

24.04.2023
SL No.14
Court No.8
(gc)

SAT 77 of 2022
CAN 1 of 2022

Moslem Ali Mallick
Vs.
Minati Mallick (Das)

Mr. Chandraydoy Roy,
Mr. S.A. Joynal,
...for the Appellant.
Mr. Ovik Sengupta,
Mr. Asis Dutta,
...for the Respondent.

Affidavit of service filed in Court today is kept with the record.

The order of the Appellate Court affirming the order and judgment of the Trial Court in a suit for declaration that the certificate of marriage dated 29th January, 2013 is null and void is a subject matter of challenge in this second appeal.

We have heard the learned Counsel for the appellant. It is submitted on behalf of the appellant that the learned Trial Judge was doubtful about its jurisdiction and having decided that it has no jurisdiction, we do not have decided the suit on merits. This point was urged in the first appeal. The First Appellate Court while affirming that the Trial Court has a jurisdiction instead of remanding the matter for fresh consideration decided the appeal and dismissed the appeal.

We have carefully read the order of the Trial Court as well as the First Appellate Court. The Appellate Court

has decided the question of jurisdiction of the Trial Court to decide the suit on merits. This decision of the First Appellate Court is not under challenge. In any event, the First Appellate Court has, in our view, rightly observed that it is a suit for mere declaration that there is no marriage between the parties which could have been decided under Section 34 of the Specific Relief Act and in view of the decision of Madhya Pradesh High Court in ***Sanjay Mishra Vs. Miss Eveline Jobe*** reported at ***AIR 1993 MP 54***, the First Appellate Court decided the jurisdiction in favour of the Trial Court. The suit was also not a merely suit for declaration that the disputed certificate of marriage is required to be declared as null and void which may be a relief available under Section 31 of the Specific Relief Act. The jurisdiction of the Trial Court to decide the issues is undoubted. The Appellate Court while affirming the judgment has held that the suit is barred by limitation in view of the fact that the said suit was instituted after 3 years and 8 months after the registration of the marriage in dispute.

The learned Counsel for the appellant submits that he was not aware of the said certificate or due to his lack of understanding of this content and purport of the said document, the said certificate was not challenged. However, in the plaint he has categorically stated that the cause of action arose on 29th January, 2013 and not from any subsequent date.

The argument advanced is contrary to the pleadings. Admittedly, the suit was filed beyond the period of limitation. The finding of the Trial Court is unassailable on this score.

The second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the connected application also stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

Leave is given to Mr. Ovik Sengupta, Advocate to file Vakalatnama on behalf of the respondent in course of the day.

(Uday Kumar, J.)

(Soumen Sen, J.)