

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.287 of 2022

=====

Reet @ Seema Kumari Daughter of Rajendra Rai, Resident of Gandhi Ashram (Behind Departmental Shop), Hazipur, P.S.-Hazipur Town, District-Vaishali.

... .. Appellant/s

Versus

Chandra Bhushan Kumar son of Late Ganesh Rai, Resident of Mohanpur, P.S.-Bidupur, District-Vaishali.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Nishant Kumar

For the Respondent/s : Mr. Abhay Shankar Singh

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 11-08-2023

The present appeal has been preferred by the Appellant against the impugned Judgment dated 20.06.2022 passed by the Ld. Principal Judge, Family Court, Vaishali at Hajipur in Matrimonial Case No. 407 of 2018, whereby the Family Court has held, “*The Petitioner has been able to prove the fact that his marriage was without consent. His marriage*



with the O.P., namely, Seema Kumari, is declared as null and void. The present application is Allowed”.

2. It is further pertinent to mention that the petition filed by the Petitioner before Family Court was filed under Section 11 and 12 of the Hindu Marriage Act and in the petition the Petitioner has pleaded that the he was abducted by the father of the Defendant/Appellant and other persons on 02.02.2018 and he was subjected to beating resulting into his becoming unconscious and when he regained consciousness, he was informed by parents of the Defendant/Appellant that he has got married with Seema Kumari, who is the Appellant herein.

3. The Petitioner has also lodged Criminal Complaint for being abducted and forcibly married in the Court of Ld. C.J.M, Hajipur. He has claimed that the marriage is not valid under Section 5 of the Hindu Marriage Act and he has prayed as follows :

“ क) उपरोक्त परिस्थित में आवेदक और विपक्षी के बीच दिनांक 02.02.2018 के रोज जो शादी हुई, उसे (शून्य विवाह) भंग किया जाए तथा आवेदक के पक्ष में डिक्री दिया जाये.

ख) उक्त मुकदमे में जो खर्च होगा, ब्याज के साथ उसे विपक्षी से दिलाया जाये. ”

4. On notice, Appellant/Defendant appeared before



the Family Court and filed her written Statement contesting the suit pleading that the petition has been filed on wrong facts and it is not maintainable as framed. It is also claimed that the marriage was solemnized as per Hindu Rites and Customs with consent of the Petitioner.

5. On the basis of the pleadings of the parties, following issues were framed :

- i) Is the suit, as framed, maintainable?
- ii) Has the plaintiff got valid cause of action and right to sue?
- iii) Whether the marriage held on 02.02.2018 in between the petitioner and the O.P. was performed forcefully and without consent of the Petitioner?
- iv) Whether the marriage held on 02.02.2018 in between the petitioner and O.P. is liable to be declared void?

6. Heard Ld. counsel for both the parties.

7. Ld. counsel for the Appellant/Defendant submits that the Impugned Judgment is not sustainable in the eye of law whereas, Ld. counsel for the Respondent/Plaintiff submits that there is no infirmity in the Impugned Judgment. However, after perusal of the divorce petition, written statement, issues framed and the order passed by the Family Court, it transpires that the



case of the Respondent/Appellant before the Family Court is that the claimed marriage was not validly solemnized as per Hindu Rites and Customs, and, as such, there is no marriage in the eye of law between the Respondent/Plaintiff and Appellant/Defendant. The alternative case of the Petitioner is that the marriage, if any, is liable to be annulled under Section 12(1)(c) of the Hindu Marriage Act, because consent of the Respondent/Plaintiff was vitiated on account of consent having been taken under force.

8. However, as per the pleadings of the parties, no issue has been framed whether the marriage between the parties has been validly solemnized or not. No specific issue has been framed under which provisions of the Hindu Marriage Act, the marriage, if any, is liable to be annulled or declared void, nor is any specific finding on such issue. Even the order which has been passed by the Family Court is not legally consistent and sustainable. Marriage can be declared null and void under Section 11 but the marriage without consent is no ground under Section 11 of the Act for declaring marriage as null and void. It can be annulled under Section 12(1)(c) of the Hindu Marriage Act, if the consent of the Petitioner has been obtained under force.



9. The whole mess has been created not only on account of lack of clarity of law on the part of the presiding officer of the Family Court, but it has also been created on account of immensely poor drafting of the petition filed by the petitioner before the Family Court. As per the petition, Petitioner is not clear under which section of the Hindu Marriage Act he is entitled to get relief in the given facts and circumstances, nor the prayer part has been properly framed. This poor drafting and lack of knowledge on the part of the presiding officer of the Family Court has created complete mess and chaos in the trial.

10. Needless to say that the Impugned Judgment is not sustainable and this Court has no option but to set aside the Impugned Judgment and remand the matter to the Family Court to conduct a fresh trial.

11. Hence, the Impugned Judgment is set aside and the matter is remanded to the Family Court concerned to conduct a fresh trial and conclude the same at the earliest and in any case, not beyond six months. If required, trial may be conducted on day to day basis because there is already delay in the matter and if there is any further delay, whole purpose behind litigation would get frustrated. If the parties pray for



amendment, either of the petition or written statement, they should be allowed without changing the nature of the case before framing of issues and conducting trial.

12. The Appeal is disposed of, accordingly. Both the parties will bear their own costs.

13. Registrar General is directed to circulate a copy of this Judgment amongst all the Presiding Officers of the Family Courts.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

chandan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

