

2024:PHHC:113279-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

FAO-M-47-2011 (O & M)

Reserved on: 22.08.2024

Pronounced on: 30.08.2024

SUDHA

.....Appellant

Versus

VINOD KUMAR

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Hitesh Pandit, Advocate
for the appellant.

Ms. Neeru Bansal, Advocate
for the respondent.

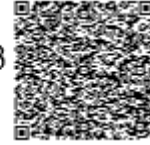
SURESHWAR THAKUR, J.

Civil Misc. No. 1027-CII of 2024

1. Hindu Marriage case No. 12 of 2008 became instituted on 23.07.2009 before the learned Additional District Judge, Panchkula, wherebys the petitioner therein, one Vinod Kumar asked for the dissolution of his marital ties with his spouse one Sudha. Through a decision made on 19.01.2011, on the Hindu Marriage case (supra), the petition (supra) became allowed, wherebys the marital ties inter-se the (supra) became dissolved through the rendition of a decree of divorce.

2. Before proceeding to determine the challenge as made to the impugned decree at the instance of one Vinod Kumar, who however was alive at the time of raising an appeal bearing No. FAO-M-47-2011, filed by Sudha, against the rendition of decree (supra), it is but

2024:PHHC:113279-DB



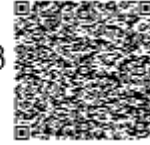
necessary to determine the validity of the application (supra), filed before this Court in terms of the order made by this Court, on 16.10.2023, whereby, on demise of one Vinod Kumar, petitioner in the petition (supra), an espousal has been made for his estate being substituted by his real nephew one Dinesh Tanwar. The said nephew is detailed in paragraph No.2 of the instant application, to be the legatee under a notarized will dated 08.08.2014, as became executed in his favour by the deceased Vinod Kumar.

3. It is submitted before this Court by the learned counsel appearing for the applicant-respondent, that the said application is maintainable before this Court.

4. Therefore, the controversy which falls for the makings of an adjudication thereons, relates to whether after the demise of one of the contracting parties to a contract of marriage, which but is a personal contract, whereupon any party who is not a privy to the apposite contract, thus can on the demise of one of the spouses concerned, choose to seek continuation of the *lis* on behalf of the deceased spouse concerned, through his/her asking for his/her substitution as an LR of the deceased spouse concerned.

5. The answer to the above conundrum, is set forth in a judgment rendered by the Hon'ble Apex Court, in case titled as ***Smt. Yallawwa vs Smt. Shantavva, reported in 1997 (11) SCC 159.*** Furthermore, the said judgment was also concurred with by the Hon'ble Apex Court, in a judgment rendered in case titled as ***R.Lakshmi versus K.Saraswathi Ammal reported in 1997 (1) R.C.R. (Civil) 582.*** The

2024:PHHC:113279-DB



ratio decidendi as propounded in the judgment made by the Hon'ble Apex Court in ***K.Saraswathi Ammal case (supra)*** becomes captured in paragraph No. 3 thereof, para whereof becomes extracted hereinafter.

“3. We are of the opinion that the wife should be and is competent to maintain the application under Order IX Rule 13. Even though the husband is dead, yet the decree obtained by him is effective in law and determines the status of the appellant. If the appellant says that it is an ex-parte decree and ought to be set aside, her application has to be heard on merits. The decree of divorce determines her status as a wife apart from determining her rights in the properties of her deceased husband. This gives her sufficient locus standi and right to contest the divorce proceedings even after the death of her husband.”

6. A reading of the above extracted paragraph as carried in the verdict (supra), made by the Hon'ble Apex Court, thus makes forthright speakings, that in the event of rendition of an ex-parte decree of divorce in favour of either of the contracting parties, to the contract of marriage, thereupon it becomes declared in the verdict (supra), qua the spouse against whom such an ex-parte decree becomes rendered, thus becoming entitled qua his/her asking for the continuation of the proceedings hence by seeking the apposite substitution vis-a-vis the estate of the deceased husband, thus by his LRs. The reason as propounded therein thus to ensure the continuations of the application filed under Order 9 Rule 13 CPC, as preferred for setting aside the ex-parte decree of divorce, became grooved in the factum, that since in the wake of the said decree rather not being permitted to be set aside, thereby it would have a consequential effect upon the rights of

2024:PHHC:113279-DB

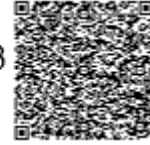


inheritance, if any, qua the surviving spouse vis-a-vis the estate of her deceased husband.

7. Be that as it may, since the extantly rendered decree of divorce, thus by the learned trial Judge concerned, but obviously is not an ex-parte decree, yet when thereby there is an annulment of the marital ties entered into amongst the present appellant and her deceased husband, who died, during the pendency of the instant appeal before this Court, yet on analogically applying the above ratio decidendi, vis-a-vis the facts at hand. Resultantly, therebys in case the decree of divorce is not permitted to be efforted by the present appellant, to be rescinded, naturally therebys her rights to claim inheritance vis-a-vis the estate of her deceased husband, but would become severely jeopardized. As such, the effort of the present appellant to seek the rescission of the decree of divorce passed by the learned trial Judge in favour of deceased husband but cannot be forestalled, as therebys her right of inheritance vis-a-vis the estate of deceased husband, but naturally would become gravely affected.

8. Furthermore, in exception to the above, there may be situations, where during the pendency of the Hindu Marriage Petition before the learned trial Judge concerned, thus one of the parties to the matrimonial ties, does expire. Since at the said stage, there is no rendition of a decree of divorce nor a declining decree is passed, thereupon in the said event the sub judice proceedings vis-a-vis the Hindu Marriage Petition are required to become declared abated.

2024:PHHC:113279-DB

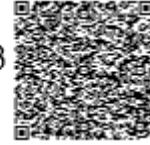


9. In addition, in the event of the setting aside of an ex-parte rendered decree of divorce by the trial Court or by the Appellate Court, therebys when there is no decree, thus segregating the marital ties entered amongst the marital partners concerned, thereupon too, the aggrieved therefrom LR of the deceased spouse concerned, rather cannot choose to assail the renditions of the ex-parte decree of divorce.

10. The reason for making the above conclusion spurs, from the factum that since therebys there is conferment of a right of inheritance qua the successful party to the marital union, thus with all consequential benefit/affects, inasmuch as, therebys there would be conferment of rights of inheritance, qua the estate of her deceased husband, rather necessarily on both counts i.e. firstly where the deceased husband has died intestate. Secondly, even when the deceased husband has made a testamentary disposition in respect of his estate, whereby he excludes his surviving spouse, yet the surviving spouse becoming conferred with a befitting *locus standi*, to challenge the said made testamentary disposition by her deceased husband, whereby he constitutes a person other than the surviving spouse rather as his legatee.

11. Moreover, if during the pendency of an appeal challenging the dismissal of a divorce petition, thus one of the spouses to the matrimonial ties, does expire, thereupon, the LR of the deceased spouse cannot choose to seek continuation of the proceedings. Contrarily, in the said situation, the appeal is required to be declared to become abated but after dismissing the application as filed by the LR of the

2024:PHHC:113279-DB



deceased spouse concerned, wherebys the LR concerned, seeks his/her becoming substituted in place of his predecessor in interest.

12. However, when a spouse files an appeal challenging the granting of decree of divorce, and when during the pendency of the appeal, the demise of one of the litigants does occur. Reiteratedly, thereupon, there is permissibility for continuation of the appeal or the same being continued by the LRs of the deceased spouse.

13. Consequently, it appears that the above leverage bestowed upon the surviving spouse, to on demise of the other marital partner thus seek the continuation of the *lis* or of the appeal, by the LRs of the deceased spouse, becomes anchored on the premise qua therebys the affirmation of the decree of divorce but would have a concomitant ill cascading effect vis-à-vis the rights of inheritance qua the spouse concerned, vis-a-vis the estate of the deceased marital partner.

14. In the wake of the above, even if one Vinod Kumar, the recipient of a decree of divorce passed by the learned trial Judge concerned, has died during the pendency of the instant appeal. Moreover, if he has constituted one Dinesh Tanwar, his real nephew, as his LR under a notarized will executed in his favour. In addition, though therebys on demise of Vinod Kumar rather the latter's estate may not be subjected to the rules relating to intestate succession, but may become governed by the testamentary disposition executed by him in favour of his nephew. However, only for enabling the present appellant, subject to hers succeeding in the instant appeal, to therebys become capacitated with a *locus standi* to throw challenge(s) to the said

2024:PHHC:113279-DB



testamentary disposition besides consequent thereto mutation, if any, as become attested.

15. Resultantly for facilitating the above, the instant application, whereby an endeavour is made, to on demise of Vinod Kumar, thus ensure the continuation of the appeal, through his estate being substituted by his LR, as detailed in paragraph No. 2 of the said application, but cannot be construed to be a mis-endeavour nor the application can be stated to be mis-constituted.

16. Therefore, the extant application is allowed. The LR, as enumerated in paragraph No. 2 of the application, rather is permitted to be substituted in place of the deceased respondent. Requisite corrections are ordered to be made in the array of respondent(s) in the memo of parties by the Registry of this Court. No notice is required to be given to the newly added LR, as he stand represented through his counsel Ms. Neeru Bansal, Advocate.

FAO-M-47-2011 (Main Appeal).

1. One Vinod Kumar (since deceased) respondent-husband herein filed petition, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the HMA'), on 23.07.2009, before the learned Additional District Judge, Panchkula. To the said petition, HMA/12/2008 became assigned. Through the said petition, the petitioner claimed the making of a decree for dissolving his marital ties with one Sudha.

2. Through a decision made, on 19.01.2011, on the petition (supra), the said petition became allowed, leading to a judgment and

2024:PHHC:113279-DB



decree becoming passed, whereby the marriage solemnized between the parties, became dissolved, thus on the ground of cruelty.

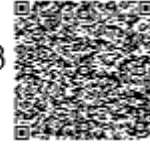
3. The passing of the aforesaid affirmative decree, thus led the appellant-wife to make an appeal thereagainst, through hers instituting the instant appeal before this Court.

Facts of the case

4. The marriage between the parties was solemnized on 23.9.2007 at Chandigarh according to Hindu rights and ceremonies. The marriage between the parties was simple with no exchange of dowry. Both the parties were divorcee at the time of marriage. After their marriage they cohabited as husband and wife at Panchkula. Their marriage was registered with the Registrar of Marriage, Chandigarh on 27.9.2007. No child was born from their wed lock.

5. The petitioner/husband (since deceased) sought dissolution of marriage on the ground of cruelty stating therein that after two days of the marriage, the respondent/ wife pushed the petitioner from the bed as a result of which he fell down and his right limb got fractured. The respondent/wife complained that her family members had compelled her to marry with the petitioner, whereas she wanted to marry a person with whom she could enjoy a luxurious life. It was alleged that the respondent is a quarrelsome lady and would indulge in frequent and unnecessary quarrels with the petitioner and his family members to the extent that she also slapped the petitioner without any reason in the presence of the President of the Society where the parties were living. It was also alleged that the behaviour of the respondent was not good

2024:PHHC:113279-DB



even with the family members of the petitioner and she used to insult them. The behaviour of the respondent has caused loss in the service of the petitioner inasmuch as, he was transferred from Chandigarh to Karnal branch. The respondent/wife did not paid any heed to prepare meals for the petitioner even on his request. The respondent was residing in the house of the petitioner although she herself is the owner of a house in Chandigarh. She has deserted herself from the company of the petitioner since April 2008. It was further alleged that in June 2009, the petitioner came to his house to fetch his belongings, and he was astonished to see the presence of a minor child in his house. When inquired about the child, the respondent replied that it was the petitioner's child whereas the petitioner had no physical relation with the respondent for the last more than 1 ½ years. The petitioner has thus sought dissolution of marriage between the parties.

6. Notice of the petition was issued to the respondent-wife who filed written statement taking preliminary objections that the petition was not maintainable. It was averred that it was the petitioner who had harassed and ill-treated the respondent whereas the respondent and her parents tried their best to convince the petitioner but of no help. It was further averred in the written statement that the petitioner had intentionally disconnected the electricity connection of the house in which the respondent is living and a civil litigation in this regard is pending between the parties. Further, the respondent-wife in her written statement denied all the allegations as levelled by her husband in the

2024:PHHC:113279-DB



Hindu Marriage Petition (supra) and prayed for dismissal of the petition.

7. On the pleadings of the parties, the hereinafter extracted issues were struck.

1. *Whether the petitioner is entitled for divorce on the grounds as alleged ? OPP*
2. *Whether the petition is not maintainable in the present form ? OPP*
3. *Whether the petitioner has no locus standi to file the present petition ? OPP*
4. *Whether the petitioner is estopped by his own act and conduct to file the petition ? OPR*
5. *Whether the petitioner has not come to the Court with clean hands ? OPR*
6. *Relief.*

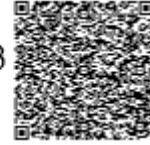
8. Subsequently, on the above formulated issues, the contesting parties in terms of the evidence adducing discharging onus as became cast upon them, thus proceeded to adduce the apposite evidence.

9. A careful reading of the evidence, as became adduced by the petitioner (since deceased)-respondent herein, on the issue relating to his becoming subjected to cruelty by the present appellant-respondent in the Hindu Marriage Petition (supra), the learned trial Judge concerned, proceeded to return affirmative findings on the said issue(s).

Inferences of this Court.

10. The ground of cruelty became rested on the premise, that the respondent, is of a quarrelsome nature to the extent, that she had

2024:PHHC:113279-DB



pushed the petitioner from the bed, as a result whereof, he suffered fracture besides the said ground becomes anchored, on the further factual foundation, that the respondent had slapped the petitioner in the presence of President of the residential Society, in one of whose dwelling units the parties were living. Though in support to the allegations, the petitioner during the course of his stepping into the witness box, thus in his examination in chief, tendered into evidence his affidavit Exhibit PW1/A. However, since no medical evidence to support the entailment of fracture on his person, in sequel to the present appellant-respondent in the Hindu Marriage Petition (supra), hence pushing him from the bed, thus became adduced, thereby the said ground of physical cruelty as set forth in the Hindu Marriage Petition became aptly rejected.

11. Moreover, also the ground of physical cruelty, as set forth in the Hindu Marriage Petition, thus hinged on the factum that the present appellant had slapped the deceased respondent in the presence of the President of Society, one Mr. Verma also became aptly disbelieved by the learned trial Judge concerned, as the eye witness to the said incident one Mr. Verma remained unexamined and as such the said fact remained uncorroborated rather it being only baldly testified by the present appellant.

12. However, the material ground which appears to etch mental trauma in the mindset of the respondent (since deceased) in the instant appeal, became generated from the factum, that a female child was residing in the matrimonial home. Admittedly the said female child

2024:PHHC:113279-DB



is not begotten from the wedlock of the present appellant and the respondent (since deceased) in the instant proceedings. Contrarily, the said child was purportedly adopted by the present appellant in June, 2008. The present appellant contended that prior to her marriage, with her husband, she had with the consent of her husband, moved an application to the Red Cross Society, Chandigarh, Haryana Branch for the said child becoming permitted to be adopted by her. However, the contention (supra) became dithered from, by the present appellant, through hers subsequently stating that she did not adopt the child from the Red Cross Society. Resultantly when therebys the purported adoption of a child by the present appellant rather remained in a shroud of doubt. Contrarily, when there is evident tangible evidence thus exemplifying that without the consent of the respondent (since deceased), the said child becoming proclaimed by the present appellant to be living with them at the matrimonial home, thus as their consensually adopted child. Therefore, the validity of the said espousal is required to be adjudicated upon. In the said endeavour, it is imperative to refer to the imperative statutory ingredient, as become cast in the relevant statute nomenclatured as the Hindu Adoptions and Maintenance Act, 1956 (hereinafter for short called as the Act of 1956). The apposite statutory ingredients are carried in Section 8 of the Act of 1956, provisions whereof become extracted hereinafter.

“8. Capacity of a female Hindu to take in adoption. - Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption: Provided that, if she has a husband living, she shall not

2024:PHHC:113279-DB



adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.”

13. A reading of the above extracted provisions display that for endowing legitimacy qua any adoption of a child, thus made by the parents who profess Hindu religion, rather the takings into adoption of the adoptive child but requires cogent proof becoming adduced that the said takings into adoption of a adopted child, thus become banked upon the bilateral consent of both the marital partners.

14. However, to prove the statutory ingredient (supra), there exists no clinching evidence, whereby the purported adoption of the minor female child, who is evidently staying at the matrimonial home, thus can become construed to become endowed with any legitimacy. Moreover, when there is ditherings at the instance of the present appellant with respect to the minor child becoming so adopted with the prior consent of the present respondent (since deceased), inasmuch as, the present appellant, dithers in projecting that she received the minor child in adoption from the Red Cross Society, Chandigarh, Haryana Branch, but after consent thereto becoming meted by her husband, qua hers subsequently projecting that the child was adopted with the consent of her husband.

15. Consequently, therebys as stated supra, a deep suspicion did etch in the mind of the respondent-husband in the appeal (supra) about the origin of the child. Moreover thereby mental trauma became

2024:PHHC:113279-DB



concluded as aptly done by the learned Family Court concerned, that there arose a necessity of segregating the marital ties entered amongst the parties at contest.

Final Order of this Court.

16. In aftermath, this Court finds no merit in the appeal and with the observation(s) aforesaid, the same is dismissed. The impugned verdict and decree, as passed by the learned trial Judge concerned, is maintained and upheld.
17. No order as to costs.
18. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.08.2024

kavneet singh

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No