

Item-42.		SAT 417 of 2010
	21-12-2022	CAN 1 of 2011 (old CAN 1685 of 2011)
		Biplab Pandit & Ors.
sg		Versus
	Ct. 8	State of West Bengal & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

We find from record that on 15th June, 2011 a coordinate Bench upon noticing various defects as notified by the Stamp Reporter directed the matter to go out of list with liberty to the learned Advocate for the appellants to remove the defects by two weeks.

None appears for the appellants in spite of having due notice.

From the revised report, it appears that some defects have been removed but not all the defects.

Be that as it may, we have gone through the judgment and decree passed by the learned Additional District Judge, Fast track Court, Berhampore, District Murshidabad dated 10th June, 2010 in Title Appeal No. 7 of 2003 arising out of a judgment and decree passed by the learned Civil Judge (Junior Division), Additional Court, Berhampore, dated 3rd October, 2002 in other suit no. 82 of 1999, which is the subject matter in this appeal.

It appears from the judgment of the First Appellate Court

that the dispute is with regard to legal relationship and legal status of Kalyani Pandit with late Kali Kinkar Pandit. The suit was with regard to declaration of a legal status of Kalyani Pandit as the legal married wife of Kali Kinkar Pandit. It was a case of the plaintiff/appellant that the appellant no.3, Kalyani Pandit got married to Kali Kinkar Pandit on 15th August, 1972 according to Hindu Rites and her marriage was duly registered in the Hindu Marriage Act. After the said marriage, they used to live as husband and wife and continued with their conjugal relationship till the death of the Kali Kinkar Pandit. During the aforesaid period, Biplab and Saauli Pandit @ Saha were born in the wedlock. However, the plaintiff did not receive any died-in-harness benefits after the demise of Kali Kinkar. Gita Rani contested the suit. She was defendant no.3. According to her, she was married with Kali Kinkar on 10th Ashar, 1370 B.S. corresponding to 1962 according to the Hindu Rites and Customs and they used to reside together as husband-wife. During the aforesaid period of the wedlock two daughters and one son were born. Kali Kinkar left behind his wife and three children as his legal heirs and representatives. Gita has received the death benefits as she was appointed as nominee of the deceased.

The Trial Court dismissed the suit. Before the First Appellate Court, it was argued that the Trial Court has failed to appreciate that the burden of proof lies on her to prove her marriage. There was no reason to disbelieve the evidence of PW-3, Ashwini Kumar Chattopadhyay, the priest who alleged to have performed the marriage of late Kali Kinkar and Kalyani. The Trial Court declined to accept the evidence of the appellant no. 3,

Kalyani and the priest Ashwini who alleged to have performed the rituals in the marriage. The First Appellate Court has considered the evidence adduced on behalf of Kali Kinkar and Gita in respect of their marriage. Once Gita is able to establish that she was the prior marriage which is evident from series of documents i.e. Exhibit A-T, the appellant had enough opportunity to appear and make submission with regard to the said exhibits. The said exhibits relate to period prior to 1972 and support a claim of an existing marriage when Kali Kinkar alleged to have tied nuptial knot in the year 1972.

The absence of the appellant in spite of notice upon us to believe that the appellants have no case to argue on the legality and validity of the said exhibits. Moreover, it is not disputed that Gita was the nominee in the service records and she was described as the wife of Kali Kinkar. Kalyani cannot claim the status of a legally married wife. The evidence of the priest having performed the rituals cannot invalidate the marriage duly solemnised between Kali Kinkar and Gita in the year 1962.

In view thereof, the appeal is not admitted. The appeal fails at the admission stage. However, there shall be no order as to costs.

The application is, accordingly, disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)