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Court : Mumbai

Decided On : Feb-20-1987

Reported in : 1987MhLJ174

Judge : Petel, J.

Acts : Hindu Marriage Act, 1955 - Sections 12 and 15

Appeal No. : Second appeal No. 282 of 1985

Appellant : Lata

Respondent : Vilas

Advocate for Def. : A.P. Deshpande, Adv.

Advocate for Pet/Ap. : R.K. Deshpade, Adv.

Judgement :

1. The respondent- husband instituted original petition on 7th March 1984 for a declaration that the marriage with the appellant wife was a nullity under subsec.(1) (d) of S. 12 of the Hindu Marriage Act (Herinafter referred to as 'the Act') on the ground the the appellant-wife ar the was time of marriage pregnant by some person other than the respondent-husband. The appellant-wife contested the prceedings, but evntually the petition filed by the respondent-husband was allowed by the IIIrd Joint Civil Judge, senior Division Nagpur who by his judgment and

decree dated 3-5-1985 declared the marriage between the parties as null and viod. The appellant feeling aggrieved by the judgment and decree filed regular Civil Appeal No, 436 of 1985 on 19th July, 1985 before the Iind Additioal District Judge, Nagpur Before the appeal could befiled the respondent-husband married one Miss Sarita daughter of Laxmnoaro Modak on 27the June, 1985 The respondent-husband raised a preliminary objection (Ext.9) in te appeal preferred by theappellant wife contending that after passing on the judgment anddecree dated 3rd May, 1985 by the trial Court he married one Sarita daughter of Laxmanrao Modak, residernt of Nagpur on 27the June, 1985. It was further asserted in the application that when the marriage was solemnised on 27th June 1985 there was no impediment against the respondent-jusband incontracting the said marriage since the parties to the appeal were legated to the position as if there was no mariage between them and as such the marriage solemined on 27th June, 1985 was legaland valid with the consequence that the appeal filed by the appellant was not tenable having been rendered infructionus.. The Iind Additonal Distric Judge, Nagpur vide his order dated 17the August, 1985 allowed the application (Exh, 9) and dismissed the appeal with a direction to the parties tobear their respective costs. It is this judgment and decree which is now impugned in theis second appeal.

2. The question which falls for determination is, whether the re-marriage of the respondent-husband with Miss Sarita daughter of Laxmanrao Modak before filing of regular Civil Appal NO, 436 of 1985 renders that appeal infructuous.

3. Shri R. K. Deshpande. Advocated the learned counsel for theappellant contended that althout S. 15 of the Act does not specidically mention of annulment of marriage by a decree f nullity yet inview of the observaitons Chandra Mohini v. Avinash Prasad, AIR 1967 SC 581, the principle laid down in S. 25 of he Act would still be applicable in cases where the marriage had been annuled. In support of the contention reliance was also placed on the decision in Vathsala v. V. Manoharan, : AIR1969 Mad405 , On the other had Shri .A. P. Deshpande, Advocate appearing for the respondent contended that since the decree passed was one of the annulment of the marriage under S. 12 of the Act, the provisions of S. 15 or for that matter eventhe principle laid down therein wil lhave no application

whatosoever. Section 15 of the Act applies only in cases where the marriage was dissolved by divorce and not in the case whee the marriage was annulled. Sonsequentlyno bar was created frothe respondentto marray against after ontaining the decree of nullity from the trial Court. In this connection reliance was placed ontwo reported decisions of Promod Sharma v. Radha, and Jamboo Prased, v. Malti Prabha, : AIR1979 All260 He also referred to the decision of the Supreme Court inChandra Mohin's case AIR 1967 Sc 581 (cited supra) and urged that the obsservationns contained therein had application only in respect of dissolution of marriage of divorce.

4. the first question which invited my attention is tofind ot whether S. 15 of the Act of the principles underlying there under can apply ina case where the decree of annulmentof marriage has been passed under S. 15 of the Act would reveal that it shall be lawful for eigher party to marry again whose marriage had been dissolved by a decree of divorce of the following circumstances. Firstly, where there is no right of appeal against the decree of divorce secondly if there is such a right of appeal the time for tiling the appeealhas expired without any appeal having been presented and thirdly if there is such a right of appeal and an appeal has been presented on dismissal of the appeal Clearly enough S. 15 of the Act does not create any express bar to the decree of divorce is passed but any suchmarriage would not be lawful unless it took place after one of the three circumstances mentioned above. The Supreme Court ina subsequent decision in Lila Gupta V. Laxmi Narain, : [1978]3SCR922 held that the marriage contracted incontravention of or violation of the provisions of S. 15 is not void but merely invalid not affecting the marriage.

5. The Hindu Marriage Act classifies marriages as void voidable and valid. Under S. 11 of the Act any marriage solemnised after the commencement of the Act shallbe null and viod and may, on a petition presented by either party there tobe so decleared by a decree of nullity it if contravenes any of he conditios mentioned in cls. (I),)(iv) and (v) of S. 5 while undr S. 13 of the S. 12 the Act anymarriage solemnised whether before or after comencement of the Act, shall be voidable andmay be annulled by a decree of nullity of any of the grounds mentioned ilnthe section. Where the law on the ground of public policy has prohibed certain

marriages the marriages are hence said tobe void . Such marriages are hence said tobe void ab initio as if no marriage has taken place. On the other hand voidable marriages are valid until avoided. Where impedimant existed at thetime of the marriage thelaw permits it's a avoidance by the parties if they or any of them so choose When so avoided they are annulled by a decree of nullity whichmeans of if their marriage was void ab initio. However, when once a valid marriage has been performed, the law does not permit it's a avoidance No decree of nullity can be pased in respect of it. It canonly be dissolved by a decree of divorce subject of theprovisionns of S. 14 on the grounds stiputated in S. 13.

6. Section 15 of the Act has been specifically made applicable in cases of decree for divorce. No provision similar of S. 15 is to be found intheAct, whichcould be made applicable to a decree of nullity annulling the marriage. What remains to be determined is theeffect of the observations made by their Lordships of the Supreme Court in Chandta Mohini' case AIR 1967 Sc 581 (cited supra) not withstanding the imission in the Act.

7. The Supreme Court was dealing with the case for dissolution of the marriage under S.s 13 of the Act. A suit was filed by Shri A viansh Prased against his wife Smt. Chandra for a decree of divorce or in the altermative, it was prayed that a decree for judicial separation be granted The trial court dismissed the Petition. The husbane Avinash filed an appeal before the High Court. The saidappeal came to be allowed and the appellant Avinah was granted a decree for dissolution of the marriage., After marriage was dissolved by the High court the husband Avinash married another woman. The wife Chandra Filed Special Leave Petition to the Supreme Court against the decree for dissolution of the marriage and whichcame to be granted Sometime later the husband A vinashmade an application to the Supreme Court that the special leave granted by the Suprem Court should be revoked as he had already married another woman and a sonwas also born out of such wedlock. The necessity to revoke special leave was emphasisted because the child born should not become illegitimate. In these circumstances the Supreme Court held as follows.

'It is true that S. 15 does not in terms apply to a case of an application for special leave tothis Court. Even as we are to opinion that the party who has wonin the high Court and got a decree of dissollution of marriage cannot by marrying immediately after the High Court's decree and thus take way form the losing party the chance of presenting an application for special leave. Even though S. 15 may not apply in terms and it may not have been unlawful for the first respondent tohave married immediately after the High Court's decree for no appeal as of right lies formt he decree of the HighCourt tothis Courtin this matter we still think that it was for the first respondent to make sure whether an application for special leaver had been filed inthis court and the couldnot by marrying immediately after the High Court's decree deprive that appellant of the chance to present a special leave petition to this court. If's person does so he takes a risk and cannot ask the court to revoke the special leaver onthis ground.

There isno doubt that the observations made by the Supreme Court are binding on this court. The obly question is whether theobservations apply tothefacts on the present case. The observations of the Supreme Court are in relation to a case of dissultion of marriage that a supose can lawfully marry only when ther eis noright of appeal against a decree dissolving marriage of it there is a right of he time ofr filing the expored. Or id theappealhas beenpresented it had beendismissed. A party who was successful In theHigh Court andhas obtained the decree dissolution of marriage cannot remarry immediately there after thous taking away from the losing party the chance for preseting the special leave petition to the Supreme Court. The case inhand is one of annulemnt of marriage uner S. 12 of the Act where the marriage betweenthe parties has beendeclard as a nulity and remarriage of either party of not barraed either under S. 15 or any other provision of the Act. Division Bench of Madhya Pradesh HighCourt in para 9 of its Judgement inMohsan Muraru v. Kusumkumari : AIR 1965 MP194 held that the wife having remarried during pendency of the appeal; filed by the husband the appeal had become infructions since the original petition was filed under S. 12 of the Act and hence S.s 15 had no application. This was the view taken byteh Court much before Chandra Mohini's case AIR 1967 Sc 581 (cited Supra) wa decided. The Punjab and Haryana High Court in Pramod Sharma's case (cited supra) while considering a case under S. 12 of the Act adopted similar view that a party whose

marriage has been annuled can remarry and the apeal filed against the decree of annulment after the remarriage is rended unfructuous. In yet another case the High Court of Allahabad on Jamboo Prased's case AIR 1979 ALL 20)cited supra) held that S. 15 of the Act only applies in cases of dissolution of marriage by a decree of divorce. The said judgment also reles that there is noting in S. 15 of itself to show that it applies even as regards a decree passed for annulment of marriage under S. 12 of the Act. The Supreme Courts case of Chandra Mohin was also considered both in Pubjab and Haryana case of Pramod Sharma and Allahabad case of Jamboo Prased and either of the cases expressed that the observations made in the Supreme Court case cannot have any application to a case of an annulment of marriage unde S. 12 of the Act.

8. In contract the Madras High Court in Vathsala v. Mancharan, : AIR1969 Mad405 also (cited supra) however, followed the observationns of the Supreme Court in Chandra Mohini's case A AIR 1967 Sc 581 in a case under S. 12 of the Act In that case the Coury held that onve anexparte decree is setasie, thesuit proceeds and the remarriage willnot render the application for setting aside exparte decree infructions. While respect I am unable toshare this view taken by the learned Judge of that Court.

9. Upon consideration of the matter it. Is crytal clear S.s 15 of the Act or the principles there under has been made applicable to cases of dissolution of marriage by divorce. The provisionns of S.s 15 or the principles thereunder cannot apply tocases where the decree of nullity annulling the marriage is passed. It seems that a decree of dissolution of marriage standds on a different footing than a decree for annulment of marriage the basic differnce being that the former postualtes a valid marriage whichfor happening of subsequent events requires to be dissolved whereas thelatter case postuale a voidable marriage and upon such marriage being decleared viod the parties are relegated tothepositionas if there was no marriageas void the parties tosuch a marriage would be free tocontract fresh marriage in theabsence of any legal incomptency in their way. The respondent remarried after having obtained the decree of nullity annuling his marriage with the appellant. He was perfectly within his right todo so. If a at all appellant wanted the status quot to be preserved till final decision in appeal she

should have obtained stay of the decree or a prohibitory order restraining the respondent from marrying again formthe very court which granted thedecree for annulling the marriage In the case absence of such anorder th respondent was no more thehusband of the appellant and there was no provsion of law which created any impediment inthemarriage. Such a marriage was a valid marriage as long as the provisions of S. 5 are not violated. It cannot be annulled or dissolved on the ground that it was contracted before the appeal was filed challengint the decree of nullity annulling the marriage., The marriage also cannot be affected by the ultimate decision in appeal Unfortunately for the appellant thelaw has no made nay provision for such a contingency analogous to S. 15 of the AC. In such an eventuality, there to no difficult inholding that the appeal filed by theappellant after-re-marriage of the respondent was infructuous and was rightly dismissed as such by the learned Additional District Judge Nagpur.

10. In the result the appeal is without any merit and is accordingly dismissed without any order a to costs. In the circumstances, the Civil Application No. 1030 of 1986 claiming maintenance pendente lite and expenses of the preceedings also stands rejected.

11. Appeal dismissed.