

**Niharendu Das Mohanto & Anr.
Vs.
Purnima Biswas & Ors.**

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The appellants are not represented nor any accommodation is prayed for on behalf of the appellants. The matter was adjourned earlier on behalf of learned advocate representing the appellants.

The appellate judgment and decree dated 19th March, 2013 passed by learned District Judge of Nadia in Title Appeal No. 92 of 2012 affirming the judgment and decree dated 31st August, 2012 passed by learned Civil Judge (Junior Division), 1st Court at Krishnagar, District-Nadia in Title Suit No. 116 of 2008 filed by the plaintiffs is the subject matter of challenge in this second appeal.

The plaintiffs filed a suit for declaration that no marriage took place on 15th May, 2006 or any other date between defendant no. 1 and Narayan Das Mohanto and the certificate of marriage is null and void.

Facts of the case in brief is that Narayan Das Mohanta was the father of the plaintiff was a person of high repute and he used to run a vernacular weekly newspaper at Krishnagar town while the defendant no. 1 used to stay in the house for taking care of his father. It is alleged that the defendant no. 1 taking advantage of the old age of his father fraudulently obtained signature on papers and thereafter utilised those papers containing his signatures, for the purpose of manufacturing a marriage certificate. In the plaint challenge was thrown to the legality

of the marriage certificate issued by the competent authority. The defendant no. 1 contested the suit by filing written statement denying all the material allegations and she made a positive defence that Narayan Das Mohanta since being widower was abandoned by the appellants and was pressurised for financial demand. Due to the said reason, Narayan Das Mohanta started living with the defendant no. 1 at a separate place at Bethuadahari and thereafter he married the defendant no. 1 in terms of the provision of the Special Marriage Act and till death of Narayan they lived together as husband and wife.

It was alleged that the Narayan was unhappy as the pressure being put upon him by the plaintiffs to claim a share of the pension and for transfer of the ownership of proprietorship business that Narayan used to run when he was alive.

The plaintiffs/appellants claimed that they are the legal heirs of late Narayan Das Mohanto and in support of the said claim produced the original death certificate of the chairman issued by the Krishnagar Municipality. They further claimed that Narayan Das Mohanto published a declaration in the newspaper "Nadia Sunder" dated 23.10.2006 stating that he had no connection with the defendant no. 1 due to breach of trust.

The plaintiffs prayed for decree that the marriage registration certificate (Exhibit-A) is a void one. It is elementary to note that burden lies upon the plaintiffs to prove that Narayan had no intention to marry the defendant no. 1 or that the marriage certificate was obtained

fraudulently. The plaintiffs did not dispute that Narayan was widower. The plaintiff also has the burden to bring rebuttable evidence to the effect that after the death of wife Narayan Das Mohanto would be looked after by the plaintiffs for better living during his life time. The plaintiffs did not submit a scrap of paper or document showing that that they used to arrange for medical treatment of Narayan Das when he was suffering from gerontological problem.

From the cross-examination of P.W 1 it appeared that P.W 1 could not produce any document to show that the defendant no. 1 was an employee of Nadiya Sundar, as alleged by the plaintiffs. The plaintiffs did not produce any reliable and cogent evidence to disprove the signature of Narayan Das in the notice of marriage.

P.W 2 is a neighbour of the plaintiffs and he has no knowledge about personal life of the defendant no. 1, as such the evidence has been rightly discarded by the trial court. Moreover, he made contradictory statement with regard to the care and treatment of said Naryana Das Mohanto. On the one hand P.W 2 stated that the plaintiffs and family members used to look after Narayan, but the P.W 2 did not know whether Narayan Das Mohanto had lodged complaint in Kotwali Police Station alleging that his sons and daughter-in-law were inflicting torture upon her.

The defendant no. 1 during trial contended that she used to reside with Narayan Das Mohanto in a rented accommodation at Bethuadahari as the family member of Narayan Das did not take care of him. To that effect D.W

2 deposed that the defendant no. 1 and Narayan Das Mohanto resided in his house as husband and wife.

D.W 1 admitted that after demise of the first wife of Narayan Das Mohanto she was employed in "Nadiya Sunder" and admitted her previous marriage and her issue in of the said wedlock. She has clearly stated about family strature of Narayan Das Mohanto and in her cross-examination the plaintiffs did not put their case which is against the principle of law laid down in *Karapeat case, reported in AIR 1961 Cal 359*.

Learned Trial Judge has duly taken into consideration that the veracity of the defendant no. 1 in respect of her claim of marriage was never tested in the cross-examination. The first appellate court on appreciation of the fact and law concurred with the findings of the trial court.

The objection with regard to the authenticity of the marriage certificate that at the time when the second marriage had taken place the wife of Narayan was alive or the respondent No. 1 was married clearly stands disproved by Exhibit-A, which is a certified copy of the decree of divorce filed by the respondent no. 1 at the trial stage and the said document was marked as Exhibit-A without any objection. The said decree of divorce showed that prior to the second marriage the respondent no. 1 obtained a decree of divorce from her husband in the year 2002 and the second marriage had taken place in the year 2006. Accordingly, it cannot be said that the said document is void. The first appellate court also taken into consideration the fact that the trial court considered the evidence of D.W1 at length during such cross-examination.

At the appellate stage the appellants produced certified copy of sale deed to argue that the respondent no. 1 purchased the said land and in the said deed she did not give the name of her husband but she gave the name of her father. The first appellate court has rightly discarded the objection of the plaintiffs as at that relevant point of time the respondent no. 1 was residing with her father and there was nothing wrong in mentioning the name of her father in the said deed. Moreover, the respondent no. 1 filed the certified copy of decree of divorce, which had clearly clarified the point regarding the existence of her first marriage and subsequent dissolution of her marriage tie with her former husband by decree of divorce.

Both the courts on proper appreciation of evidence and facts arrived at a concurrent findings with regard to the legal status of the respondent no. 1 and the said concurrent findings of facts are based on cogent evidence, in our view, is not perverse.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

