

2024:PHHC:170175-DB



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4731-2024 (O&M)

Date of Decision: December 18, 2024

Vipin Kumar

.....Appellant

versus

Meenu

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Yadwinder Singh, Advocate for
Mr. Naresh Jain, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 25.07.2024 passed by learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri (for short the 'Family Court'), whereby, suit for declaration with consequential relief of permanent injunction filed by the appellant has been dismissed.

2. The aforesaid petition had been filed by the appellant, *inter alia*, alleging therein that he being unmarried was searching for a suitable bride and through mediation of relative, namely, Surinder Kumar, his marriage with the respondent was solemnized on 29.01.2017, and out of the said wedlock, a male child was born on 13.12.2017. The parties lived together for sometime, but there was no love between them. On 21.06.2017, the appellant left his office on his motorcycle, but he met with an accident and had suffered grievous injuries, including an injury

on his spine. On 03.07.2017, the respondent created an ugly scene in the rented accommodation at Chandigarh, and when the said fact was brought to the notice of her parents, they did not bother to prevail upon her. Rather, the respondent pushed the appellant in the staircase, as a result of which, he had suffered fracture in his right foot. The respondent forced the appellant to live at Chandigarh and snap all ties with his family, and had even threatened to implicate him and other family members in one or the other criminal case. On 02.08.2017, the respondent left the company of the appellant to go to her parental home, and despite a lot of persuasion and a *panchayat* having been convened, she did not return. This led to filing of a petition under Section 9 of the Act by the appellant. It was further asserted that the respondent was residing at Jagadhri and that the appellant came to know that prior to her marriage with him, she was already married to one Deepak Kumar son of Shri Amar Singh, resident of Village Peer Majra, P.O. Harnaul, Tehsil Jagadhri, District Yamuna Nagar, and that at the time of said marriage, aforesaid Deepak Kumar was alive. It was further pleaded that before her marriage with the appellant, the respondent did not obtain any divorce from her previous husband. Thus, a declaration was sought regarding the marriage of the parties being null and void *ab initio*.

3. Upon notice, the respondent entered appearance and filed her written statement admitting the factum of marriage and birth of the child. It was further asserted that the appellant had treated her with cruelty on account of demand of dowry and in order to save himself from criminal proceedings, he had filed petition under Section 9 of the Act. It was further alleged that at the instance of the respondent, the police had

also initiated proceedings under Sections 107/151/150 Cr. P.C. It was still further asserted that at the time of her marriage with the appellant, the respondent was unmarried, which fact was so mentioned by the appellant in his petition under Section 9 of the Act. It was further alleged that after having been deserted by the appellant, the respondent was residing at her parental house.

4. On the basis of pleadings of the parties, the following issues were framed by the learned Family Court:-

- “1. *Whether the defendant is not legally wedded wife of plaintiff and alleged marriage dated 29.01.2017 is null and void and consequently, the plaintiff is entitled to relief of declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP*
3. *Whether the suit is not maintainable in its present form? OPD*
4. *Whether the plaintiff has no locus-standi to file the present suit? OPD*
5. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
6. *Whether the plaintiff has not come to the court with clean hands from the court? OPD*
7. *Relief.”*

5. In evidence, the appellant appeared as PW1 and had also examined Rameshwar Dass (PW2), Hari Singh (PW3), Kuldeep Singh Chauhan (PW4) and Dharmanand (PW5) besides tendering documentary evidence Exhibits PW1/B to Exhibit P5/1. On the other hand, the respondent appeared as RW1 and had also examined RW2-Meenu, besides tendering documents Exhibits R1 to R29, Exhibit PA and Mark A to Mark C and Mark X.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant, as noticed above.

7. Learned counsel appearing on behalf of the appellant has vehemently argued that once the appellant has placed on record petition under Section 9 of the Act (Exhibit PW1/B) filed by Deepak against the respondent, claiming himself to be her husband, there was no occasion for learned Family Court to discard the case set up by the appellant. While referring to the aforesaid document, it is further argued that in the said petition, a decree of conjugal rights was sought for, and neither there was any denial on the part of the respondent nor did she lead any evidence to rebut the same in the present proceedings. It is further argued that it was specifically pleaded by the appellant, in his suit, that the marriage of the respondent with aforesaid Deepak was solemnized on 22.02.2013, and he had filed the aforesaid petition under Section 9, on 26.07.2013. It is yet further argued that once the said evidence was not rebutted by the respondent, she is presumed to have admitted the factum of her previous marriage. Still further, it is argued that the respondent could not prove on record that she had told the appellant regarding her previous marriage, and hence, the findings recorded by learned Family Court, are not tenable in the eyes of law.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment and decree.

9. The only issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. The appellant had sought declaration to the effect that his marriage with the respondent was null and void *ab-initio*, while pleading the factum of her previous marriage and him being not made aware of it,

either by the respondent or her family members. It is settled law that a party pleading any fact must prove it by way of cogent and convincing evidence. In the instant case, though, the appellant had produced on record a document (Exhibit PW1/B), purported to be a petition under Section 9 of the Act, filed by aforesaid Deepak against the respondent, yet it was found by learned Family Court that the same did not prove existence or performance of marriage by the respondent with said Deepak. It was found that the said petition was filed by aforesaid Deepak on 26.07.2013, but on 05.08.2013, he moved an application and withdrew the said petition. It was thus, found that the respondent was never served in the said proceedings and she had not got any opportunity to rebut the contents of the said petition. Still further, it was found that the said evidence was also considered by the Court while adjudicating upon an application under Order XXXIX Rule 1 and 2 of CPC, when an application for interim injunction moved by the appellant was dismissed on 30.11.2018. Even in the proceedings, under Section 125 of the Cr. P.C., filed by the respondent, it was observed by the Court that the appellant was not able to prove the factum of previous marriage of the respondent. It was, thus, found that the suit filed by the appellant was an attempt to escape his liability in the petition under Section 125 of the Cr. P.C. and FIR registered under Section 498A of IPC.

11. As has been found by learned Family Court, the appellant could not prove the factum of previous marriage of the respondent. Once the appellant had alleged that the respondent had already been married at the time of his marriage with her, the onus was on the appellant to lead cogent, convincing and trustworthy evidence before the Court. The

Family Court has rightly found that document (Exhibit PW1/B) was merely the recitals of petition purported to have been filed by aforesaid Deepak Kumar, but as the said petition had already been withdrawn before the service of any notice upon the respondent, the same was of no worth.

12. We find no error in the findings recorded by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration.

13. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

December 18, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No