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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1256-2024

Date of Decision: 15.05.2024

FATMA ZAHRA

... PETITIONER

VS.

MAJID AHMAD

.. RESPONDENT

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present : Mr. Satish Chaudhary, Advocate, for the appellant.
Mr. Jasmeet Singh Ghumman, Advocate, for the respondent.

RITU TAGORE, J.

1. Mr. Jasmeet Singh Ghumman, Advocate, filed vakalatnama signed by brother-in-law, Special Power Attorney holder of the respondent, namely, Aabid Alvi in Court today, same is taken on record, subject to just exceptions.

2. It is stated that special power of attorney executed on 29.12.2020 still exists and has not been cancelled.

3. Learned counsel for the petitioner urges that clause Nos. 4 and 6 of Settlement/Agreement dated 03.02.2021 (Annexure P-2) and the relief of permanent injunction is required to be incorporated in the judgment and decree dated 12.10.2023 (Annexure P-1) as per the statements made by the parties based on compromise deed. It is stated that necessary directions be issued to learned Principal Judge, Family Camp Court, Derabassi in this regard, or any other appropriate order may be passed for giving effect to the terms of the settlement.

4. Learned counsel for the respondent, on instructions on behalf of Aabid Alvi, Special Power of Attorney holder of the

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respondent, who is present in the Court, submits that respondent has no objection if the conditions as mentioned in Clause Nos. 4 and 6 of compromise deed dated 21.04.2022 (Annexure P-4) and Settlement/Agreement dated 03.02.2021 (Annexure P-2), are incorporated in the judgment and decree.

5. I have heard learned counsel for the parties and have gone through the paper book with their valuable assistance.

6. It is a matter of record that the petitioner filed a suit (Annexure P-3) for declaration that the marriage solemnized between her and defendant according to Muslim Rites has been dissolved by mutual consent by following the Muslim Customary Rights. An Settlement/Agreement was also made in writing on 03.02.2021 between the parties in this regard. The petitioner further sought a declaration that *nikahnama* dated 30.10.2013 is illegal, null and void after dissolution of marriage between the parties, and that no marital relationship exists between them. Additionally, the petitioner sought the relief of permanent injunction to restrain the defendant, his relatives, servants and representatives from interfering with the peaceful life and property of the plaintiff and her relatives i.e., her son, brother, parents etc. in any manner. She also sought to restrain the defendant from taking custody of their child as per Settlement/Agreement dated 03.02.2021 (Annexure P-2) and from claiming any ownership and possession of the plaintiff in Flat No.1-B, Second Floor, Park View, Peer Muchalla Zirakpur, Tehsil Derabassi, District SAS Nagar Punjab.



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7. Recording of statements of petitioner (Annexure P-5), the respondent through his special power of attorney holder Aabid Alvi (Annexure P-6), and tendering of the compromise deed dated 21.04.2022 (Annexure P-4) in the aforesaid suit, before Principal Judge, Family Camp Court, Derabassi, are not in dispute between the parties.

8. On the basis of the statements of the parties, their counsels and compromise deed (Annexure P-4), learned Family Court passed the judgment (Annexure P-1), the attested copy tendered on record, which is reproduced as below;

“xxx

Joint statement of plaintiff Fatma Zehra and Ababid Alvi, being SPA of Majid Ahmad defendant alongwith Ld. Counsel Sh. Gaurav Kumar and Sh. Mukesh Mehra, Advocates.

Stated that the matter has been compromised between us vide compromise deed dated 21.04.2022 and same is Ex. CX. As such the same may kindly be decreed as per the compromise.”

9. On the basis of the judgment (Annexure P-1), following decree sheet (Annexure P1) was drawn, which is extracted below:-

“xxx

This petition coming on this 12th October 2023 for final disposal before me (Barjinder Pal Singh, Principal Judge, Family Court, Camp Court, Derabassi) in the presence of Shri Gaurav Kumar and Shri Mukesh Mehra, Advocates for both the petitioners. The present suit filed under Muslim Law is hereby partly allowed. The marriage between the plaintiff and defendant is hereby dissolved by a decree of divorce by way of mutual consent under Muslim Law w.e.f. today i.e. 12.10.2023, leaving the parties to bear their own costs. There shall be no relief qua the permanent injunction as detailed in the headnote of the suit, as sought by the plaintiff.”

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10. Perusal of judgment (Annexure P-1), as reproduced above, does not indicate a formal expression of adjudication of rights of the parties, as defined under Section 2 (9) CPC and as contemplated under Order XX CPC. The judgment (Annexure P-1) simply reflects the statements of counsel for the parties seeking passing of decree based on the compromise arrived at between the parties. The decree sheet (Annexure P-1) also does not reflect the settlement and compromise deed, as referred to in the statements of the parties. The judgment (Annexure P-1) does not provide any reasons for declining the decree for a permanent injunction to the petitioner. Therefore, both the judgment and decree do not at all meet the requirements of law.

11. Accordingly, both judgment and decree are set aside with a direction to the learned Family Court to pass afresh, detailed judgment based on evidence and statement of the parties already recorded. If required, the Court may receive further evidence before passing the judgment and, thereafter, draw a decree, accordingly. The Court is directed to restore the petition and undertake the above exercise, accordingly.

12. The parties are directed to appear before the learned Principal Judge, Family Camp Court, Derabassi on 30.05.2024.

13. The Revision Petition is disposed of accordingly.

14. Pending application(s), if any, shall also stands disposed of.

15.05.2024

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(RITU TAGORE)**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No