

Krishneshwari Varshney Vs. Ramesh Chandra Varshney and ors.

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Court : Allahabad

Decided On : May-06-1964

Reported in : AIR1965All228

Judge : S.C. Manchanda, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 3 and 19; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35, 96 and 100 - Order 41, Rule 22

Appeal No. : Second Appeal No. 598 of 1963

Appellant : Krishneshwari Varshney

Respondent : Ramesh Chandra Varshney and ors.

Advocate for Def. : S.P. Kumar, ;Lajpat Rai, ;Dhurva Narain and ;G.P. Bhargava, Advs.

Advocate for Pet/Ap. : Deoki nandan Agarwala, Adv.

Disposition : Appeal dismissed

Judgement :

S.C. Manchanda, J.

1. This is a plaintiff's second appeal from the order of the District Judge, Moradabad, dated 16th Oct. 1962, confirming the dismissal of her suit.

2. Smt. Krishneshwari Varshney had filed the suit giving rise to this appeal and claimed the following reliefs:

(A) It be declared that the plaintiff is the lawfully wedded wife of defendant No. 1.

(B) The defendant No. 1 be permanently restrained from contracting any subsequent marriage during the subsistence of the plaintiff's marriage and other defendants be restrained from bringing about and participating in the second contemplated marriage of defendant No. 1 with defendant No. 5.

(C) That the defendant No. 1 be ordered to perform conjugal and marital rights as a husband of the plaintiff and in case of refusal a decree for restitution of conjugal rights be passed against him.

(D) That the costs of the suit be taxed against the defendants.

(E) That any other relief, which may be beneficial to the plaintiff over and above the reliefs claimed as deemed just and equitable be granted. The suit was valued at Rs. 5,000/- for declaration of relief A; at Rs. 250/- regarding permanent injunction and Rs. 250/- for the relief of restitution of conjugal rights.

3. The suit was filed in the Court of the Civil Judge, Moradabad. The contesting defendant-respondent by paragraph 10 of his written statement challenged the jurisdiction of the Civil Judge and averred that the suit being one for restitution of conjugal rights ought to have been filed before the District Judge under the Hindu Marriage Act, (25 of 1935) (hereinafter referred to as the Act). Issues were struck, but neither the plaintiff nor the defendant pressed for an issue on the question of the Jurisdiction of the civil Court to try this suit. Both parties led evidence and after a protracted trial the Civil Judge dismissed the plaintiff's suit holding that there was a love affair between the plaintiff and the defendant No. 1 but the factum of marriage had not been satisfactorily proved.

4. On appeal therefrom, the District Judge confirmed the finding of the Civil Judge, and as such the finding that no marriage had taken place was clearly one of fact and binding on this Court in second appeal.

5. Mr. Deoki Nandan, the learned counsel for the appellant has, therefore, very properly not sought to challenge this finding of fact but has attempted to salvage the case by raising the question of the Jurisdiction of the Civil Judge to try the suit. His contention was that as the main relief was for restitution of conjugal rights, and after the passing of Act 25 of 1955, which was an Act meant to codify the law relating to marriages amongst Hindus, the suit could only have been filed by way of a petition for restitution of conjugal rights under Section 9 read with Section 19 of the Act. According to him, the other relief for a declaration that the plaintiff was the lawfully wedded wife of the defendant could not have been sought by means of a separate suit as the larger relief of restitution embraced the smaller relief as to the validity of the marriage.

It was further contended that a 'petition', as required by Section 19 of the Act, could only have been filed in the Court of the District Judge and not in the Court of the Civil Judge as the Civil Judge though notified as a 'District Court' under the provisions of Section 3(b) of the Act was nevertheless not the 'District Court' within the local limits of whose ordinary original civil Jurisdiction the marriage was solemnized as required by Section 19 of the Act. Great stress was placed on the word 'ordinary' which obtained in Section 3(b) of the Act.

The argument was that the Civil Judge was undoubtedly a Court of ordinary original civil Jurisdiction within whose local limits the marriage was solemnized but matrimonial Jurisdiction was not the 'ordinary original Jurisdiction' of that Court. Lastly it was urged that the application moved in this Court to withdraw the suit with permission to file a fresh petition under the Act should be allowed as the findings of the Civil Judge and confirmed by the District Judge, on appeal, were all without jurisdiction and non est.

6. Mr. G. P. Bhargava, the learned counsel for the respondent, on the other hand, contended that two of the three reliefs claimed and in particular the one for a declaration that the plaintiff was the legally wedded wife of the defendant, and which was valued by the plaintiff at Rs. 5,000/-was one which was clearly cognizable by the Civil Judge in the exercise of his original civil jurisdiction. The relief restraining the defendant No. 6 from marrying was also a relief which could

be sought from the civil Judge. The relief for restitution of conjugal rights, according to him, was only incidental thereto and as such the provisions of the Act would be inapplicable and the suit therefore had rightly been filed in the Court of the Civil Judge.

It was further contended that notwithstanding the plea taken by the defendant respondent, in paragraph 10 of the written statement that the suit did not lie because of the provisions of the Act, the plaintiff had persisted in pursuing the suit before the Civil Judge and she had raised no objection on appeal before the District Judge which, clearly amounted to a deliberate act on her part in filing the suit before the Civil Judge and now that the two Courts had given concurrent findings against the plaintiff she cannot be allowed to turn round, take a somersault and say that she was wrongly advised and therefore should now be permitted to file a fresh petition. The suit, therefore, according to Mr. G. P. Bhargava the learned counsel for the respondent was properly filed in the Court of the civil Judge.

Even assuming for the sake of argument that the provisions of the Act applied and no suit could have been filed, then too according to Mr. Bhargava, the particular Civil Judge, who had been specially notified under Section 3 (b) of the Act, as the 'District Court' for the purposes of Act, was fully competent to try the suit under the Act and would have jurisdiction both under the general and special law to decide the issues raised before him and, having done so the technicality that a 'petition' and not a 'suit' had been filed would not be sufficient to render his decision as non est or one wholly without jurisdiction.

7. On the respective contentions raised by the parties, the main question which falls for consideration is whether the Judgment and decree or the Civil Judge can be treated as being wholly without jurisdiction and therefore non est, which would justify this Court in giving permission to the plaintiff' appellant to withdraw the present suit with permission to file a fresh petition and thereby to put the clock back to 1957?

8. The dispute which arises in this case is an unfortunate one as it arises between two young people, who at one time were fond of each other and pressure tactics

on one side or the other have landed them in this fruitless and unpleasant litigation. I am, however, not called upon to go into the merits of the relevant allegations on the question of matrimony and the question of jurisdiction is all that I have to decide.

I have heard the parties and have come to the conclusion that the present suit even if it was filed under the general law in the Court of the Civil Judge, and not under the Act yet as all the requirements for conferring jurisdiction upon mm under the Act were also satisfied inasmuch as the notification had issued appointing this Civil Judge, inter alia, as the 'District Court' under Section 3(b) of the Act, the judgment and decree passed by him cannot be treated as one without jurisdiction and non est. The technical plea that what was filed was a 'suit' and not a 'petition' and further that there was no averment made as to the absence of collusion or connivance, cannot possibly affect the substance and reality of the matter nor the judgment and decree given by the Civil Judge after a vigorous contest between the parties. The absence of a specific averment of collusion or connivance between the parties as required under the Act, at best IS a mere irregularity which must be taken to have been cured by the tooth and nail fight put up by the parties right up to this Court. Nobody in these circumstances can possibly attribute or suspect that the suit was filed as a result of collusion or connivance between the parties.

The view that I am taking is supported by a DIVISION Bench decision of the Bombay High Court in Peter Philip Saldanha v. Anne Grace Saldanha AIR 1930 Bom 105 where a suit on the original side of the Bombay High Court for a declaration as to the validity of the marriage and restitution of conjugal rights was filed before a judge, who also had matrimonial jurisdiction, it was held to be validly instituted and that such suit could be treated as a petition under the provisions of the Indian Divorce Act 1969. Blackwell, J. who gave the leading judgment disposed of the objection that the prayer for relief was contained, not in a 'petition' under the matrimonial jurisdiction of the High Court but by means of a 'suit' by observing :

'In my opinion the facts that the relief claimed in this case was not claimed in a petition and that the suit was not entitled 'Matrimonial Jurisdiction' are mere technical defects in no way going to the root of the jurisdiction. In my judgment, in A suit of this particular character, the suit being one for a declaration that the plaintiff was the lawfully wedded wife of defendant 1 and for an order for restitution of conjugal rights the prayer in the plaint asking for restitution of conjugal rights can properly be treated as a petition, and inasmuch as the necessary facts were proved to justify such an order, as was admitted, the learned judge, in my opinion, had jurisdiction to pass THE order, and the fact that the suit was not headed 'Matrimonial Jurisdiction' is immaterial.'

9. Mr. Deoki Nandan, next, contended that the Act required that the petition should be filed only in the Court of the District Judge, who could have kept the case on his own file or have transferred it to one of the Judges notified under Section 3(b) of the Act and the suit not having been instituted in the Court of the District Judge, the judgment and decree of the Civil Judge who undoubtedly was a 'District Court' under the Act would yet be without Jurisdiction. Reliance was placed on the provisions of Section 19 of the Act read with Section 3 of the Bengal Agra and Assam Civil Courts Act 12 of 1887. There is no force in this contention either, it does not lie in the mouth of the plaintiff appellant, who herself had chosen her forum and had gone to the particular Civil Judge to lodge her suit, now to contend that a 'petition' should have been filed and not a 'suit'. She had persisted in having the suit determined by the Civil Judge, notwithstanding the objection taken by the defendant-respondent in paragraph 10 of the written statement that the suit did not lie but a petition under the Act ought to have been filed. Now that the decision had gone against her she cannot change her position and complain that the order of the Civil Judge was wholly without jurisdiction.

10. Section 19 of the Act does not necessarily rule out the jurisdiction of a Civil Judge, having original jurisdiction within whose territorial limits the marriage was alleged to have been performed from entertaining and determining the case filed before him. Section 19 of the Act reads:

'Every petition in this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnised or the husband and wife reside or last resided together.'

11. It will be noticed that the words used by the Legislature are the 'District Court' and not the 'District Judge' nor 'the principal Court of original civil jurisdiction.' Therefore, the meaning that has to be ascribed to the words 'District Court' must necessarily be the same as contained in the definition of those words in Section 3(b) of the Act.

According to the latter, 'District Court' means, 'in any area in which there is a city civil Court, that Court, and in any other area the principal civil Court of original jurisdiction, and includes any other civil Court which may be specified by the State Government, by notification in the official gazette, as having Jurisdiction in respect of the matters dealt with in this Act.' Therefore, any Civil Court which has been notified in the official gazette would be a 'District Court' as much as the Court of the 'District Judge'. The only other condition under Section 19, which might possibly, require to be satisfied is that such Court, even if notified must be a Court having ordinary original civil jurisdiction. The Court of the Civil Judge in the present case was certainly a Court which had been notified as a 'District Court' and it was a 'Court having ordinary original civil jurisdiction' and the alleged marriage having taken place within its territorial limits, the requirements of Section 19 would appear to have been satisfied so as to confer jurisdiction on this particular Civil Judge.

The word 'ordinary' cannot possibly refer back only to the Court of the 'District Judge' for the Court of the District Judge is not the only Court having ordinary original civil jurisdiction. Therefore, there is no warrant, on a plain reading of the provisions of the Act, to hold that the petition could only have been filed under the Act in the Court of the District Judge and not in any other court, even though such Court satisfied the conditions of Section 3 (b) of the Act and were undoubtedly 'District Courts' within the meaning of the Act.

12. It was then contended that the practice was to file such petitions only in the Court of the District Judge. There is, however, no proof on the record of any such practice. Even assuming that such a practice did exist, the failure to lodge the suit

in the Court of the District Judge and the tiling of the suit or the petition before the Civil Judge directly, who was also the 'District Court' within the meaning of the Act, would at best be an irregularity and not an illegality. It would be difficult, if not impossible, to treat the judgment and decree given by such a Court as wholly without jurisdiction and, therefore, non est.

13. Lastly, the cross-objection filed by the defendant-respondent in respect of the disallowance of costs has no validity or merit. No appeal on the question of costs lies and a fortiori no cross-objection on such a ground can be filed, for the simple reason that the award of costs is primarily in the discretion of the Court and in all the circumstances of the case the Court had rightly left the parties to bear their own costs.

14. For me reasons given above the appeal is dismissed. There will be no order as to costs.

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