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Court : Punjab and Haryana

Decided On : Mar-24-2014

Appellant : Saini Pushpinder

Respondent : Jagir Singh” by Making Statement in the Court Which Was

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Rs.No.1106 of 2013(O&M) Date of decision: 24.3.2014 Jagir Singh Bassi
.....Appellant(s) Versus Kuljit Kaur and othersRespondent(s) CORAM:-
HON'BLE MR.JUSTICE RAKESH KUMAR GARG * * * Present: Mr.A.S.Gill,
Advocate for the appellant.

Rakesh Kumar Garg, J.

This is plaintiff's second appeal challenging the judgements and decrees of the Courts below whereby his suit for recovery of Rs.10 lakh on the basis of customary divorce deed dated 25.12.2003 and affidavit executed by the defendants, was dismissed.

As per the averments, the plaintiff-appellant filed the suit against the defendant-respondents seeking recovery of Rs.10 lakhs alleging that he was married to respondent No.1 on 1.3.2002 at Sultanpur Lodhi, District Kapurthala, according to

Sikh rites and thereafter, the appellant went to England.

He tried his best to bring defendant-respondent No.1 to United Kingdom, however, she could not get visa permit.

Thereafter, defendant No.1 started causing harassment to the sister of the plaintiff-appellant, namely, Gurbax Kaur alias Baksho by making the false applications to the police and other authorities and also filed a false suit against the plaintiff in the Court.

With the intervention of the villagers of Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh both the plaintiff and defendant No.1, sister of the plaintiff on behalf of the plaintiff and defendant No.1 had entered into a settlement in consultation with the counsel for defendant No.1 Shri Tilak Raj Tandon, Advocate, Nakodar.

As per the said settlement, Sh.

Tilak Raj Tandon, Advocate, Nakodar had got typed a customary divorce deed between the plaintiff and defendant No.1 on 25.12.2003.

Sister of the plaintiff had paid Rs.5 lacs to defendant No.1 in the presence of her father and mother and defendants No.2 and 3 and other respectable persons and her counsel Shri Tilak Raj Tandon, as lump sum amount, for consideration of divorce.

Then, defendant No.1 had signed customary divorce deed on 25.12.2003 and Smt.

Gurbax Kaur @ Baksho, attorney of the plaintiff, had also signed the same on behalf of the plaintiff.

Defendants No.2 & 3, as also father and mother of defendant No.1 had also signed customary divorce deed as witnesses.

As per clause 3 of the aforesaid deed, both the parties had undertaken that they will not initiate any kind of civil as well as criminal proceedings against each other

and if any such proceedings are pending, the same shall be withdrawn and both the parties will file a joint petition under Section 13-B of the Hindu Marriage Act and make their statements in the Court as per settlement dated 25.12.2003.

On the said date, defendants No.2 and 3 had stood guarantors and sureties for conduct of defendant No.1 for payment which plaintiff had made to defendant No.1 through his attorney and they had taken responsibility of defendant No.1 to file petition under Section 13-B of the Hindu Marriage Act and to get statements recorded in the Court as per the customary divorce deed.

They had undertaken that if Kuljit Kaur-defendant No.1 resiles from giving statement then they will pay a sum of Rs.10 lacs to the plaintiff and Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh executed an affidavit to this effect which was duly signed by Sh.

Tilak Raj Tandon, Advocate.

After a few days from 25.12.2003, Smt.

Baksho, attorney of plaintiff, requested the defendants to withdraw the suit titled as Kuljit Kaur versus Jagir Singh.

by making statement in the Court which was pending, but she refused to do so.

The attorney of the plaintiff had approached defendants No.2 and 3 who had taken responsibility as per affidavit dated 25.12.2003.

Defendant No.1 instead of withdrawing the pending case and to file joint divorce petition under Section 13-B of the Hindu marriage Act, filed an application to Senior Superintendent of Police, Kapurthala, against attorney of the plaintiff and others regarding execution of customary divorce deed dated 25.12.2003 which was enquired into by DSP (Special Branch).Kapurthala and found to be false.

Thereafter, defendant No.1 had filed a criminal complaint against the appellant, his mother and sister under Sections 420, 406, 467, 468, 468-A, 471 read with Section 120-B of Indian Penal Code.

Attorney of the plaintiff requested defendant No.1 to withdraw the civil as well as criminal proceedings against the plaintiff and his attorney and also file joint petition for divorce by way of mutual consent but to no effect.

Hence, this suit for recovery.

Upon notice, claim of the plaintiff was resisted by the defendants.

Defendant No.1 in her written statement raised various preliminary objections and it was stated that she never entered into any customary divorce deed dated 25.12.2003 and receipt of Rs.5 lacs from Baksho was also denied.

It was further stated that alleged document was a forged document prepared by Baksho along with others after hatching conspiracy with Sh.

Tilak Raj Tandon, Advocate who was representing her in another case which she had filed against the plaintiff for creating charge Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh on his property which was pending in Court.

She had signed some blank papers at the behest of her counsel Shri Tilak Raj Tandon, Advocate, Nakodar and thus, the plaintiff has no cause of action to file the instant suit against her as the attorney of the plaintiff and defendants No.2 and 3 have prepared a false and forged document.

Defendant No.1 has also filed a complaint against Sh.

Tilak Raj Tandon, Advocate for his professional misconduct, fraud and cheating to the Punjab and Haryana High Court.

The plaintiff was in the habit of cheating.

He had already married with defendant No.1 while having already legally wedded living wife and children.

The name of his living wife is Kulwinder Kaur and Jagir Singh and Jasbir Singh are his sons.

The plaintiff had concealed this fact from defendant No.1 while marrying with her.

The plaintiff has estopped by his act and conduct to file the present suit which was false and frivolous.

Defendant No.1 reserved her right to seek compensation to the tune of Rs.50,000/- from the plaintiff in order to harass her and the plaintiff be burdened with exemplary costs for initiating false proceedings.

All material averments were denied and dismissal of the suit was prayed.

Defendants No.2 and 3 filed a separate written statement stating that the plaintiff has no cause of action and locus standi to file the suit.

It was further stated that they never stood guarantors or sureties for defendant No.1.

They have never executed the alleged affidavit and the same might have been prepared by Baksho, defendant No.1 father and mother of defendant No.1 in connivance with Sh.

Tilak Raj Tandon, Advocate.

They had never appeared before any Oath Commissioner for executing the affidavit and they reserved their right to initiate proceedings against wrong doers. Gurbax Kaur, was not competent to file and present Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh suit on behalf of the plaintiff and the plaintiff has filed a false and frivolous suit and as such, the same was liable to be dismissed with special costs.

On the basis of the pleadings of the parties, the following issues were framed: 1.

Whether there is customary divorce agreement dated 25.12.2003 between the parties?.

OPP2 What is the value of said agreement?.

OPP3 Whether the plaintiff is entitled to recover the amount of Rs.10 lakhs as prayed for?.

OPP4 Whether the plaintiff is estopped by his act and conduct to file the present suit?.

OPD5 Relief.

The suit of the plaintiff was dismissed vide impugned judgement and decree dated 4.6.2010.

However, while dismissing the suit, the trial court decided issue No.1 in favour of the plaintiff holding that Customary Divorce Deed dated 25.12.2003 was executed between the parties.

However, under issues No.2 to 4, it was held that no liability can be fixed upon defendants No.1 to 3.

The relevant paragraphs of the judgement of the trial Court are as under: 16.

In view of specific terms and conditions of customary divorce deed dated 25.12.2003 and facts enumerates deed in preceding para, this court is of the opinion that customary divorce has taken place between the parties the moment Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh Defendant No.1 denied execution of aforesaid deed and her failure to file joint petition under section 13-B of Hindu Marriage Act.

In earlier petition under order 33 rules 1 & 2 Code of Civil Procedure, the plaintiff has rested his claim over aforesaid customary divorce deed and has denied the status of his wife of defendant No.1.

As plaintiff is not conferring any status of wife upon defendant No.1, therefore, he is estopped by his own act and conduct from filing the present suit for recovery of amount from defendants.

Accordingly, no question, to fix liability of any of defendant No.1 arises in the instant suit.

17.

So far as liability of defendants No.2 and 3 is concerned, it is relevant to mention here that there is no clause in Customary Divorce Deed (Ex.

P3) in this regard.

Although, plaintiff proved on record an affidavit (P-4).contents of which provide that defendants No.2 and 3 took responsibility to pay ` 5 lac each in case defendant No.1 escape from given statement but this document is of no avail to plaintiff.

When defendant No.1 cannot be held liable for non completion of Customary Divorce Deed, these defendants cannot be held responsible for any payment as Customary Divorce has already taken Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh place between plaintiff and defendant No.1 and making of statement by defendant No.1 in this regard is not going to affect rights of parties.

Even otherwise, liability of defendants No.2 and 3, on basis of affidavit (Ex.

P4) cannot be affixed because there is no cogent evidence on record to conclude who scribed, signed and attested the affidavit.

Shri T.R.Tandon has stated in his cross- examination that he does not know the parties personally, then there was no occasion for him to identify defendants No.2 and 3 before Oath Commissioner.

The identification of defendants No.2 and 3 is also surrounded by suspicion because Shri T.R.Tandon (PW-3) has stated that affidavit was taken from persons of village Kalaran whereas none of defendants No.2 and 3, is resident of said village.

18.

On the basis of above discussion and after taking into consideration the cumulative effect of facts, circumstances and evidence available on record, this court is of the opinion that divorce between the parties has already taken place in view of specific terms and conditions Customary Divorce Deed dated 25.12.2003, hence customary divorce deed is on no consequence for Plaintiff in the instant suit for recovery against defendants.

Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh Hence, all these issues are decided against the plaintiff and in favour of the defendants.

The appeal filed against the aforesaid judgement and decree of the trial Court on behalf of the appellant was also dismissed vide impugned judgment and decree dated 6.10.2012.

Still not satisfied, the plaintiff-appellant has filed the instant appeal submitting that the following substantial questions of law arise in this appeal: i) Whether the documents Ex.P3 could be considered as document of divorce without filing of joint petition under section 13-B of Hindu Marriage Act for Dissolution of their marriage?.

ii) Whether the courts below have totally misread and misappreciated Ex.P3 and the same has resulted in miscarriage of justice?.

iii) Whether the documents Ex.P3 and affidavit Ex.P4 have to be read jointly?.

iv) Whether in the facts and circumstances of the instant case, the approach of the courts below can be sustained in the eyes of law?.

v) Whether the courts below have mis-read and mis-appreciated the evidence on record and have drawn wrong inference from proved facts by applying the law erroneously?.

vi) Whether the courts below have ignored the material evidence and have acted on no evidence Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and

integrity of this document High Court Chandigarh while passing the impugned judgments?." Learned counsel for the appellant has vehemently argued that the Courts below have not appreciated the documents Ex.P-3 and P-4 execution of which have been duly proved on record.

It was further contended that there is overwhelming evidence to prove that defendant No.1 had resiled from compromise Ex.P3 and as such, she was liable to return Rs.5 lacs deceitfully taken by her from the attorney of the plaintiff at the time of execution of deed Ex.P3.

It has been further contended that defendant No.2 and 3 had taken guarantee on behalf of defendant No.1 for implementation of terms and conditions contained in Ex.P3 and on her failure to fulfill her obligation, created vide Ex.P3, they were liable to be pay as the terms of the said document have been violated and the pending civil and criminal litigation between the parties has not been withdrawn and on the other hand, defendant No.1 was filing fresh complaint/suit against the plaintiff and his attorney and in view thereof, the impugned judgements and decrees of the Courts below are liable to be set aside.

At the outset, it may be noticed that reasoning given by the trial Court as well as the Lower Appellate Court cannot be upheld at all.

The plaintiff has set up a case of customary divorce agreement.

There is no evidence on record that such a custom is prevailing in the State of Punjab.

Not only this, it could not be proved on record that attorney of the appellant Smt.

Gurbax Kaur was competent to execute any such customary divorce agreement with defendant No.1.

A perusal of the copy of GPA in favour of Gurbax Kaur is also on record, however, the same does not show that she had any such power to execute the agreement on behalf of the plaintiff-appellant giving the divorce to defendant No.1.

Further it Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh could not be brought before this court as to how the divorce agreement could be legally made by the attorney of the appellant on his behalf for mutual divorce.

In view of the aforesaid discussion, this Court finds no merit in this appeal as the suit filed on behalf of the appellant itself is misconceived.

No other point urged.

No substantial question of law, as raised, arises in this appeal.

Dismissed.

March 24, 2014 (RAKESH KUMAR GARG) ps JUDGE Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh CM No.2953-C of 2013 in Rs.No.1106 of 2013 Jagir Singh Bassi Versus Kuljit Kaur and others Present: Mr.A.S.Gill, Advocate for the applicant-appellant.

Application is allowed subject to all just exceptions.

March 24, 2014 (RAKESH KUMAR GARG) ps JUDGE Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh Saini Pushpinder 2014.03.27 16:26 I attest to the accuracy and integrity of this document High Court Chandigarh

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