as Anando and other as Kaliya. The plaintiffs case that Kaliya and

Anando are one and the same, has also not been proved by any clinching evidence except making a bald statement. If Kaliya and Anando were one and the same, one fails to understand why in one application two names have been separately mentioned. Either, it would have been mentioned as Kaliya or Anando but certainly, not both. Further more, learned counsel for the respondent has right pointed out to this Court and it has also been held by the learned Court below that in Sudarshan's application for grant of compassionate appointment, while before the name of Anando word "late" has been mentioned, before the name of Kaliya no such word has been mentioned.

17. Therefore, in view of our consideration, we do not find any good ground to interfere with the impugned judgment and decree, appeal therefore, fails and is hereby dismissed. Parties to bear their respective costs.

18. Let appellate decree be drawn.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge