

11.07.2022
Item No.88
Ct. No.8
CHC

S.A.372 of 2016

**Dharma Dasi @ Dharam dasi Bairagyya
Vs.
Bandana Das & anr.**

Mr. Partha Pratim Roy,
Mr. S. Sanyal
...for the appellant

The concurrent findings of fact cited by both the courts that plaintiff/appellant is the second wife of one Dhanapati Das. The appellant cannot claim any right to succeed in the estate of deceased Dhanapati Das.

It is an admitted fact that Mr. Dhanapati Das married the appellant during subsistence of the first marriage which is illegal.

Both the courts have come to the finding that plaintiffs are the only legal heirs, representatives of Dhanapati Das and it was also declared that the appellant is not legally married wife of Dhanapati Das. Both the courts, on consideration of Sections 7 and 8 of the Hindu Marriage Act have arrived at a

finding that there is no valid marriage between Dhanapati Das and the respondent. The existence of the first marriage is proved by the P.W.1 and P.W.2. Once the first marriage is proved, the second marriage is illegal. The defendant could not establish her marriage with Dhanapati Das prior to marriage with the plaintiff namely, Bandana Das. The evidences of the witnesses produced by the defendant are not relatable or credible. The factum of the marriage between the defendant and Dhanapati could not be established by the evidence adduced on behalf of the defendant. Moreover, Bandana did not appear in the witness box. Hence, best evidence was not available.

Learned court while going through the evidence of plaintiffs with that of defendant found that evidence of the plaintiffs is more credible. The plaintiffs having discharged their personal proof by valid marriage, the onus have been shifted upon the defendant to prove otherwise which defendant has failed to establish by cogent evidence. On the cogent evidence and preponderance of probabilities emanated from oral and documentary evidence, both the courts have decreed the suit in part.

Since we do not find any perversity in the findings of both the courts in decreeing the suit in part, the

Second Appeal is not admitted and the same is dismissed. However, no order as to costs.

(Soumen Sen, J.)

(Siddhartha Roy Chowdhury, J.)