

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 117 OF 2024

Haridas Mahadev Sasne

..Applicant

Versus

Tejasvini Krushnat Bhosale

...Respondent

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Mr. Sandeep Koregave, with Pallavi A. Karanjkar, for the Applicant.
Mr. Yuvraj P Narvankar, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 6th MARCH 2025

JUDGMENT :

1. A pivotal question of law which arises for consideration, in this revision application, is: “whether a suit for declaration simpliciter that there is no marital relationship between the plaintiff and the defendant, is maintainable” ?

2. The background facts in which the aforesaid question crops up for consideration can be stated as under:

2.1 The plaintiff and the defendant are residents of the same village. They were acquainted with each other. The defendant took undue advantage of the proximity, and falsely claimed that defendant’s marriage was solemnized with the plaintiff on 21st September 2018 at Janjagruti Matrimonial Alliance Center, Chiplun. Asserting that no valid marriage was ever solemnized between the plaintiff and the defendant and the later was falsely claiming that the plaintiff is the wife of the

defendant, the plaintiff instituted a suit for a declaration that no marriage was solemnized between the plaintiff and the defendant on 21st September 2018 or on any other day, at Janjagruit Matrimonail Alliance Center, Chiplun or at any other place.

2.2 The defendant appeared and resisted the suit.

2.3 The defendant also filed an application for rejection of the Plaint under Order VII Rule 11 of the Code asserting *inter alia* that the plaintiff is seeking a negative declaration that no marriage was solemnized between the plaintiff and the defendant. Such a negative declaration cannot be granted under the provisions of Section 34 of the Specific Relief Act 1963 (“the Act of 1963”). Thus, there was a bar to the Suit seeking negative declaration. Resultantly, the Plaint was liable to be rejected under Order VII Rule 11 of the Code.

2.4 The plaintiff resisted the application for rejection of the Plaint contending *inter alia* that if the averments in the plaint are read as a whole, it cannot be said that the plaintiff is seeking a negative declaration. Moreover, the Suit cannot be said to have been instituted under the provisions of Section 34 of the Act of 1963 only. The plaintiff was entitled to seek declaratory relief under Section 9 and Order VII Rule 7 of the Code *de hors* the provisions contained in Section 34 of the Act of 1963. At any rate, the plaintiff was seeking a declaration as to

her status, and, therefore, the purported bar under Section 34 of the Act of 1963 was inapplicable.

2.5 By the impugned order, the learned Civil Judge was persuaded to reject the application observing that a Suit of the present nature for negative declaration was maintainable. The relief sought by the plaintiff was of a substantive nature. Thus, there was no substance in the application.

2.6 Being aggrieved, the defendant has invoked the revisional jurisdiction.

3. I have heard Mr. Koregave, the learned Counsel for the applicant, and Mr. Yuvraj Narvankar, the learned Counsel for the respondent, at some length. The learned Counsel took the Court through the Plaint, averments in the application for rejection of the Plaint and the reply thereto.

4. Mr. Koregave, the learned Counsel for the applicant, would urge that a person is not entitled to seek a negative declaration under Section 34 of the Act of 1963. It was submitted that the text of Section 34 of the Act of 1963 warrants that the person seeking a declaration must claim to be entitled to any legal character, status or right. A declaration that the plaintiff is not married to the defendant does not fall within the ambit of the main part of Section 34. Moreover, in the case at hand, the plaintiff is seeking a mere declaration without any

consequential relief. Therefore, the proviso to Section 34 of the Act, 1963 precludes the Court from granting a mere declaration. In these circumstances, according to Mr. Koregave, a declaratory suit of the present nature is clearly barred.

5. Mr. Koregave would urge that though there is a conflict of views of the different High Courts on the aspect of maintainability of such a suit, a Division Bench Judgment of Karnataka High Court in the case of **Bhuvaneshwari Vs Revappa Alias Rani Siddaramappa Kolli (Since Deceased) by L.Rs¹** has categorically ruled that a relief seeking negative declaration as to marriage is beyond the scope of the provisions contained in Section 34 of the Act of 1963. The decision to the contrary by Calcutta High Court in the case of **Joyita Saha Vs Rajesh Kumar Pande,²** does not adequately deal with the said aspect. Therefore, the decision in the case of **Bhuvaneshwari** (Supra) commands more persuasive value.

6. In opposition to this, Mr. Narvankar, the learned Counsel for the respondent, would submit that the declaration sought in the instant case cannot be said to be negative in character. Section 34 of the Act of 1963 is not the sole source of a declaratory relief. Section 9 of the Code is expansive enough to include a Suit for declaration that the defendant, who falsely claims to be married to the plaintiff, is not the husband of

1 2009 SCC OnLine Kar 738.

2 AIR 2000 Calcutta 109.

the plaintiff. Therefore, the very premise of the application for the rejection of the Plaint on the count that Section 34 of the Act of 1963 bars a Suit of the present nature, is flawed.

7. Mr. Narvankar further submitted that the judgment of the Karnataka High Court can not be construed to lay down the ratio that a Suit for a declaration that the plaintiff is not married to the defendant cannot be instituted. The controversy in the said case before the Karnataka High Court was regarding the maintainability of a Suit seeking a declaration that the defendant was not the wife of the plaintiff, before the Family Court. Adverting to the provisions contained in Section 7 of the Family Courts Act, 1984 the Karnataka High Court ruled that a relief in the nature of a negative declaration in respect of a marriage does not fall within the ambit of the provisions contained in the Explanation to Section 7 of the Family Courts Act, 1984.

8. Mr. Narvankar further submitted that the Division Bench of Karnataka High Court has made a passing observation that the relief of the instant nature is beyond the scope of section 34 of the Act, 1963. The Court has not considered the issue elaborately. The provisions and precedents which govern the field have not been considered. Thus, the said decision can be said to be a precedent *sub silentio*. To this end, reliance was placed on a Supreme Court judgment in the case of **A-One Granites vs. State of U.P. and Ors.**³.

³ (2001) 3 SCC 537.

9. As a matter of principle, according to Mr. Narvankar, it cannot be said that a suit for negative declaration is not at all maintainable. The Court essentially deals with the legal character, right or status. The form of declaration is not material. Mr. Narvankar placed reliance on a judgment of Andhra Pradesh High Court in the case of **Narhar Raj (died) by L.Rs and Ors. vs. Tirupathybibi and Anr.**⁴ wherein the Andhra Pradesh High Court held that a suit for a relief of negative declaration is maintainable.

10. I have given anxious consideration to the rival submissions canvassed across the bar. To start with, it may be apposite to note the nature and contours of a declaratory decree. A declaratory decree, in effect, cements and strengthens the legal character, right or status a person asserts, and denied by another. A declaration as to legal character or status protects from adverse attacks on title to such right, character or status and obviates further litigation by putting a judicial imprimatur over such right, character or status. Ordinarily a declaratory relief is accompanied by the consequential relief. However, it is not inconceivable that, in a given case, declaration itself assumes the character of a substantive relief. Undoubtedly, in a vast majority of cases, declaratory relief is sought under section 34 of the Act, 1963. However, that is not the sole repository of the power to grant a declaration. A civil Court in exercise of its ordinary civil jurisdiction,

⁴ 2002 SCC OnLine AP 1032.

referable to section 9 of the Code, may grant a declaration *dehors* the provisions contained in section 34 of the Act, 1963.

11. With the aforesaid preface, to appreciate the submissions of Mr. Koregave, it may be appropriate to extract the provisions contained in section 34 of the Specific Relief Act, 1963. It reads as under:-

34. Discretion of court as to declaration of status or right. —

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

12. A bare perusal and convenient dissection of the aforesaid provision would indicate that any person entitled to any legal character or any right in relation to any property, may sue for declaration. The words “character” and “property” are of expansive nature. To illustrate, “character” may include the status and relation qua another person. The character may encompass within its scope an office, privilege and position with regard to a given entity. All attributes which the law vests in a person on account of an office, position, status or relation may fall within the ambit of the term “legal character”.

13. Secondly, the declaration can be sought against any person denying the first person’s title to such character or right, and also against any person interested to deny first person’s title to such legal character or right.

14. Thirdly the proviso to section 34, precludes the Court from granting a declaration simpliciter where the plaintiff though able to seek further consequential relief, than a mere declaration omits to do so. The proviso thus warrants a further inquiry whether in the facts of the case, the plaintiff is able to seek further consequential relief and yet omitted to do so. Obviously the necessity and adequacy of consequential relief, in addition to declaration, would hinge upon the facts and circumstances of each case.

15. The declaration under section 34 of the Act, 1963 is, however, not exhaustive of the power of the civil Court to grant declaratory reliefs. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of **Vemareddi Ramaraghava Reddy and Ors. vs. Konduru Seshu Reddy and Ors.**⁵ wherein the Supreme Court traced the development of the law with regard to declaratory action and enunciated that section 42 of the Specific Relief Act, 1877 (Old), was not exhaustive of cases in which a declaratory decree may be made and the civil Courts have the power to grant such declaration independent thereof. The observation in the paragraph 11 read as under:-

11 In our opinion, s. 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of S. 42 of the Specific Relief Act.

(emphasis supplied)

⁵ AIR 1967 Supreme Court 436.

16. Following the aforesaid judgment, the Supreme Court further expounded the law in the case of **M/s. Supreme General Films Exchange Ltd. vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Ors.**⁶ The Supreme Court enunciated that section 42 of the Specific Relief Act, 1877 merely gives statutory recognition to well recognized type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42.

17. In the light of the aforesaid exposition of law, the edifice of the submission of Mr. Koregave that section 34 of the Act, 1963, bars the declaration, as sought in the instant case, and, therefore, the plaint deserves to be rejected stands dismantled. A civil Court is competent to grant a declaration regarding the marital status *dehors* the provisions contained in section 34 of the Act, 1963.

18. This propels me to the moot question as to whether a negative declaration as to marital status can be granted. First and foremost, from the phraseology of section 34 of the Act, 1963, (extracted above) an inexorable inference can not be drawn that such a negative declaration, cannot be made. As noted above, the term legal character is of wide amplitude. The 'marital status' as a personal attribute and qua a particular person, squarely falls within the ambit of legal character. If a

6 AIR 1975 Supreme Court 1810.

person can seek a declaration that he is legally wedded to the defendant, a *fortiori*, there does not seem any impediment in seeking a declaration that he is not married to the defendant. The negative form of declaration is nothing but assertion of a particular positive marital status. If the defendant denies or is interested in denying such marital status asserted by the plaintiff, a declaration can be legitimately sought under the provisions of section 34 of the Act, 1963 itself.

19. Indeed there seems to be a cleavage in the judicial opinion of the High Courts on the tenability of such a suit for negative declaration as to marital status. In the case of **Bhuvaneshwari** (supra) which constituted the sheet anchor of submission of Mr. Koregave, a Division Bench of Karnataka High Court while deciding the question as to whether a suit seeking declaration that the defendant is not the wife of the plaintiff is maintainable before the Family Court, after considering the provisions contained in section 7 of the Family Courts Act, 1984 which confers the jurisdiction upon a Family Court, held that the relief in the nature of negative declaration in respect of a marriage, is not tenable before the Family Court. After recording aforesaid view, the Division Bench ventured to add that the relief of such nature was even beyond the scope of section 34 of the Act, 1963. The observations in paragraph 22 of the judgment are relevant and hence extracted below:-

22] In fact, we find a relief of this nature is even beyond the scope of Section 34 of the Specific Relief Act as a negative declaratory relief to declare that the marriage had never taken place, is not one that can

come within scope of Section 34 of the Specific' Relief Act. Accordingly, when it is a relief that cannot be granted in law, there is no way the civil court can grant a declaratory relief.

20. Per contra, a Division Bench of Calcutta High Court, in the case of **Joyita Saha** (supra) ruled that since the marriage itself was denied and the prayer was made in the suit for a declaration that there was no marriage between the parties, the suit as framed was quite maintainable in law.

21. The controversy, however, seems to have been settled by a decision of the Supreme Court in the case of **Balram Yadav vs. Fulmaniya Yadav**⁷. In the said case, the High Court of Chattisgarh had allowed an appeal against a decree passed by the Family Court to the effect that the respondent was not the legally married wife, on the ground that a negative declaration was outside the jurisdiction of the Family Court. Referring to the provisions contained in sections 7 and 8 of the Family Court Act, 1984 the Supreme Court held that in case there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative or negative relief. What is important is a declaration regarding marital status. The observations in paragraph 7 are material and hence extracted below:-

7. Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are

7 (2016) 13 SCC 308.

excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.

(emphasis supplied)

22. Mr. Koregave attempted to distinguish the aforesaid judgment by canvassing a submission that the ratio in the aforesaid decision is restricted to the Family Court, and that a civil Court would not be empowered to grant negative declaration as to marital status.

23. The submission simply does not merit countenance. As noted above, the civil Court has power to grant declaratory relief even independently of section 34 of the Act, 1963. The principle that the form of declaration does not matter and it is the status or legal character with regard to which the Court makes the declaration that is of substance, applies with even greater force to the proceedings before the civil Court which has inherent jurisdiction to decide all suits of civil nature unless their cognizance is either expressly or impliedly barred.

24. Lastly, the submission that a suit for mere declaration without any consequential relief, is not maintainable also does not carry much conviction. In a case of the present nature, the declaration about the marital status itself assumes the character of a substantive relief. The plaintiff in such a case is not required to seek any further relief. The

declaration of marital status bears upon the rights and obligations of the parties and also serves the purpose of vindication of legal character.

25. The upshot of the aforesaid consideration is that a suit for a negative declaration that the defendant is not legally married to the plaintiff is maintainable. Consequently, the civil Judge can not be said to have committed any error in rejecting the application for rejection of the plaint.

Hence, the following order.

ORDER

- (i) The application stands rejected.
- (ii) No costs.

[N. J. JAMADAR, J.]