

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 97 of 2020**

- Anjulata W/o Shri Dipesh Yadu Aged About 23 Years Current R/o Village- Paraswani, Tehsil- Bhatapara, District- Balodabazaar-Bhatapara, Chhattisgarh.

---- Appellant**Versus**

- Dipesh S/o Tekan Lal Yadu Aged About 26 Years R/o Akaltara, Tehsil- Bhatapara, District- Balodabazaar-Bhatapara, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Shikhar Bakhtiyar, Advocate on behalf of Shri B.P. Singh, Adv.
For Respondent	:	Shri Arvind Shrivastava, Adv.

Hon'ble Shri P. Sam Koshy, Judge &
Hon'ble Smt. Rajani Dubey, Judge
Order on Board by P. Sam Koshy, Judge

10/11/2021

1. The appellant/plaintiff has preferred this First Appeal under Section 19 of the Family Court Act. The appellant/plaintiff has assailed the judgment dated 17.02.2020 passed by Family Court, Balodabazar, in HMA No. 131A/2019, whereby, the Court below has rejected the application of the appellant filed under Section 9 of the Hindu Marriage Act (for short the 'Act 1955').
2. Brief facts, relevant for the disposal of the appeal, is that the appellant rested and moved an application under Section 9 of the Hindu Marriage Act before the Family Court, Balodabazar seeking for restitution of the Conjugal Rights. It was contended by the appellant that there was a marriage entered into between the appellant and the respondent on 14.12.2016 at the Arya Samaj Temple, Raipur (C.G.). The

marriage was performed according to the Hindu custom and rites. Notices were issued to the respondent and the respondent entered appearance before the Court below and categorically denied the marriage that was entered into between the parties and had contended for dismissal of the application in view of the fact that there is no marriage that was entered into between the appellant and the respondent. That in the absence of any marital relationship, Section 9 of the Act, 1955 could not have been invoked as well as imposed, in the course of the adjudication of the application under Section 9.

3. The Court below primarily framed three issues, first whether there was a due marriage entered into between the appellant and the respondent under the Hindu rites at the Arya Samaj Temple, Raipur on 14.12.2016. The second issue was whether the appellant/plaintiff was the legally wedded wife of the respondent, and third whether the appellant/plaintiff was entitled for an order of restitution of Conjugal Right ?
4. In the absence of any documentary proof by the appellant/plaintiff before the Court below in respect of the marriage that is alleged to have taken place on 14.12.2016, the Court below rejected the application filed under Section 9 of the Act, 1955. While deciding the three issues, it answered the issues in the negative holding that firstly there was no proof of marriage on 14.12.2016, secondly in the absence of any proof of marriage, the plaintiff could not have been declared as a legally wedded wife of the respondent and since these two issues were decided against the plaintiff, relief under Section 9 of the Act, 1955 could not have been granted and it too was answered in the negative.
5. During the course of pendency of the appeal before this Court, the appellant has moved an application under Order 41 Rule 27 of the C.P.C. and along with that application he has enclosed an application filed by the respondent/husband before the Additional District Judge at Bhatapara that is an

application under Section 12 of the Act, 1955 seeking for declaring the alleged marriage between the appellant and the respondent to be void.

6. Learned counsel for the appellant, relying upon the said application and the documents, submits that the very application filed by the respondent/husband before the Court at Bhatapara proved the marriage part between them and in the light of such cogent evidence the findings given by the Court below in the impugned judgment under challenge the present First Appeal gets falsified and deserves to be recalled. Learned counsel for the appellant/plaintiff also refers to the evidence of respondent/husband (Dipesh) recorded on 05.02.2020, wherein in the cross-examination, the said respondent has admitted the fact that he has moved an application under Section 12 before the Court at Bhatapara for declaring the marriage between the parties as null and void. The appellant/plaintiff, therefore, argued that when the respondent/husband himself has moved an application for declaring the marriage null and void, it cannot be said that there was no marriage between the appellant and the respondent and, therefore, to that extent the findings given by the Family Court, Balodabazar in the impugned judgment, so far as issue No. 1 and issue No. 2 are concerned, are totally baseless and are also contrary to the evidence on record warranting interference by this Court.
7. Learned counsel appearing for the respondent, on the other hand, submits that at the first instant the application filed under Order 41 Rule 27 of C.P.C. itself should not be entertained by this Court as there is nothing new which the appellant has brought to the notice of this Court. All these informations were already in the notice and knowledge of the appellant/plaintiff all along and if they have not brought these facts and evidence before the Court below, at the first instance, they cannot be now permitted to move an application to take these facts for consideration by the appellate Court. Learned counsel for the respondent further

submits that even in the application under Section 12 of the Act, 1955 it has been the categorical stand of the respondent that the alleged marriage that has said to have been performed between the parties was under pressure and coercion and the same cannot be accepted to be a proper marriage and that is what was persuaded before the Court below.

8. Having heard learned counsel appearing on either side and on perusal of records as has been stated in the preceding paragraphs, the Court below, in the process of deciding the suit, had framed three issues and the first two issues being whether there was a proper marriage under the Hindu rites on 14.12.2016 at the Arya Samaj Temple, Raipur, and whether the appellant is the legally wedded wife of the respondent. The evidence of the respondent/husband before the Court below, particularly, in his cross-examination, goes to show that there was a marriage that took place on 14.12.2016, from the cross-examination of the said respondent/husband it also goes to prove that he has already approached the Court at Bhatapara for declaring the said marriage held on 14.12.2016 to be null and void.
9. These two evidence on the part of the respondent/husband falsifies the entire defence that the respondent/husband has taken in Section 9 proceedings particularly in respect of his contention of there being no marital relationship between the appellant and the respondent and there having been no marriage whatsoever having been performed between the two. In the factual backdrop as has been stated in the preceding paragraphs, it goes without saying that when the respondent/husband has moved an application under Section 12 of the Act, 1955 before the competent Court of law and as long as there is no proper order/judgment passed by the competent Court in the said proceeding for all practical purposes, the alleged marriage between the parties has to be accepted as a legally enforceable marriage. It would have been an entirely different case, had there been no proceeding

under Section 12 of the Act, 1955 initiated by the respondent/husband before the competent Court of law till the impugned judgment in the present appeal has been filed. However, it is during the pendency of application under Section 9 of the Act, 1955 itself that the respondent also has filed an application under Section 12 of the Act, 1955 for declaring the marriage as null and void. This action on the part of the respondent, is ample proof on record for this Court to reach to the conclusion that two issues, issue No. 1 and issue No. 2 decided by the Court below not being proper and is also contrary to the evidence which was brought on record as would be evident from the cross-examination of the respondent/husband itself.

10. The finding of the Court below with regard to these two issues would therefore not be sustainable. The judgment itself would require reconsideration and cannot be said to be proper in the eyes of law. We are of the considered opinion that the impugned order deserves to be and is, accordingly, ordered to be set aside. The matter now stands remitted back to the Court below for a fresh adjudication in the light of the evidence that the parties have adduced before the Court below. The parties would be at liberty to amend the pleadings or improve the pleadings and also would be entitled to adduce fresh evidence, if any, required before the Court below passes a fresh order, on its own merit.
11. The appeal, accordingly, stands allowed. The impugned order stands set aside. For the convenience, both the parties are directed to appear before the Court below on **9th December, 2021** and on all subsequent dates as are given by the Court below.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge