

Savitri Devi Vs. Suryabhan Sharma

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Court : Madhya Pradesh

Decided On : Dec-20-1991

Reported in : I(1992)DMC206

Judge : K.L. Issrani, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 5, 9 and 11

Appeal No. : F.A. No. 57 of 1989

Appellant : Savitri Devi

Respondent : Suryabhan Sharma

Advocate for Def. : J.K. Agnihotri, Adv.

Advocate for Pet/Ap. : Shaiendra Shukla, Adv.

Disposition : Appeal dismissed

Judgement :

K.L. Issrani, J.

1. This is an appeal under Section 28 of the Hindu Marriage Act, arising out of the judgment and decree dated 16.1.1989 passed by the District Judge, Rewa, in Civil Suit No. 36-A of 1987.

2. The appellant had filed the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The case of the appellant was that she had been married with the respondent 25-27 years back, according to Hindu Vedic rites. After marriage with her, the respondent kept one Shantibai, who was Sunar by caste and was a married lady having children. It was on the date of the Pujan of Kuldevta that the appellant objected that Shantibai is not a Brahmin by caste and, therefore, she cannot take part in the Pujan of Kuldevta, she was abused, beaten and driven out of the house. Since then she is living with her parents. She also filed an application under Section 27 of the Hindu Marriage Act for return of the articles.

3. The respondent had denied that Shantibai was a kept wife. According to the respondent, the marriage of the respondent with Shantibai had taken place 30 years before whereas the marriage of the respondent with the appellant had taken place only 25 years before. The respondent also admitted that two issues, a son and a daughter, were born out of the wedlock but they had expired. From Shantibai, the appellant has five sons and two daughters. The respondent denied and resisted the claim of the appellant and submitted that she (the appellant) being the second wife, the marriage with her is void. She is living separately of her own accord for the last about 18 years with her parents. She is not entitled to any relief claimed.

4. The trial Court found that Shantibai was married to the respondent 30 years before and the respondent has sons and daughters from Shantibai. It was not proved that on 4.7.1987, the respondent had beaten and drew her (appellant) out from the house after snatching her ornaments, as alleged by the appellant. The trial further held that the appellant is living with her parents of her own accord for the last 15-16 years and the respondent was always willing to keep her with him. The trial Court refused to grant the decree for restitution of conjugal rights, as prayed by the appellant.

5. The submission of the learned Counsel for the appellant is that her marriage with the respondent took place earlier and Shantibai is not a legally wedded wife of the respondent. Her suit was wrongly dismissed by the lower Court.

6. In support of her claim, no documentary evidence has been filed by the appellant. The appellant based her claim only on the oral evidence. Ishwardin (P.W.I) has stated that Shantibai had her husband, who was Sunar by caste. But this alleged husband of Shantibai has not been examined by the appellant. The appellant has, however, tried to examine one Rohni Prasad as P.W.6 who has stated that the respondent's sister was married to him and that his wife expired 20 years before. He also states that Shantibai was married to one Swarnakar at village Uprahti, district Rewa, but he does not know his name. He also does not know whether the said husband of Shantibai is alive or dead. He is a witness, against whom one Bhaktin had filed a criminal complaint under Section 406 of the Indian Penal Code, which was hotly contested by him. It seems that this witness is having some enmity against the respondent. The other witness examined by the appellant is Rambahore. He states that he had been called by the appellant to give the statement. He further states that at that time the appellant stayed with Rohni Prasad. He has no personal knowledge about the facts. Marriage of the appellant with Shantibai is a fact. One Dwarka Prasad (P.W.4) is the cousin brother of the appellant and is an interested witness. The witness Balmik Prasad (P.W.5) is a labourer. He also admits that he had not seen Shantibai. He is a resident of a different village Pipri. He also further states that he does not know even the respondent. No evidence to the effect as to actually when the marriages of Shantibai and the appellant with the respondent took place, has been led by the appellant. On the contrary, the respondent has not only led oral evidence but has also filed the documentary evidence regarding the certificates of birth and marriages of his sons and daughters -- Exs. D-3 to D-10. He has also examined one Lal Guru (D.W.2), who has stated that the marriage of the respondent took place with Shantibai 30 years before. They have D-5 issues. Shantibai was never married to any other person. He is Pandit of the respondent Suryabhan's family. He has got two sons and one daughter of the respondent married. He has knowledge of the family affairs of the respondent. The respondent has also examined Prayagdatt Vishwakarma (P.W.3) who states that the father of Shantibai was working in his wooden toll (timber yard). He states that the marriage of the respondent took place with Shantibai in his house. Shantibai has also been examined as D.W. 4. Nothing has been taken out from her cross examination to

show that she was not married to the respondent or that she was kept by the respondent after the marriage of the appellant with the respondent. Therefore, there is sample evidence on the side of the respondent to hold that Shantibai was married to the respondent 30 years before or at least before the marriage of the appellant with the -- respondent. Therefore, it is the appellant only who is the second wife of the respondent.

7. The marriage took place after the coming into force of the [Hindu Marriage Act, 1955](#). Such a marriage is prohibited under Section 5(i) of the Act. Under Section 11 of the Act, such marriage is void ab-initio and may be so declared by a decree of nullity. Therefore, the marriage solemnized during the subsistence of the previous marriage of the respondent with Shantibai, the subsequent marriage of the respondent with the appellant is void.

8. Section 5 of the Hindu Marriage Act provides conditions for Hindu marriage. According to Section 5(i). at the time of marriage, neither party must have a spouse. Section 11 of the Act says that any marriage solemnized after the coming into force of the Act shall be null and void if it contravenes the conditions specified In clause (i), (iv) and (v) of Section 5. Section 11 further provides that such a marriage, on a petition presented by either party thereto against the other party, may be declared null and void by a decree of nullity. But since Section 11 itself says that such marriage is a nullity, I think, no further declaration is required.

9. In view of the circumstances, it can-not be said that the findings arrived at by the lower Court are perverse or against the provisions of law. The appeal has no substance and is liable to be-dismissed. However, since the respondent has not complied with the order of this Court dated 22.11.1990 by which he was directed to pay Rs. 200/-per month to the appellant as maintenance pendente lite and also the litigation expenses of Rs. 750/- as expenses of this appeal within one month, this Court by order dated 6.12.1990 had directed the respondent to comply with the orders of this Court dated 22.11.1990, failing which his defence in the case will be struck off. Having not complied the same, the defence of the respondent was accordingly struck off by this Court on 14.2.1991. The respondent was not heard. The appellant will be free to move for her claim for maintenance and, her relief

under Section 27 of the Hindu Marriage Act, as no findings on that application are deemed necessary at this stage.

10. The appeal is accordingly dismissed. There shall be no order as to costs.

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