

Basanti Sethi Vs. Paramananda Sethi

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Court : Orissa

Decided On : Dec-02-2014

Appellant : Basanti Sethi

Respondent : Paramananda Sethi

Judgement :

ORISSA HIGH COURT : CUTTACK MATA No.24 of 2014 In the matter of an application under Section 19(1) of the Family Court Act, 1984. -----Basanti Sethi Appellant -VersusParamananda Sethi Respondent For Appellant : M/s. S.K. Tripathy, and A.K. Mishra. For Respondent : M/s. S.K. Mishra, J.Pradhan, D.K. Pradhan and S.K. Rout. PRESENT: THE HONOURABLE SHRI JUSTICE VINo.PRASAD AND THE HONOURABLE SHRI JUSTICE PRAMATH PATNAIK

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of hearing : 28.10.2014 Date of judgment : 02.12.2014

Pramath Patnaik, J.This appeal has been filed under Section 19(1) of the Family Court Act, 1984 challenging the legality and propriety of the judgment and order dated 07.02.2014 passed by the learned Judge, Family Court, Puri in Civil Proceeding No.368 of 2010 allowing the 2 proceeding instituted by the present respondent thereby declaring that the present appellant is No.the legally married wife of the present respondent.

2. The factual background of the case is that both the appellant and respondent are governed by Mitakshara School of Hindu Law and both of them belong to

Scheduled Caste category. The brother of the respondent Purna Chandra Sethi married to the sister of the appellant namely Sukanti Sethi and accordingly the appellant is related to the brother of the respondent as sister-in-law. Being the sister-in-law she was most of the time coming to the house of the respondent and during that period, between respondent and the appellant, cupid relationships developed and ultimately on 18.11.1992, they got married in presence of Purohit, Barik and gentleman and since then, the appellant, being the wife of the respondent started permanently residing in the house of the respondent at village Dekhata along with other in-laws relatives. The couple were also blessed with a son namely Prasanta @ Alok Sethi. Admittedly the respondent is working as a Stenographer at Regional Research Laboratory, Bhubaneswar for which most of the time he used to stay at Bhubaneswar. While staying at Bhubaneswar, respondent developed extra marital relationships with another girl Seba Sethi and married her in 1994. Because of aforesaid fact 3 dissensions and misunderstanding arose between the appellant and respondent and appellant was even subjected to torture by the respondent and other in-laws relatives. She, however, endured such ill treatment with a hope that the matter would be settled, but when the situation became very precarious and unbearable, left with no alternative, she lodged F.I.R. before the I.I.C., Nimapara Police Station basing on which Nimapara P.S. Case No.13 of 2000 was registered under Sections 498(A)/494/34, I.P.C. corresponding to G.R. Case No.481 of 2000 in the court of learned J.M.F.C., Nimapara, where the trial is on the final stage. In the year 2002 the appellant filed an application in the court of learned J.M.F.C., Nimapara under Section 125, Cr.P.C. vide Misc. Case No.28 of 2002. After perusal of the relevant materials on record, on 02.05.2007, learned Magistrate has been pleased to allow the application of the appellant inter alia directing the respondent to pay monthly maintenance of Rs.1,000/- to the appellant and Rs.500/- to his son from the date of filing of the application i.e., from 10.05.2002. Challenging the said order passed by the learned J.M.F.C., Nimapara in Misc. Case No.28 of 2002, the respondent preferred Criminal Revision No.602 of 2007 before this Court which was dismissed on 18.02.2013. The respondent had also filed a suit in the court of 4 learned Judge, Family Court, Puri vide C.P. No.368 of 2010 inter alia praying to declare that the appellant defendant is No.his legally wedded wife and is a stranger him.

3. Appellant wife contested respondents suit/case by pleading that she was the legally married wife of husband, (respondent in this appeal) and she had married on 18.11.1992, and the marriage ceremony was performed as per the terms and conditions of the Hindu Marriage Act as Dwarbaha. in presence of purohit, Barik, gentleman, guests and family members of both the parties. After their marriage, she resided with the respondent along with other family members and blessed with a son. Wife appellant in that suit/application had admitted that she is the younger sister of Sukanti Sethi and that husband was working as a Stenographer and used to stay most of the time at Bhubaneswar. Taking advantage of her absence at Bhubaneswar, the respondent married another girl without her consent and knowledge. She denied the allegation that due to previous grudge between the respondent and Purna Chandra Sethi (brother of the respondent) she was being used as conduit against the respondent and falsely filed maintenance case and G.R. case against the respondent claiming herself as his wife. 5 4. Learned Judge, Family Court, Puri framed the following issues for determination on the basis of pleadings of both the parties: Issue : (i) Whether the suit is maintainable ?. (ii) Is there any cause of action to file this case by the petitioner. (iii) Whether the declaration can be made to the effect that the respondent is never legally married wife of the petitioner, rather she is stranger to him ?.

5. In order to substantiate his case husband applicant examined four witnesses including petitioner as P.W.1 and his elder brother as P.W.2. Three witnesses were examined by the respondent wife including herself as R.W.1. List of documents from Exts.1 to 11 has been filed on behalf of husband respondent and the wife, present appellant, filed Exts.A and B.

6. Learned Judge, Family Court, Puri relying on the evidences on record filed by both the parties has been pleased to allow the prayer of the husband petitioner declared that respondent/present appellant is No.the legally married wife of the applicant husband, respondent in this appeal vide judgment and order dated 07.02.2014, passed in concerned C.P. No.368 of 2010. 6 7. Being aggrieved by the aforesaid judgment and order, the appellant has assailed the said order on the ground of illegality and No.application of judicial mind.

8. Learned counsel for the appellant has contended that learned Judge, Family Court, Puri has erred in law in No.taking into consideration the order passed by the learned J.M.F.C., Nimapara in Misc. Case No.28 of 2002 dated 02.05.2007 which was filed by the petitioner-appellant under Section 125, Cr.P.C. wherein the learned J.M.F.C., Nimapara directed the respondent to pay monthly maintenance of Rs.1,500/- to the appellant and her son. The said order being challenged by the respondent vide Criminal Revision No.602 of 2007 which has been dismissed by this Court vide order dated 18.02.2013. So the order of the learned J.M.F.C. under Section 125, Cr.P.C. has attained its finality. The same was No.considered and was No.taken into consideration by the learned Judge, Family Court, Puri. Learned counsel for the appellant further submits that the factum of marriage having gone into by the learned Magistrate under Section 125, Cr.P.C. has No.been considered by the learned Judge, Family Court, Puri. That the relevant document more particularly Exts.A and B filed by the 7 appellant respondent relating to mention of the present respondent as father of Alok Sethi has No.been taken into consideration rather the voter list of 1995 and 2001 as Exts.5 and 6 have been given undue importance thereby discarding the genuine claim of the appellant respondent resulting in the miscarriage of justice. Learned counsel finally submits that the impugned judgment and order dated 07.02.2014 passed in C.P. No.368 of 2010 is No.only illegal but also against the weight of evidence on record.

9. Learned counsel for the respondent has strenuously urged and vehemently contended that in view of the pleadings of the parties and more particularly when the appellant defendant claims herself to be the legally married wife of the plaintiff respondent the initial burden of proof was always upon her to establish her marriage with that of the plaintiff respondent as per the decision reported in 2006 (I) CLR SC 739. He further submits that both the oral evidences and the documentary evidences clearly suggests that the appellant respondent was never married to the plaintiff either on 18.11.1992 or on any other date and the child never belongs to the plaintiff respondent. Learned counsel for the respondent further reiterates that this Court in exercise of power under Order 41 Rule 8 33, C.P.C. can decide as to whether the respondent has been able to discharge his burden that the appellant is No.the legally married wife of the respondent and as to whether the conclusion of the learned court below is correct or No.?.

10. In the instant case, as contended by learned counsel for the respondent that the respondent has fully discharged his burden through both oral and documentary evidences, therefore while defending the

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of the learned Judge, Family Court, Puri, learned counsel for the respondent has submitted that there is no legality in the conclusion arrived at by the learned court below.

11. On perusal of the lower court records and pleadings of both the sides, the moot question to be determined is as to whether the appellant is the legally married wife of the respondent so as to set aside the judgment of the learned Judge, Family Court, Puri. After scanning through the oral/documentary evidences from both the sides, we have bestowed our anxious consideration to the issue relating to factum of marriage. Learned Judge, Family Court, Puri has put onus and the burden of proof on the appellant to prove the factum of marriage. When the respondent plaintiff has instituted the suit for declaration that the appellant is No.the legally married wife, it was incumbent upon the respondent plaintiff to prove that the 9 marriage was never solemnized between the parties No.Prasanta @ Alok Sethi was born out of their wed-lock. Moreover, learned Judge, Family Court has brushed aside the contention of the appellant and the documents exhibited by the appellant, i.e, Exts. A and B which are very much part of the record has No.been taken into consideration resulting in erroneous appreciation of factual matrix and facts and circumstances of the case.

12. It is no more res-integra that the burden of proof rest upon the party who alleges or claims the factum of marriage. Learned Judge, Family Court, Puri seems to have lost sight of the fact that the factum of marriage has never been disputed by the present respondent as has been observed by the learned Magistrate in the matter under Section 125, Cr.P.C. and two important documents filed by the present appellant as Exts.A and B could have thrown light on the veracity/genuineness of the factum of marriage but in the impugned judgment/order no whisper/discussion has been made relating to the aforesaid documents rendering it to be infallible and unsustainable suffering from vice of

non-consideration of significant evidences tendered by one party.

13. After careful consideration, we are of the considered view that the impugned judgment and order of the learned Judge, Family 10 Court, Puri passed in C.P. No.368 of 2010 is No.legally sustainable and liable to be set aside and accordingly the same is set aside and we remit the matter back to the learned Judge, Family Court, Puri to decide the application/case afresh taking into consideration the documents, more particularly, Exts. A and B filed by the appellant/respondent strictly in accordance with law within a period of four months from the date of receipt of certified copy of this order. While deciding the proceeding learned Judge, Family Court, Puri shall No.be influenced by any observation made in this appeal and shall adjudicate the proceeding independently in consonance with law. The MATA is accordingly disposed of. .. Pramath Patnaik, J.ViNo.Prasad, J.I agree. .. ViNo.Prasad, J.Orissa High Court, Cuttack, Dated the 2nd December 2014/KCBISOI, Secy. 11

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