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01-05-2023
debajyoti
(Ct. no.06)

FMA 122 of 2023
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IA NO:CAN/1/2023

Sri Suvash Chandra Mahata
Vs.
The State of West Bengal & Ors.

Mr. Swapan Kumar Pal,
Ms. Srijani Mukherjee
... For the Appellant.
Ms. Sipra Majumder,
Mr. Milan Kumar Maity
... For the State.

Affidavit-of-Service filed in Court today be taken on record. In spite of service, the private respondent is not represented. However, in view of the order that we propose to pass, it is not necessary to defer hearing of this matter.

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated November 03, 2022, whereby the appellant's writ petition was dismissed, is under challenge in this appeal.

The appellant approached the learned Single Judge challenging the validity of a Certificate dated January 18, 2017 issued by the Pradhan of Arjuni Gram Panchayat, Kharagpur-I Block, to the effect that the private respondent herein is a resident of Gaidua, P.O. Hariatara, Paschim Medinipur. There are other statements in the Certificate which are not relevant for the present purpose.

The appellant is aggrieved by the residential address of the private respondent that is mentioned in the aforesaid Certificate. He says that way back in 1980, the private respondent had left that address and had gone back to her parental house. In any event, on her own admission contained in paragraph 11 of her petition under Section 12 of the Protection of Women from the Domestic Violence Act filed in Misc. Case No.69 of 2017 in the Court of Chief Judicial Magistrate, Paschim Medinipur, she moved from the house of the present appellant on January 25, 1995 and since then, has been living in her father's house.

The appellant/writ petitioner prayed for quashing/cancellation of the aforesaid Certificate issued by the Pradhan in favour of the private respondent.

The learned Judge noted that two suits have been filed by the writ petitioner. One is Matrimonial Suit No.375 of 2016 filed in the Court of the learned District Judge, Paschim Medinipur claiming divorce. Another suit has been filed by the writ petitioner for declaration that the private respondent is not his legally married wife. The learned Judge dismissed the writ petition with the following observations:-

“ In the opinion of the Court, when there are other proceedings pending with regard to the issue of marriage and identity of the respondent no.4, any observation or order passed by this Court will directly interfere with the proceedings which have been initiated by the petitioner himself for divorce and also for declaration that the respondent no.4 was not his wife. It also appears that in the proceeding under Section 24 of the Hindu Marriage Act, 1955, another

alleged person claiming to be wife of the petitioner sought to be added as a party.

Under such circumstances, the status of the respondent no.4 and the marriage between the respondent no.4 and the petitioner are sub judice.

The petitioner is always at liberty to take appropriate steps with regard to the certificate that has been issued in favour of the respondent no.4 before the civil court. The writ petition is not maintainable for the reasons stated hereinabove. Whether the Pradhan knew the respondent no.4 as the wife of the petitioner is a question of fact. In any event the status of the petitioner's wife would be determined in the civil suit. All documents of identity of the respondent no.4, as the petitioner's wife will also be subject to the decision in the civil suit. ”

Being aggrieved, the writ petitioner has come up by way of this appeal.

We have heard learned counsel for the parties. We find absolutely no infirmity in the order under appeal. The learned Judge has noted that two suits have been filed by the appellant against the private respondent. The appellant, however, says before us that he will withdraw the suit wherein he has claimed divorce and for that purpose, he has filed an application before the learned Court below. The other suit has been dismissed for default. He prays for liberty to file a suit for delivery up and cancellation of the Certificate that has been issued by the Pradhan in favour of the private respondent.

Since we are not interfering with the order under appeal, we are not inclined to pass any order.

However, the appellant will be at liberty to take such steps as he may be entitled to in law.

If any such fresh proceeding is initiated by the appellant, the same shall be decided without being influenced by any observation in this order or in the order of the learned Single Judge.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the application for passing appropriate order, shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)