

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 20.11.2019

Order Passed on : 28/01/2020

W.P.(227) No. 856 of 2019

Smt. Rashmita Patel, D/o. Shri Vishikeshan Patel, W/o Vivekananda Patel, Aged About 27 Years, R/o. Remta (Barpali), Distt. - Bargarh Orissa.

---- Petitioner

Versus

1. Vivekanand Patel, S/o. Late Shri Motilal Patel, Aged About 32 Years, Sub-Inspector (Police) At Present Posted At Police Chowki Bundeli, P.S. Tendukona, Distt. Mahasamund Chhattisgarh.
2. N.C. Vishwal, S/o. Ajambar Lal Vishwal, Aged About 52 Years, Working As Advocate in District Court Raigarh, Distt Raigarh Chhattisgarh.
3. Dushyant Das Mahant, S/o. Mangaldas Mahant, Aged About 48 Years, Working as Advocate in District Court Raigarh, Distt. Raigarh Chhattisgarh.
4. Ramesh Kumar Sharma, S/o. Late Brijbhushan Sharma, Aged About 62 Years, Working as Advocate and Notary in District Court Raigarh, Distt. Raigarh Chhattisgarh.
5. Sandeep Kumar Rathore, S/o. Shivshankar Prasad Rathore, Aged About 40 Years, Working as Reader Grade I, Family Court Raigarh Chhattisgarh.
6. Smt. Nirmala Mourya, W/o. Ambika Prasad Mourya, Aged About 54 Years, Working as Counselor, Family Court Raigarh, District : Raigarh, Chhattisgarh.
7. Jaydeep Vijay Nimodkar, S/o. Vijay Nimodkar, Aged About 53 Years, Working as Judge, Family Court, Kawardha, Distt. Kawardha Chhattisgarh.
8. State of Chhattisgarh, Through : Secretary, Department of Law, Mahanadi Bhawan, New Raipur Chhattisgarh.

-----Respondents

For Petitioner : Mr. M.D. Sharma, Advocate with
Mr. K.N. Nande, Advocate

For State/Respondent : Mr. Arijit Tiwari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. Challenge in this petition is to the order dated 05.11.2019, passed by the Judge, Family Court, Raigarh in Case No. 46 of 2019.
2. The facts relevant in this case are this that a joint petition was filed by the petitioner and the respondent No.1 under Section 13-B of Hindu Marriage Act, which was registered as Civil Suit No.66-A/2017 by the Family Court, Raigarh. The case was enquired into and after completion of all the proceedings as required under the law, the judgment and decree was passed on 06.11.2017 by dissolving the marriage between the parties.
3. The petitioner herein challenged the above mentioned judgment and decree in First Appeal (Misc) No. 250 of 2018 before this Court, which has been disposed of by order dated 24.09.2019. The petitioner had challenged the decree on the ground that the decree was obtained by fraud. The petitioner had never participated, appeared or signed any pleading etc. and therefore, she was impersonated by some imposter, because of which the judgment and decree of dissolution of marriage has been passed. This Court held that detailed enquiry was required to be made on the allegations made by the petitioner, which could not be gone into in the first appeal filed and the remedy is available to the petitioner to invoke inherent jurisdiction of the learned Family Court by moving suitable application under Section 151 of C.P.C.. Subsequent to which, the petitioner has filed an application under Section 151 of

C.P.C., before the learned Family Court, Raigarh praying for relief of declaration that the judgment and decree, passed in Civil Suit No.66-A/2017 dated 06.11.2017 is void ab initio. The petitioner has arrayed as respondents the Legal Practitioner, Notary Public, Reader of the Family Court, Counselor of the Family Court, Judge of the Family Court and also the State Government as party in that application. The learned Family Court while entertaining this application has passed the impugned order and held that the respondents No.2 to 8 in the application are not essential or necessary parties, therefore, their names be deleted from the cause title of the application. The petitioner has challenged the order of the deletion of the names of the respondents No.2 to 8 by this petition that the petitioner has right to chose her own adversary and because of the involvement of the respondents No.2 to 8 in the process of obtaining fraudulent decree from the Court they have been made party, therefore, the order passed is not sustainable. Relying on the judgment of High Court of Allahabad in case of ***Mohd. Farooq Vs. District Judge, Allahabad and Ors.***, reported in ***AIR 1993 Allahabd 8***, ***CESC Ltd. Vs. Chief Post Master General & Ors.*** reported in ***AIR 2012 SC 2027***, ***The State of Kerala Vs. The General Manager, Southern Railway***, Madras, ***AIR 1976 SC 2538*** and in case of ***Shalini Shyam Shetty & Ors. Vs. Rajendra Shankar Patil***, reported in ***2010 MPLJ 590 (SC)***, it is submitted that case is made out against the respondents No.2 to 8, therefore, the impugned order be set-aside.

4. No notice has been served upon the respondents No.2 to 7.

5. Learned counsel for the respondent No.8/State opposes the petition and the submission made in this respect. It is submitted that under no circumstances, the respondent No.8 can be made a party in this case. Therefore, this petition be dismissed.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. In the application filed under Section 151 of C.P.C., before the learned Family Court, Raigarh, the petitioner has alleged that she never appeared before the Family Court, she has not put her signature in the application filed under Section 13-B of the Hindu Marriage Act. She has not put her signature in any of the documents or affidavits and she has also never appeared before the Court in any proceeding before the Respondent No.2 to 7.
8. When the petitioner filed first appeal before this Court, this Court ordered the Registrar (Vigilance) to make an enquiry in this case. It was found in the enquiry that the petitioner has not put her signature in any of the documents and on that basis a report has been submitted by the Registrar (Vigilance) to the High Court and it is on the direction of the High Court, this application under Section 151 of C.P.C. is presented before the Family Court. Hence for the reasons that the judgment and decree has been obtained by playing fraud in which the respondent No.2 to 7 are the participants, therefore, they have been arrayed as a party in this application.
9. The main relief that has been sought in the application under Section 151 of C.P.C. is that the judgment and decree dated 06.11.2017, passed in Civil Suit No.66-A/2017 is inoperative and is

void ab initio and not binding upon the petitioner. The respondents No.2 to 7 are not present and they are not going to be affected in any manner by the result of the petition filed by the petitioner. The only person, who would be affected is respondent No.1 in whose favour there is at present a decree of dissolution of marriage. Therefore, as prayed in the application, if the, decree is passed for declaring the judgment and decree dated 06.11.2017 void ab initio will be effective and operative only against respondent No.1 and not against the respondents No.2 to 8. Therefore, there is no liability of respondent No.2 to 8 to appear and contest the proceeding.

10. Family Court has jurisdiction over the cases, which are mentioned in the Section 7 and its Explanation clause, which reads as under :-

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

*Explanation.-*The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring

the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.”

11. Under the jurisdiction of the Family Court as mentioned hereinabove, there is no place to adjudicate the role of the respondent No.2 to 8 in the earlier proceeding taken up by the same Court against which there are now allegations made by the petitioner. The petitioner has made one prayer for compensation

and damages against the respondent No.2 to 8 and that too is not within the scope of explanation of Section 7 (1) of the Family Court Act, 1984.

12. Therefore, on the basis of this discussion, this Court is of the view that the main relief prayed in the application under Section 151 of C.P.C. is not against the respondent No.2 to 8 and neither they are going to be affected by the same. Secondly the other relief for compensation, which is prayed is not within the scope of provisions of Family Court Act and also not within the jurisdiction of Family Court to entertain and proceed against the respondent No.2 to 8 on that account. Therefore, I do not find any illegality committed by the Family Court in passing the impugned order.
13. In a result, the petition is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge