

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 68 of 2019**

- Smt. Nandani Chandraker Wd/o. Khemlal Chandraker Aged About 33 Years Resident Of Bajrang Chowk, Kurmipara, Ward No. 5 Kurud, Tahsil Kurud, District Dhamtari Chhattisgarh

---- Appellant**Versus**

- Smt. Manju Bai W/o. Kanhaiya Lal Kanwar Aged About 35 Years Resident Of Village Dandesara, Tahsil Kurud, District Dhamtari Chhattisgarh

--- Respondent

For Appellant/s : Mr. Ritesh Verma, Advocate.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****07/01/2020**

1. Heard on merits.
2. This appeal has been filed against judgment and decree dated 26.07.2019 passed by learned Family Court, Dhamtari, C.G., in Civil Suit No.55-A/2018 by which appellant/plaintiff's suit for declaration that she is legally wedded wife of Khemlal Chandraker has been dismissed. Appellant-plaintiff filed a suit seeking decree of declaration to the effect that she is a legally wedded wife of late Khemlal Chandraker on the pleadings that she was married to Khemlal Chandraker according to customs of the community on 23.05.2002 at Kurud and since then, the appellant was residing with Khemlal Chandraker. Khemlal Chandraker was employed in the Government service in the Department of Irrigation. It was further pleaded that before solemnization of marriage of appellant-plaintiff with Khemlal, Khemlal had earlier contacted marriage with respondent twenty years before. Further pleading was that though, they led family life for 8 to 10 months, thereafter, because of severe disputes, Manju left the Khemlal Chandraker and went back to parental house and thereafter, she never came back, Khemlal Chandraker and Manju has no issues. It was

also pleaded that according to the community customs, on 20.06.2000, customary divorce had taken place between Khemlal Chandrakar and Manju and thereafter, she married one Kanhaiya Lal and is living as his wife. On 20.01.2012, Khemlal Chandrakar died. On application for grant of succession certificate filed by the appellant, it was ordered that no order could be granted unless there is a declaration of legal status given by a court of competent civil jurisdiction. Whereafter, appellant filed suit and has prayed for declaration on the basis that she was legally wedded to Khemlal Chandrakar and is, therefore, widow and is entitled to all the benefits in the capacity.

3. The respondent was proceeded ex-parte as respondent did not take part in the proceedings despite service of notice.
4. In order to prove its case, plaintiff examine herself and two other witnesses.
5. Learned trial Court, however, came to the conclusion that the plaintiff failed to lead specific pleading and evidence to prove existence of the custom prevailing in the community of the plaintiff, recognizing a customary law of divorce in that community. On such finding, the suit was dismissed giving rise to this appeal.
6. Learned counsel for the appellant argued that the appellant-plaintiff not only specifically pleaded but led specific evidence that the divorce between the respondent-Manju and Khemlal Chandrakar had taken place in presence of community people according to their prevailing custom. According to learned counsel for the appellant, those pleadings and evidence remained uncontroverted, therefore, the learned Court below ought to have granted decree in favour of appellant taking into consideration undisputed position that the appellant had been living with Khemlal Chandrakar and widely accepted and recognized in the society as wife of Khemlal Chandrakar only, till the death of Khemlal Chandrakar.
7. We have heard learned counsel for the appellant and perused the records.
8. The appellant-plaintiff herself has pleaded in the plaint that prior to her marriage with Khemlal, Khemlal was married to respondent Smt. Manju about twenty years before. That means, the so-called marriage of appellant with

Khemlal is clearly subsequent to the marriage of Khemlal with respondent Manju. Therefore, it was the burden of the plaintiff to prove by leading cogent evidence that there existed and prevalent, custom in the community of Chandrakar residing in the area of Kurud in district Dhamtari having long standing practice of divorce.

9. For this purpose, if we look into the plaint averments, the averments in this regard are blissfully vague. In para-4 of the plaint, it has been pleaded as below:-

“यह कि, प्रतिवादीनी को स्व. खेमलाल चंद्राकार लेने आया तब प्रतिवादीनी जाने से मना कर दी तथा जाति एवं सामाजिक रीति रिवाज एवं प्रचलित प्रथा अनुसार दिनांक 20.06.2000 को विवाद सुलझाने वाले सामाजिक पंच व्यक्तियों को अपना छोड़ छूट्टी नामा लिखकर देते हुये विवाह विच्छेद कर स्व. खेमलाल चंद्राकार से विवाह संबंध समाप्त कर ली इस बात की जानकारी प्रतिवादीनी से प्राप्त होने पर उपस्थित सामाजिक प्रमुखों से संपर्क करने पर व छोड़ छूट्टी नामा प्राप्त होने पर हुई है।”

10. In para-7 of the plaint also following pleading was made:

“यह कि, स्व. खेमलाल चंद्राकार की प्रथम पत्नि श्रीमती मंजू बाई प्रतिवादीनी द्वारा जाति एवं सामाजिक रीति रिवाज व प्रचलित प्रथा अनुसार छोड़ छूट्टी नामा कर विवाह विच्छेद होने के पश्चात श्री कन्हैया लाल कंवर से विवाह कर दाम्पत्य जीवन व्यतीत करते हुये संतान उत्पन्न किया गया।”

11. The aforesaid pleadings, to say the least hardly constitute specific pleadings of any established custom prevalent in the society and community of Chandrakars in the matter of divorce.
12. The plaintiff, who was examined as the first witness, in order to support of her case did not utter a single word in her affidavit under Order 18 Rule 4 CPC with regard to proof of any prevalent custom except bald statement that divorce had taken place according to the customs.
13. The other two witnesses namely Keshav Vaish and Rajendra Chandrakar have

also stated that divorce between Khemlal Chandrakar and Manju had taken place according to “सामाजिक रीति-रिवाज एवं प्रथा” (According to custom and practice prevalent in the society). Except this, no other evidence has been led by the appellant to prove existence of custom with regard to divorce prevalent in the society in the community of Chandrakar.

14. In the case of **Yamanaji H. Jadhav vs. Nirmala (AIR 2002 SC 971)**. Their Lordships in the Supreme Court have authoritatively pronounced that custom has to be pleaded and established by leading cogent and reliable evidence. It was observed as below:-

“7.....It is to be noted that the deed in question is purported to be a document which is claimed to be in conformity with the customs applicable for divorce in the community to which the parties to this litigation belong to. As per the Hindu Law administered by Courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy. Therefore, there was an obligation on the trial Court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in

fact established in the case on hand to the satisfaction of the Court. In the instant case, we have perused the pleadings of the parties before the trial Court and we do not find any material to show that prevalence of any such customary divorce in the community, based on which the document of divorce was brought into existence was ever pleaded by the defendant as required by law or any evidence was led in this case to substantiate the same. It is true in the Courts below that the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the Court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a Court of law. In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the Court ought to have appreciated the consequences of their not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a Court unless specifically permitted by law.”

15. Applying the aforesaid principle and legal requirement and proof of custom in the present case, we are unable to hold that the Court below committed any illegality either in law or in facts in dismissing the suit of the plaintiff. The appeal is accordingly dismissed. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge