

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.733 of 2018

1. Rabindra Kumar Jha son of late Badhan Jha, resident of Village- Maur, Police Station- Barbiga, District- Sheikhpura.
2. Dharamvir Kumar, son of Rabindra Kumar Jha, resident of Village- Maur, Police Station- Barbiga, District- Sheikhpura.

... .. Appellant/s

Versus

1. Gopal Jha, son of Mundrika Jha, residing at Village- Hemda, Police Station- Warsaliganj, District- Nawada.
2. Sintu Jha, son of Mundrika Jha, residing at Village- Hemda, Police Station- Warsaliganj, District- Nawada.
3. Gudiya Kumari, daughter of Gopal Jha, residing at Village- Hemda, Police Station- Warsaliganj, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Ranjan
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 26-11-2024

The present appeal has been filed under Section 19(1) of the Family Court Act, 1984, read with Section 151 of the Code of Civil Procedure, impugning the judgment and decree dated 23.07.2018 passed by learned Principal Judge, Family Court, Sheikhpura in Matrimonial Case No. 79 of 2013, whereby and whereunder, learned Principal Judge has dismissed the

petition filed by the appellants for annulment of the marriage of appellant No. 2 with respondent No. 3.

2. The case of the appellants as per the petition filed before the Family Court is that on 04.05.2013, appellant No. 2 Dharmvir Kumar while returning back after appearing in Class-XI examination was kidnapped by respondent Nos. 1 and 2 and some other persons and was taken to Hemda Village in the District of Nawada where the marriage of appellant No. 2 was forcefully solemnized with respondent No. 3 Guriya Kumari, daughter of respondent No. 1. The further case of the appellants is that the marriage was performed without obtaining the valid, legal and free consent of appellants No. 1 and 2 and in this regard Barbigha Police Station Case No. 93 of 2013 has also been registered against respondents on 05.05.2013 under Section 364(A) of the Indian Penal Code. The appellants have also filed Matrimonial Case No. 79 of 2013 on 21.12.2013 under Section 12(1)(c) of the Hindu Marriage Act, 1953 for

annulment of marriage of appellant No. 2 with respondent No. 3 by a decree of nullity as consent of appellant No. 2 was obtained by force and fraud.

3. It is submitted by learned counsel for the appellant that the impugned judgment and decree under appeal is bad in law as well as on facts and the same is fit to be set aside. The learned Court below has failed to appreciate that at the time of marriage, both the appellant No. 2 and respondent No. 3 were minors. The date of birth of respondent No. 3 (*Ext-5*) as per information received through R.T.I from the Headmaster, Utkramit Middle School, Pachwara, shows as 08.02.2002 which suggests that as on the date of marriage, she was minor, whereas the matriculation certificate (*Ext-6*) of appellant No. 2 shows his date of birth as 15.09.1997 which suggests that as on the date of marriage, the appellant No. 2 was also minor. The learned Principal Judge has failed to appreciate that at as on the date of marriage the bride and groom were minors, therefore,

they were not legally competent to enter into a marriage as per provision under Section 5(iii) of the Hindu Marriage Act, 1956. Learned counsel for the appellants further submits that the *bona fide* of the appellants is apparent from the fact that forceful marriage was solemnized on 04.05.2013 and on 05.05.2013, F.I.R was lodged against the respondents. The statement of the appellant No. 2 was also recorded on 06.05.2013 under Section 164 of the Cr.P.C wherein he has corroborated the allegations as levelled against the respondents in the F.I.R. The appellant No. 2 has also filed the present Matrimonial Case No. 79 of 2013 on 21.12.2013 under Section 12(1)(c) of the Hindu Marriage Act, 1956 for annulment of marriage of appellant No. 2 with respondent No. 3 by a degree of nullity as consent of appellant No. 2 was obtained by force and fraud. Learned counsel for the appellants further submits that the respondents have also not brought on record any document in support of their claim that appellants had demanded Rs. 2 lakhs as dowry

nor they have lodged any complaint regarding demand of dowry, which goes to show that a frivolous allegation has been levelled against the appellants to put pressure to compromise the cases filed against the respondents.

4. In pursuance to the direction of this Court, the appellant No. 2-Dharamvir Kumar is present in person, however, none appears on behalf of the respondents. Hence, the matter is being decided *ex-parte*.

5. We have perused the case record and considered the submissions advanced on behalf of the learned counsel for the appellants. After analysis of the evidence available on record as adduced by the appellants, this Court finds that Matrimonial Case No. 79 of 2013 was filed by the appellants with a prayer to declare the marriage solemnized between appellant No. 2-Dharamvir Kumar and respondent No. 3-Gudiya Kumari as null and void as marriage was forcefully solemnized in a temple and at the relevant time, the age

of bride-groom was below 18 years, therefore, they were not legally competent and mature enough to enter into a marriage as per the provisions under Section 5 (iii) of the Hindu Marriage Act, 1956. Section 5 of the Act reads as under:-

"5. Conditions for a Hindu marriage.--A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party--

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two."

Further Section 12 of the Act reads as under:-

"12. Voidable marriages.-(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5, as it stood immediately before the

commencement of the Child Marriage Restraint (Amendment) Act, 1978], the consent of such guardian was obtained by force [or by fraud as to the nature of ceremony or as to any material fact or circumstance concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1), shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1), shall be entertained unless the

Court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

6. In order to establish the above facts, the appellants have produced the date of birth certificate i.e. Matriculation Certificate of appellant No. 2 in which the date of birth of the appellant No. 2 has been mentioned as 15th September, 1997 which suggests that as on the date of marriage i.e. 04.05.2013, the appellant No. 2 was below the age of 21 years. It is quite relevant to point out here that the above matriculation certificate is a public document and there is no further legal requirement to

prove the genuineness of the document. Moreover, the genuineness of this document has not been challenged by the respondents. To determine the factum of minority of anyone as per rules prevalent in India, the matriculation certificate is a primary evidence. There is no reasonable ground in the entire impugned judgment to disbelieve and not considering the above matriculation certificate (*Ext-6*). The learned Principal Judge, Family Court has relied upon the customs prevalent in the society but no evidence has been adduced on behalf of the respondents in this regard. Moreover, any customs cannot prevail upon the statute of the legislature. Hence, learned Court below has committed error in not appreciating the matriculation certificate of the appellant No. 2. It is also relevant to mention here that soon after kidnapping, F.I.R was lodged on 05.05.2013, statement of the victim-appellant No. 2 was recorded under Section 164 Cr.P.C and the present matrimonial case has been filed before the Principal Judge, Family Court to declare the marriage void

and illegal. The respondents have not filed any case against the appellants regarding demand of dowry to prove their claim. All these factual aspects demonstrates that the appellant No. 2 had not completed the legally required age of maturity as on the date of marriage i.e. on 04.05.2013 which is crucial factor to validate the marriage as enshrined under Section 5(iii) of the Hindu Marriage Act. The respondents have also not proved their case regarding refusal of marriage by the appellants only due to non-fulfillment of dowry demand. Contrary to this, the appellants alleged to have proved the factum of kidnapping and abduction on the relevant date and time and F.I.R was registered just after one day of the alleged forceful marriage i.e. on 05.05.2013. All these facts have not been considered by the learned Principal Judge, Family Court, Sheikhpura while disposing Matrimonial Case No. 79 of 2013.

7. In that view of the matter, the impugned judgment and decree dated 23.07.2018 passed by

learned Principal Judge, Family Court, Sheikhpura in Matrimonial Case No. 79 of 2013 is hereby set aside.

8. The matter is remanded back to the learned Principal Judge, Family Court, Sheikhpura for fresh consideration, keeping in view the facts and circumstances, as stated above. Learned Principal Judge is requested to dispose of the matter, preferably within a period of three months from the date of receipt of a copy of the judgment. Parties are requested to co-operate in the matter.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	13/11/2024
Uploading Date	28/11/2024
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