

Suresh Kumar Vs. Sandhya and ors.

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Court : Madhya Pradesh

Decided On : Sep-10-1990

Reported in : I(1991)DMC238; 1991(0)MPLJ259

Judge : K.L. Shrivastava, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 5 and 9 - Order 39, Rules 1 and 2;
Code of Civil Procedure (CPC) - Sections 151

Appeal No. : M.A. No. 84 of 1989

Appellant : Suresh Kumar

Respondent : Sandhya and ors.

Advocate for Def. : S.M. Jain, Adv.

Advocate for Pet/Ap. : S.L. Garg and ;R.S. Garg, Adv.

Disposition : Appeal dismissed

Judgement :

K.L. Shrivastava, J.

1. This appeal is directed against the order dated 9-3-1989 passed by the IIIrd Additional Judge to the Court of District Judge, Indore, in Case No. 3 of 1980 under the [Hindu Marriage Act, 1955](#) (for short 'the act').

2. Circumstances giving rise to the appeal are these : The present appellant instituted a suit against the respondent No. 1 under Section 9 of the Act for restitution of conjugal rights alleging that she is his wife. In the suit, the respondent No. 1's parents have also been impleaded and relief of permanent injunction restraining the marriage of the respondent No. 1 has also been claimed.

3. In the said suit, he filed an application under Order 39 Rules 1 and 2 and Section 161 of the Civil Procedure Code; 1908 (for short 'the Code') for grant of temporary injunction, restraining the respondent No. 1's marriage till the disposal of the aforesaid suit.

4. The respondent No. 1 filed her written statement denying the alleged marriage. The application for temporary injunction was also opposed.

5. The learned Judge of the Court below, held that in the suit instituted under Section 9 of the Act, application for temporary injunction filed under the provisions of the Code is not maintainable.

6. The contention of the learned counsel for the appellant in this Court is that in view of the provision embodied in Section 21 of the Act, the provisions of the Code are applicable and temporary injunction could be granted under Order 39 Rule 2 *ibid*. In this connection reliance was placed on the decisions in Mohd. Kannu's case (AIR 1954 Travancore Kochin 219) Shankarappa's case (AIR 1964 Mysore 247) and Dirsingh's case (AWR 1965 (H.C.)410). It has further been urged that at any rate temporary injunction could certainly be granted in exercise of the inherent powers under Section 151 of the Code. As held in the decision in Chitras case (AIR 1988 Cal. 98) and in the Apex Court's decision in Manoharlal's case (AIR 1962 S.C. 527).

7. The contention of the learned counsel for the respondent No. 1 is that the Act does not contemplate injunctive relief and Section 21 of the Act is only in respect of procedure and not regarding reliefs.

8. The point for consideration is whether the appeal deserves to be allowed.

9. Section 21 of the Act is in these terms :--

21. Application of act 5 of 1908--Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.'

10. On, a careful consideration of the words embodied in the provision extracted above, I am of the view that it is with advertence to the proceedings under the Act that the question of applicability of the provision of the code to regulate the same has to be determined. Reference in this connection may usefully be made to the decision in Shardadevi's case (1985 MPWN 510) which in a suit under Section 9 of the Act, deals with Section 27 *ibid* which is regarding disposal of property.

11. This brings us to the question of injunctive relief.

12. Perpetual injunction is regulated by Sections 38 to 42 of the Specific Relief Act, 1963 (for short 'the Relief Act') temporary injunction on the other hand, as provided by Section 37 of the Act, is regulated mainly by the provisions of the C.P.C. For an order for temporary injunction under Order 39 Rule 1 C.P.C. the suit need not be one for injunction for the relief of temporary under Rule 2 of Order 39 the suit has to be one of injunction.

13. It may be pointed out that Order 39 Rule 1 of the Code pertains to property in dispute and its applicability to the instant case is out of question.

14. The contention of the learned counsel for the petitioner is that the term obligation used in Section 38 of the Relief Act covers both contractual as well as that arising out of status. He urges that marriage gives the woman the status of wife and there is obligation on her part in favour of her husband not to take another husband while the first is still alive and this obligation is one to prevent the breach of which equitable injunctive relief which as provided under Section 36 of the Relief Act is no doubt discretionary, can be granted under Order 39 Rule 2 of the Code. In support of this submission he has invited my attention to the decisions in Shankar Appa's case (*Supra*) and Dhir Singh's case (*Supra*). In the last mentioned decision the argument that as the act of bigamy is punishable under the Indian Penal Code, injunctive relief under the Relief Act prohibiting what

is already prohibited should not be granted, was repelled observing that it ignores the elementary difference between a civil remedy and a criminal prosecution and that a wronged party may be more interested in the protection of his right than in the punishment of the offender. Therein it has further been pointed out that law is ultimately founded on principles of morality and then in addition to the question to morality a bigamous marriage also creates rights and obligation as Section 16 of the Act lays down that the child born of the marriage will be legitimate.

15. Relying on the decision in Mohd. Kallu's case (Supra) the learned counsel for the appellant urged that balance of convenience is in favour of the appellant inasmuch as if he succeeds in proving the marriage. The non-grant of temporary injunction may well pave the way for a bigamous marriage.

16. The contention of the learned counsel for the appellant further is that courts exist for doing justice and even in cases not covered by Order 39 Rules 1 and 2 of the Code, temporary injunction may be granted for the ends of justice under inherent power under Section 151 *ibid*. This power he urges, inheras in the court in virtue of its duty to do justice. The decision in Chitra's case (*supra*) on which reliance has been placed, relates to matter under the Act. Therein reference has been made to the S.C. decision in Manoharlal case (*Supra*) wherein with advertence to the Section 94 Order 39 Rules 1 and 2 and Section 151 of the Code it has been laid down that in cases not covered by Order 39, temporary injunction can be issued under inherent power.

17. The submission of the learned counsel for the respondent No. 1 is that the Act is a special one to amend and codify the law relating to marriage among Hindus and in respect of the matters dealt with therein, the exclusive jurisdiction is of the 'District Court' as defined in Section 3(b) *ibid*. He urges that the appellant has invoked this special jurisdiction of the District Judge under the Act and, therefore, the only remedies to which he may be held entitled are those under the Act, and as the Act nowhere provides for injunctive relief, the appellant's prayer for temporary injunction was rightly refused. He further urges that in the present proceedings the petitioner cannot, with recourse to Section 21 of the act urge that he is entitled to the injunctive relief either under Order 39 Rule 2 or Section 151 of

the Code. He has submitted that it has also to be noted that even Sub-section (5) of Section 6 of the Act which provided for injunction by 'a court' in the interests of bride, stands deleted by the Child Marriage Restraint (Amendment) Act, 1978. In support of his submission that temporary injunction cannot be granted, the learned counsel has placed reliance on the decisions in Umashankar's case AIR 1967 Patna 220 and this court's decision in Bhanwarlal's case 1989 (1) M.P.W.N. 35.

18. On a careful consideration of the submissions made by the learned counsel for the parties, I am of the view that the appeal must fail.

19. It has to be held that the 'District Court' as defined in Section 5(b) of the Act is a court of exclusive jurisdiction for matters falling within the act and cannot transfer it and grant reliefs other than those contemplated by the provisions therein. In the decision in Umashankar's case (supra) it has been pointed out that the Act embodies declaratory provisions, is not a remedial one and it contains no provision for injunctive relief for restraining the husband or wife from entering into a second marriage. The appellant has invoked the jurisdiction of the special forum created by the Act and that special forum has to act within the four corners of the said act which has created it. As the act does not provide for injunctive relief the same cannot be granted. The following observations in paragraph 5 of the decision in Umashankar's case (supra) may profitably be reproduced :

'When a statute creates a special jurisdiction outside, or in addition to, the common forum such jurisdiction has to be worked within the strict ambit of the special statute. Rights and remedies created under such Act will have to be confined to the provision under that statute. If any one has got any other right under may or may not be affected by the subsequent special statute, because that will depend upon whether the subsequent special statute overrides either expressly or by implication the pre-existing right under any law.'

20. In the decision in T. Modi v. O.P. Jaiswal (AIR 1974 Patna 335) which relates to a suit under Section 9 of the Act for restitution of conjugal rights as also for grant of perpetual injunction against the wife from marrying, it has been held that the relief of temporary injunction could not be granted as the Act does not contain any provision for grant of injunction. The decision in Smt. Parvati Devi's case (AIR

1980 Rajasthan 249), is also pertinent.

21. In the decision in Roman Hosiery Factory's case (AIR 1974 Delhi 207) it has been pointed out that where final relief cannot be granted, no interim injunction can be issued, Reference in this very connection may also be usefully made to the decision in K.P.M. Aboobucker's case (AIR 1958 Mad. 287) which is on Order 39 Rule 1 of the Code. Therein pointing out that an interim relief granted during the pendency of a suit should not be of greater scope than what could be granted in the suit itself after the trial, it has been observed as under.--

'An interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated the validity of the claim of right that has been put forward. If no such claim has been put forward in the suit, it means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained.'

22. In the decision in Cotton Corporation of India v. United Industrial Bank, AIR 1983 SC 1272 it has been held that Section 41(b) of the Relief Act curtails the power to grant injunction in personam and where the final relief cannot in terms be granted, temporary relief in the same terms can hardly if ever be granted as power to grant temporary relief is in aid or as auxiliary to the final relief in order to maintain status quo so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the suit and that Section 151 of the Code cannot be invoked to nullify the provision in Section 41(b) of the said Act. This provision of the Relief Act have also to be considered in matter relating to temporary injunction. The decision in Kaliprasad's case (AIR 1978 Ori. 8) may also be usefully perused.

23. As a result of, the foregoing discussion, I hold that the appellant is not entitled to the relief of temporary injunction either under Order 39 Rule 2 or under Section

151 of the Code.

24. In the result, the appeal fails and is dismissed with costs. Counsel's fee Rs. 150/- if certified.

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