

Lata Vs. Dhanpal and anr.

Lata Vs. Dhanpal and anr.

SooperKanoon Citation : sooperkanoon.com/505725

Court : Madhya Pradesh

Decided On : Jul-10-1995

Reported in : II(1995)DMC440

Judge : J.G. Chitre, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Civil Revn. No. 928 of 1994

Appellant : Lata

Respondent : Dhanpal and anr.

Advocate for Def. : S.L. Ukas, Adv.

Advocate for Pet/Ap. : M.G. Upadhyaya, Adv.

Disposition : Petition allowed

Judgement :

J.G. Chitre, J.

1. This petition has been filed by one Lata wife of Dhanpal for challenging the order passed by IXth Additional District Judge (Matrimonial Court), Indore dated. 10.10.1994 in the matter of Matrimonial Petition No. 96/93 by which her application for pendente lite alimony was dismissed.

2. Few facts need to be stated for the purpose of unfolding the controversy between the petitioner and Dhanpal s/o Chandmal Jain, Oppon. No. 1 which can be enumerated as mentioned below. Petitioner Lata was previously married with one Komalchand Jain and because the spouses were unable to keep cordial relations between them, Lata took the shelter of her parental house. It appears from record that there was a matrimonial petition for divorce between petitioner Lata and said Komalchand Jain and in the result the marriage between Lata and Komalchand Jain was dissolved on 27.11.1992. The record shows that there was no issue during the wedlock between Komalchand and petitioner Lata.

3. The averments made by Dhanpal Jain in his matrimonial petition filed on 16.3.1993 show that on 24.5.1992 he married with Lata in Jain Temple situated in Ghandinagar, Indore. The averments further show that thereafter Lata, Dhanpal started living together in a house like husband and wife. The averments further show that Lata stayed in the said matrimonial home for 8 days and thereafter went to her parental house. 15 days thereafter, Dhanpal brought her to matrimonial home and Lata stayed there till 20.12.1992. It has been alleged by Dhanpal Jain that on 20.12.1992 she left his house and went to her parents house at Indore. The averments in the matrimonial petition further show that Dhanpal was having two children begotten from his first wife who had expired.

4. The record shows that Narendra Kumar Jain, father of petitioner Lata told Dhanpal Jain that the marriage between Lata and Komalchand Jain was dissolved and, therefore, Dhanpal Jain decided to marry with Lata. In the matrimonial petition it has been averred that petitioner Lata told him so. The record shows that after Lata deserted Dhanpal Jain on 20.12.1992, Dhanpal Jain did not issue any notice to Lata making the allegation that Lata had deceived him. The matrimonial petition further shows that the marriage between Komalchand Jain and Lata was dissolved on 27.11.1992 by the decree of dissolution of marriage passed by the Matrimonial Court. It appears from the averments made in the petition that Dhanpal Jain got this information after 28.2.1993 because in paragraph 8 it has been mentioned that he got this information after a complaint was lodged against him by Lata in Malharganj Police Station. The record does not show that Dhanpal Jain had issued a notice to Lata alleging that she had deceived him in the context

of said marriage, even after 28.2.1993 or so. During the course of arguments, Shri Ukas, learned Counsel appearing for Dhanpal Jain told while answering the query that no notice was issued to Lata before filing of matrimonial petition in the Court.

5. The record shows that an application was moved by Lata in the Matrimonial Court for alimony expenses of litigation in the said matrimonial petition which was filed by Dhanpal Jain on 28.4.1993. The said application has been decided by the Matrimonial Court on 2.9.1994.

6. It has been argued by Mr. M.S. Upadhyay, learned Counsel for petitioner Lata that keeping in view the provisions of Section 24 of Hindu Marriage Act, 1955 (hereinafter referred to as Hindu Marriage Act) the pendente lite alimony is to be given to the spouse who does not have independent income or source of income for the purpose of meeting out the expenses of litigation as well as for maintaining himself or herself. Mr. M.G. Upadhyay placed reliance on the judgment of this Court in the matter of Laxmibai v. Ayodhya Prasad, [AIR 1991 M.P. 47=II (1990) DMC 594], in which this Court has held that the expression 'wife and husband' used in Section 24 have not to be given strict literal meaning as to convey only legally married wife and husband. The expression 'wife and husband' in the context of the section and scheme of the Act should mean a 'person claiming to be a wife or husband'. The Court further held that the Act confers wide power on the Matrimonial Court so as to regulate the matrimonial relationship between the parties and such powers are to be exercised by the Court even in a case of alleged or proved invalid bigamous marriage. It is for the purpose of exercise of those powers by the Court that the Court has been further empowered to fix some interim maintenance to one of the needy spouse so as to fix some interim maintenance to me of the needy spouse so as to sustain herself/ himself during the pendency of the proceedings in the Court and to meet the expenses of litigation. It is with this benevolent object to assist the parties and the Court for passing adequate relief under the Act that Section 24 has been enacted providing for maintenance pendente lite. Though the provisions so construed would give opportunities to clever parties to come up with false cases in the Matrimonial, Court alleging false marital relationship only with a purpose to get interim maintenance merely because such a mischief is possible, any other interpretation

cannot be placed on the words 'wife and husband' used in Section 24 of the Act.

7. Relying on this judgment, Mr. Upadhyay argued that in the present case though it is the case of Dhanpal Jain that Lata is not his wife because at the time of marriage with him Lata had a living spouse duly wedded with her, Lata cannot be denied pendente lite alimony and expenses of litigation. He submitted that the purpose of enacting Section 24 has to be understood and if that is done, this revision petition will have to be allowed.

8. Countering this, Mr. Ukas, learned Counsel appearing for Dhanpal Jain placed reliance on the judgment of this Court in the matter of *Sikharam v. Gunthibai and Anr.*, reported in *Divorce & Matrimonial Cases*, I (1991) DMC 454, In that matter this Court held that the marriage which is void ipsojore lie. void from very inception will have to be treated as void. Mr. Ukas also placed reliance on the judgment of Punjab & Haryana; High Court in the matter of *Manjeet Singh v. Parson Kaur*, reported in *Divorce and Matrimonial cases*, II (1990) DMC 447, wherein Punjab & Haryana High Court held that when the petitioner-wife is claiming pendente lite alimony and expenses of litigation is not having the status of legally wedded wife, she is not entitled to get such alimony because such marriage is void ab initio. He submitted that in view of this line of thinking expressed by the judgments mentioned above the petition needs to be dismissed.

9. Mr. Ukas also placed reliance on the judgment of Supreme Court in the matter of *Yamunabai v. Anantrao and Anr.*, [AIR 1988 SC 644=I (1988) DMC 205 (SC)], and submitted that the marriage with a person having living spouse is null and void. He pointed out that Section 5 of the Act lays down, for a lawful marriage, the necessary condition that neither party should have spouse living at the time of marriage. He submitted further that in view of this legal position the marriage between Dhanpal Jain and Lata was void ab initio and, therefore, Lata never had the status of a 'wife'.

10. Section 24 of Hindu Marriage Act reads :--

'Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has not independent income sufficient for her

or his support and the necessary expenses of the proceeding, it may on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such, sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.'

11. In the matter of Yamunabai & Anantrao (supra) the question which was agitated before the Supreme Court was whether a marriage with a person having living spouse is null and void. Answering that question, as I think, Supreme Court held that in such condition the said marriage would be null and void. But in the present case the question which is to be decided is whether petitioner Lata is entitled to get pendente lite alimony during the pendency of matrimonial petition alongwith the expenses of litigation or not. As it has been held by this Court in the matter of Laxmibai v. Ayodhya Prasad (supra) too rigid view cannot be taken in judging the status of such wife or husband. It will have to be taken into consideration whether there was an association between the parties as husband and wife for a considerable time. If such persons reside in a matrimonial home under one roof for significant period, that association will have to be given due credence. In the present matter Lata and Dhanpal Jain were staying in a home under one roof for considerable period, and, as the averments made in the matrimonial petition show, they cohabited like husband and wife.

12. According to me Section 24 of the Hindu Marriage Act has been enacted for the purpose of providing relief to a party who is unable to maintain himself or herself during the pendency of the matrimonial petition. That section has been enacted for the purpose of providing such a party the relief to meet the expenses of the said litigation. For that benevolent purpose Section 24 has been enacted.

13. While dealing with an application moved by such a party in view of Section 24 of Hindu Marriage Act an inquiry will have to be made whether such a party is having independent source of income Whether such a party is capable of maintaining himself or herself during the pendency of such petition An inquiry will also have to be made for the purpose of ascertaining Whether such a party is capable of maintaining itself while incurring the expenses in contesting such

litigation. If the status of such a party as wife or husband is to be adjudged at the time of deciding an application preferred in view of provision of Section 24 of the Act, I am afraid, the question to be decided on final hearing of the petition would be adjudged at premature stage. If such verdict is to be given at premature stage, there would be no meaning to have provision like Section 24 of the Act which provides for the maintenance of such a party during the pendency of matrimonial petition and for providing some amount to such a party for the purpose of meeting the expenses of such litigation. Therefore, what is more important which it to be seen is whether such a party is having sufficient means or income for the purpose of maintaining itself during the pendency of such matrimonial petition and having sufficient income or means for the purpose of meeting the expenditure to be incurred in contesting such matrimonial petition. Therefore, I do not allow myself to share the view expressed by Punjab & Haryana High Court in the matter of *Manjeet Singh v. Parson Kaur* (supra). I agree with the view expressed in the judgment of this Court in the matter of *Laxmibai v. Ayodhya Prasad* (supra).

14. In the present matter the material on record makes it quite clear that petitioner Lata did not have sufficient income to maintain herself during the pendency of said matrimonial petition and she did not have sufficient income to meet out the expenses of the litigation. At this stage it is important to point out that record shows that Lata had received Rs. 31,000/- from Komalchand Jain, her previous husband, and out of that she was required to deposit Rs. 21,000/- for the benefit of children of Dhanpal Jain begotten from his first wife. Though Lata might have been shown as guardian of those minor children, it has no meaning because it is the claim of Dhanpal Jain that the said marriage between himself and Lata is void ab initio. If he gets a decree against Lata in that context, what is the importance of appointing Lata as guardian of those two minor children. It is clear from the record that Lata was having Rs. 10,000/- at the time when said matrimonial petition was being contested in the Court. It is a matter of experience that every litigation in the Court how-a-days requires sufficient amount to be spent. The delay which is being caused in deciding the litigations has to be given proper consideration. The decision in the Trial Court thereafter appeal, thereafter revision and in between interlocutory applications, arguments over them and verdicts deciding those interlocutory applications. All this requires sufficient time as well as sufficient

expenditure.

15. It is also to be seen while deciding an application in view of Section 24 of the Act whether the spouse claiming such pendente lite alimony and the amount of expenditure of litigation went to the Court for filing the matrimonial petition or whether such party was dragged in the Court by other spouse. This aspect has got importance because if the party claiming pendente lite alimony and the amount of expenditure of litigation has been dragged in the Court, if that spouse does not have sufficient income for maintaining himself for herself, a relief has to be given to such a spouse during the pendency of such matrimonial petition, if that spouse does not have sufficient income for the purpose of meeting the expenses of litigation. That spouse has to be given a relief for the purpose of meeting the expenses of the litigation also.

16. In the present case this important aspect has not been properly considered by the Matrimonial Court. The Matrimonial Court, according to me, has adjudicated the crucial point at premature stage which it was to adjudicate after recording of the evidence. If the Court comes to a conclusion at the initial stage of the matrimonial petition and holds that marriage is void ab initio, then according to me, nothing remains to be decided. Such verdict cannot be given at the initial stage at the time of deciding an application under Section 24 of the Act. The inquiry which has been contemplated is limited to certain purpose which has been indicated by Section 24 of the Act, which restricts to the point of sufficient income and capacity to maintain during pendency of such petition.

17. Thus, I come to the conclusion that this petition deserves to be allowed and petitioner Lata deserves to be given some amount as pendente lite alimony and some amount for meeting the expenses of litigation. While coming to the quantum, due consideration will have to be given to the income of Dhanpal Jain as well the amount which is necessary for petitioner Lata to maintain herself and to meet the expenses of litigation. The record shows that according to admissions of Dhanpal he is getting Rs. 800/- per month as his wages or salary. Even keeping in view that much of income of Dhanpal according to me, petitioner Lata is entitled to get pendente lite alimony to the tune of Rs. 200/- per month and that amount shall be

payable to her from the date of order on the application preferred by her under Section 24 of Hindu Marriage Act. Keeping in view the normal expenses of litigation, according to me Lata deserves to get Rs. 600/- on that count.

18. The matrimonial petition shows that what was told to Dhanpal Jain was told specifically by Narendra Kumar Jain, father of Lata and not Lata. Narendra Kumar was hoping that Lata would get the decree of divorce before the marriage with Dhanpal Jain. Therefore, keeping in view all these things I do not pass any order in respect of cost of this revision petition. Parties are directed to appear before the Matrimonial Court on 1.8.1985. The Matrimonial Court is directed to decide the matrimonial petition expeditiously and if possible by being *de die diem* because the written statement had been filed and issues had been settled. The matrimonial petition should be positively decided by the end of Oct., 1995. Respondent Dhanpal Jain to deposit the arrears of *pendente lite* alimony and expenses of litigation positively by the end of July, 1995. Thereafter he should deposit the amount of *pendente lite* alimony in the Matrimonial Court before 10th instant of every month. Petitioner Lata is entitled to withdraw that amount from the said Court without furnishing any security.