

04.10.2021

SAT 156 of 2020

court no. : 09
Item no. : PB-13
matter : SAT
status : DISMISSED
transcriber : nandy

Sanjay Lohar
Vs.
Haripada Lohar

Ms. Malyasree Maity, Advocate

.....for the Appellant

Leave is granted to the learned Advocate-on-record of the appellant to correct the cause title of the Memorandum of Appeal, here and now.

A suit for declaration to the effect that the marriage of the plaintiff/appellant was a nullity was filed in the trial Court against the defendant/ respondent. The suit was dismissed on contest by the trial Judge holding, *inter alia*, that in the Voter Identification Card of the defendant, the plaintiff was shown to be her husband and during cross-examination of the defendant it has been specifically taken on behalf of the plaintiff, the names of the priest and barber who presided over the marriage between the parties. The first appeal received the same fate.

The appellant has preferred the instant appeal challenging the judgement of affirmance passed by both the Courts.

We have carefully perused the judgment passed by the First Appellate Court as well as the Trial Court. We have also perused the evidence adduced by the parties being produced by the learned Counsel for the appellant at hearing.

The factum of marriage is essentially a question of fact. It is found from the judgment passed by the trial Court that the marriage between the appellant and the respondent was solemnized under compelling circumstances. It is alleged that the appellant committed rape repeatedly upon the respondent, as a result of which she became pregnant and when the marriage was held, she was mother of a three-month old baby. The appellant was to marry her because of the pressure exerted on him by the local villagers. Subsequent to marriage, she was physically tortured and mentally abused by the appellant. A case under Section 498A and allied penal provisions is pending between the parties.

An exception is taken by the learned Advocate for the appellant that reliance is solely placed upon the Voter Identification Card to prove the valid marriage which, in fact, was obtained during the pendency of the suit. It is sought to be stated that once a document took birth during the pendency of a suit, it must automatically be discarded. We fail to accept such proposition of law. If the document has seen the light of the day when such document is required to be issued by the authority, merely because it has seen the light of the day during the pendency of the suit, cannot be said to be *par se* illegal or procured for the purpose of the suit. It depends upon the degree of evidence and the quality thereof and the discretion lies with the Court to accept the same as a normal corollary unless some

sinister motive can be attributed to it. Both the Courts have concurrently held that there is no mischief in getting the Voter Identification Card as the defendant became eligible for that during the pendency of the suit.

We do not find any ground to discard such concurrent findings of fact in exercise of power conferred under Section 100 of the Code of Civil Procedure.

Moreover, the entire dispute being question of facts and no question of law, far to say substantial question of law, is involved in the instant appeal.

Therefore, the appeal being **SAT 156 of 2020** is hereby **dismissed**.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)

