

Rajmal Vs. Basantibai

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Court : Madhya Pradesh

Decided On : Mar-05-2003

Reported in : II(2003)DMC190

Judge : A.K. Gohil, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11; [Hindu Marriage Act, 1955](#) - Sections 5(1) and 11

Appeal No. : First Appeal No. 464 of 2002

Appellant : Rajmal

Respondent : Basantibai

Advocate for Def. : None

Advocate for Pet/Ap. : V.P. Saraf, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

A.K. Gohil, J.

1. This is plaintiff's first appeal. Plaintiff filed a suit against his wife for declaration that the marriage of the defendant/wife with the husband/plaintiff is void and the order passed in Criminal Case No. 3 of 1982 on 29.10.1983 Under Section 125 of the Code of Criminal Procedure is void and is not enforceable against the plaintiff.

2. In nutshell, the submission on the plaintiff in the suit is that initially plaintiff had married with one Dhapubai. Plaintiff is having three sons and five daughters from the said Dhapubai and she is still residing as a legally wedded wife of the plaintiff. Thereafter in the year 1964 the father of the plaintiff forcefully performed second marriage of the plaintiff with defendant Basantibai. This defendant Basantibai has also resided with the plaintiff right from 1964 to 1982 as legally wedded wife. Thereafter there was some dispute between them. The plaintiff deserted the defendant Basantibai. She filed an application Under Section 125 of the Code. In this case the learned Magistrate by order dated 29.10.1983 directed for payment of amount of maintenance at the rate of Rs. 200.00 per month. Thereafter the plaintiff has not paid the said amount as awarded by the Magistrate in 125 proceedings to the defendant but filed a suit for declaration after 18 years of the marriage with the defendant that the said marriage is nullity Under Sections. 5(1) and 11 of the [Hindu Marriage Act, 1955](#) and also after 15 years of the order passed by the Magistrate that the same is void and not enforceable, The Trial Court after appreciating the evidence of the parties dismissed the suit. The trial Court has observed that the order passed under 125 proceedings by the Magistrate cannot be challenged in a civil suit. In fact the plaintiff's suit for getting such declaration was also not maintainable as he himself was party to the marriage. He had no right to vanish the order passed under 125 proceedings on the ground that the marriage with the defendant was a nullity. Such a suit can only be maintainable under the provisions of Hindu Marriage Act and in view of such provisions such a suit appears to be barred under the law. The learned Counsel for appellant could not satisfy me that how the civil suit of such a nature for declaration was maintainable before the Civil Court and how an order passed under 125 proceedings can be challenged after 15 years in civil suit, as the plaintiff has filed this suit on 1.7.1998 whereas the order in 125 proceedings was passed on 29.10.1983. In fact such a suit should have been dismissed by the Trial Court at the initial stage exercising powers Under Order VII Rule-11 of the Code of Civil

Procedure as no cause of action arose to the plaintiff for filing the same and the suit is barred under the provisions of Hindu Marriage Act. The suit is nothing but is a frivolous and vexatious litigation. During the course of hearing of this appeal learned Counsel for appellant also could not reply me, whether he has deposited any amount in compliance of the order of maintenance dated 28.10.1983. Accordingly this appeal is nothing but the misuse of the powers by the plaintiff and a kind of frivolous and vexatious attempt to prolong the litigation. Trial Court has rightly dismissed the suit and no case is made out to interfere in the said order.

3. Accordingly this appeal is dismissed with compensatory costs of Rs. 10,000,00 to the defendant. Cost be deposited within a period of 30 days. The amount of cost imposed on the appellant be paid to the respondent as compensation. A copy of this order be forwarded to the Trial Court as well as Magistrate where proceedings Under Section 125 were tried for its execution. Record be returned.

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