

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

SAT 190 of 2015

**Kishalay Roychowdhury
Vs.
Shrimati Manashi Goswami & Anr.**

Appearance:

For the Appellant : **Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Roy, Adv.**

Judgment On : **27.7.2023**

PRASENJIT BISWAS, J.:

The instant appeal has been preferred by the plaintiff/appellant challenging the concurrent findings of both the courts below.

It is the case of the plaintiff/appellant that he married with the respondent no. 2 namely Tapati Roy Chowdhury in the year 1390 B.S. and out of their wedlock two children were born to them. The appellant was posted at

Muksudpore, P.S. Kharagpur in connection with his service and then the respondent no.1 was appointed as his cook therein. The appellant denied that he had no relationship with the respondent no.1 and no marriage ever took place in between them. Since the respondent no.2 has been claiming herself to be his wife, the appellant under compelling circumstances filed the suit before the trial court praying for declaration that he never married with respondent no.2.

The respondent no.1 entered appearance in that case and filed written statement claiming herself to be the married wife of the appellant. As per her statement the marriage in between her and the appellant was solemnized on 12.08.1988 corresponding to 1395 B.S. in accordance with the Hindu rites and customs and after marriage they started to lead their conjugal life as husband and wife. Out of that wedlock they were blessed with a girl child who was born in the year 1396 B.S. After their marriage the appellant applied for getting ration card and voter identity cards in her name and in the name of their daughter where from it would be revealed that the appellant is her husband.

It is also stated by the respondent no.1 that since the month of June, 1990 a suspicion arose in her mind when the appellant started to return late in his house and sometime he did not return house. Thereafter, this respondent no.1 came to know that the appellant had taken a rented house elsewhere wherein he was living with another woman and children. This respondent was in distress condition due to negligence of the appellant towards her and as such she filed an application before the court of Magistrate praying for maintenance for her and their daughter under the provision of the Code of

Criminal Procedure. Our attention is drawn that in M.R. Execution Case being no. 27 of 1997 the present appellant admitted this respondent and her daughter as his wife and children.

Our attention is further drawn about the deposition of the appellant wherein he admitted that the respondent no.1 was engaged as his cook since the year 1988. The appellant further admitted that order of maintenance was passed in favour of the respondent no.1 and her daughter after contested hearing. It is quite astonishing fact that the respondent no. 2 who claimed to be the legally married wife of the appellant did not venture to come and depose in that case. It creates shadow of doubt in our mind as to why she did not come and depose that the appellant never married with the respondent no.1.

It is the specific case of the appellant that he married with the respondent no.2 as per Hindu rites and customs but no reliable evidences either documentary or oral were brought on record to show that the marriage was solemnized in between the appellant and the respondent no.2. Pw2 and Pw3 who deposed in the trial court are the interested witnesses and relations of the respondent no.2.

It appears from Exhibit 6 which is a marriage registration certificate that marriage between appellant and the respondent no2 took place in the year 1393 B.S. and the same was issued in the year 2001 which is almost 18 years after the marriage. In the voter identity card of the respondent no.1 the name of the appellant has been written therein as her husband and similarly the name of the appellant has been written as husband and father in the ration cards of the

respondent no.1 and her daughter which have been marked as Exhibit D (series) in the case.

It appears that in the maintenance proceeding this appellant admitted the respondent no.1 to be his wife. We are not unmindful about the proposition of law that judgement in criminal case is not relevant in evidence for the purpose of proving plaintiff's liability in civil case, but the admission of the appellant in filing show cause in the maintenance case is admissible in evidence. Appellant made admission as regards his marriage with the respondent no.1 wherein respondent no.1 denied and disputed the marriage in between the appellant and the respondent no. 2 so, burden of proof comes upon the appellant.

Section 5 of the Hindu Marriage Act lays down the conditions to be fulfilled in a marriage between any two Hindus. One of the conditions is that neither party has a spouse living at the time of the marriage. Section 7 of the Act says that (1) a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto; and (2) where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken. Section 11 of the Act deals with void marriages. One of the conditions, if contravened, which makes a marriage solemnized after the commencement of the Act null and void. In the instant case, the proponent namely, the appellant, who had claimed that there had been a valid marriage between him and the respondent no.2, failed to prove by any piece of evidence that the marriage was solemnized after observing the rites and ceremonies of the Hindu Marriage, particularly invocation before the

sacred fire and Saptapadi. These two ceremonies are essential and must be observed and proof for performance of the essential ceremonies to make the marriage valid, is wholly absent and the appellant who is the proponent, failed to bring any evidence before the court to establish that there was a valid marriage. If there was no valid marriage, the registration also does not come to the rescue of the appellant to claim that there had been a valid marriage because of registration. Registration of Hindu Marriages provides that for the purpose of facilitating the proof of Hindu Marriages only.

The appellant fails to prove the essential ceremonies of marriage and it does not inspire any confidence in our mind about the factum of marriage in between the appellant and the respondent no.2. Exhibit 6 was issued just before the institution of the case which also creates doubts in our minds. Respondent No.2 whom the appellant claims to be the legally married wife did not come before the trial court and depose. As per Section 114(g) of the Indian Evidence Act it is a party in possession of best evidence which would throw light in controversy withhold it, the court can draw an adverse inference against him notwithstanding that the onus proving does not lie on him. It is for the appellant to have produced the best evidence which is missing in this case and so an adverse presumption can be drawn against the appellant.

Various documents have been filed on behalf of the respondent no.1 and marked as exhibits in the case reflects that on those documents the name of the husband of the respondent no1 has been stated to be the appellant. From those documents as well as of the admission of the appellant in maintenance case lodged by the respondent no1 against him that there was relationship in

between them and they resided as husband-and-wife. The relevancy of those documents cannot be denied as those are issued long before the institution of the suit whereas some documents produced by the appellant are of recent origin and issued just before the institution of the suit. The documents submitted by the appellant does not inspire our confidence that the marriage between the appellant and the respondent no. 2 ever took place.

We, thus, do not find any merit in the instant appeal nor involvement of the substantial question of law.

The appeal is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)