

Smt. Rita Rani Vs. Ramesh Kumar

Smt. Rita Rani Vs. Ramesh Kumar

SooperKanoon Citation : sooperkanoon.com/613696

Court : Punjab and Haryana

Decided On : Jan-13-1995

Reported in : AIR1995P& H337; I(1996)DMC511; (1995)110PLR434

Judge : Mrs. Dr. Sarojnei Saksena, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 5, 12, 11, 25(2), 29 and 29(2)

Appeal No. : First Appeal from order of No. 79 of 1991

Appellant : Smt. Rita Rani

Respondent : Ramesh Kumar

Advocate for Def. : Mr. J.S. Sheikhpuri and; Mr. Vijay Rana, Adv.

Advocate for Pet/Ap. : Mr. R.K. Chibbar, Sr. Adv. and; Mr. Anand Chibbar, Adv.

Judgement :

1. Wife-appellant has assailed the decree and judgment of divorce passed by Shri V. P. Aggarwal, Additional District Judge, Ambala, in Hindu Marriage Act Case No. 47 of 1988 decided on 13-5-1991.

2. Admittedly, respondentl-Ramesh Ku-mar married appellant-Rita Rani on 15-2-1985 at Saharanpur. It was marriage by 'Chader Andazi'. After marriage, they lived together at Yamunanagar. Respondent is Hindu Arora and appellant is Hindu Khatri.

3. Respondent-husband filed a petition to obtain a decree of nullity of marriage under Section 11 of the Hindu Marriage Act (hereinafter referred to as the Act) alleging that he married Rita Rani-appellant by 'Chader Andazi on 15-2-1985. At the time of marriage, wife-appellant and her parents assured him that Rita Rani was earlier married to Ajay Kumar son of Shri Ram Saran, but she has obtained a decree of divorce against Ajay Kumar. He and his family members believed them. But later on, he came to know that Rita Rani did not obtain any decree of divorce against Ajay Kumar, who is still alive and, thus, her previous marriage with Ajay Kumar is still subsisting. In view thereof Rita Rani's marriage with him is void under Section 11 of the Act. Hence the prayer.

4. Appellant-wife raised preliminary objections that before filing this petition dated 31-5-1988, respondent-husband gave her a notice dated 27-4-1988 through his counsel Shri Pradeep Kumar Garg wherein he has specifically averred that she is his legally wedded wife and out of this wedlock, she gave birth to a female child on 26-4-1986 who is still alive. By this notice, she was asked to join the respondent along with the female child, failing which appropriate legal action would be taken. She admitted that her marriage with Ramesh Kumar was performed on 15-2-1985. But she denied that she was earlier married to Ajay K umar or she or her parents assured the respondent Ramesh Kumar that she has obtained a decree of divorce against Ajay Kumar. Maintainability of the petition was also assailed.

5. The trial Court framed issues, recorded parties evidence and came to the conclusion that Rita Rani was earlier married to Ajay Kumar and she has not obtained a decree of divorce against Ajay Kumar. Her marriage with Ajay Kumar is still subsisting. Ajay Kumar is alive and thus under Section 11 of the Act, her marriage with Ramesh Kumar is void ab initio. On the basis of this finding impugned decree was passed.

6. Appellant-wife's learned counsel contended that the trial Court has not tried to scan minutely the respondent's pleadings and his evidence and thus has arrived at a wrong conclusion. According to him in the petition, the respondent has specifically pleaded in Para 1 that his marriage with Rita Rani was by 'Chader Andazi', which is customary mode of marriage. He has further pleaded in para 6 of

the petition that at the time of marriage Rita Rani and her parents assured him that Rita Rani was earlier married with Ajay Kumar but she has obtained a decree of divorce against Ajay Kumar. Admittedly, Ajay Kumar is alive and is examined by the respondent as PW 6. But on oath the respondent as PW 3 has categorically admitted that before his marriage with Rita Rani-appellant, he was informed by her parents that Rita Rani was earlier married to Ajay Kumar but she has obtained divorce in the brotherhood. He has further stated on oath that he married Rita Rani with the 'Chuni' ceremony. On enquiry, he came to know that Rita Rani has not taken legal divorce from Ajay Kumar. He further pointed out that in the cross-examination Ramesh Kumar PW 3 has admitted that he too was earlier married to another Rita Rani and out of that wedlock one child was born to him. He admitted in unequivocal terms that he had obtained divorce through brotherhood from his previous wife and not through the Court.

7. Relying on *Balwinder Singh v. Smt. Gurpal Kaur*, AIR 1985 Delhi 14; *Smt. Sudarshan Kaur v. Major Manmohan Singh Bhatt*, AIR 1978 Punjab and Haryana 115; *A Digest of Customary Law* by Sir W. H. Rattigan (Fourteenth Edition) page 470; and *Hindu Law* by Mulla 16th edition page 745, he contended that from the pleadings and sole testimony of Ramesh Kumar, it is evident that in the caste of the parties, there is customary mode of marriage and customary mode of dissolution of marriage also. Therefore, Ramesh Kumar himself dissolved his earlier marriage with another Rita Rani under this customary mode i.e. dissolution of marriage by 'biradari'. He stressed that under Section 29(2) of the Act, it is not necessary for parties in any such case to go to Court to obtain divorce on ground recognized by custom. It is not the case of Ramesh Kumar that this customary mode of dissolution of marriage is either against the public policy or is not upheld by Courts.

8. Appellant's learned counsel further pointed out that Ramesh Kumar has not come to the Court with clean hands. He filed this divorce petition on 31-5-1988 but before that on 27-4-1988 he gave notice Ex. R-I to appellant Rita Rani and her father wherein he has specifically averred that Rita Rani, the present appellant, is his legally wedded wife and out of this wedlock, she has given birth to a female child. By this notice, she was called upon to rejoin Ramesh Kumar and came back

to matrimonial home. Ramesh Kumar has not filed any replication to refute this allegation, which is specifically made in the written statement by the appellant. Even on oath, Ramesh Kumar has not stated that he never gave such a notice. The appellant has examined Shri Pradeep Kumar Garg, Advocate as RW 1, who has testified that he gave notice Ex. R-1 to Rita Rani and her father under the instructions from his client Ramesh Kumar son of Shri Sohan Lal Batra resident of House No. 84, Hamida Colony, Yamuna Nagar. He apprised Ramesh Kumar of the contents of the notice and after he admitted their correctness, he posted the notice. In the cross-examination. Mr. Pradeep Kumar Garg, has stated that he has no personal knowledge of the facts mentioned in this notice. This notice is not signed by Ramesh Kumar. He does not know whether Ramesh Kumar is conversant with English language or not. Be that as it may, once this notice Ex. R-1 is issued under the instructions of the respondent, who has not denied on oath that he never gave instructions to Mr. Pradeep Kumar Garg, Advocate, to send such a notice to the appellant and her father, the learned lower Court ought to have relied on this notice. Further, Ramesh Kumar has admitted that he cohabited with the appellant till 1988. Thus, according to him, the trial Court ought to have rejected the respondent's petition under consideration for dissolution of marriage.

9. Respondent's learned counsel has vehemently argued that appellant-Rita Rani cannot be believed at all. In her written statement, she has categorically denied that earlier, she was married to Ajay Kumar or at the time of marriage she or her parents assured Ramesh Kumar that she has obtained a decree of divorce against Ajay Kumar. On oath also, she has denied that she was married to Ajay Kumar earlier. She has gone to the length of denying even her photographs Ex. A-1 and Ex. A-5. She has just offered a hollow explanation that these photographs are the result of camera tricks, while Ajay Kumar PW 6, Ram Saran PW 5, Babu Ram PW 1 and Ganpat Rai PW 2 have all proved her earlier marriage with Ajay Kumar on 8-2-1982 and that the photographs exhibits A1 and A5 are of Ajay Kumar and Rita Rani. Ajay Kumar PW 6 has also proved that her marriage with Rita Rani appellant was dissolved by executing agreement Ex. A-3 which is signed by him as well as by Rita Rani and her parents. He has further stated that there is no custom in our brotherhood for dissolving the marriage by agreement. Jang Bahadur PW 4 is the Notary Public, Saha-ranpur, who prepared the agreement Ex. A-3 and got it

signed by appellant Rita Rani and Ajay Kumar PW 6. He has also made a corresponding entry in this register at serial No. 653 on 18-9-1982. Its copy is Ex. A-4 which bears his signature. Respondent's learned counsel pointed out that Rita Rani-appellant has denied even the execution of agreement Ex. A-3. She has categorically stated that the same does not bear her signatures. Since, appellant Rita Rani has not obtained a decree of divorce through Court, her previous marriage with Ajay Kumar is still subsisting. Ajay Kumar is alive. Hence, under Section 11 of the Act her marriage with Ajay Kumar is void. In support of his contention he has relied on Smt. Sodha v. Mansha Ram, AIR 1971 Himachal Pradesh 27; Rajinder Singh v. Smt. Promila 1987 MLR 319 : (AIR 1987 Delhi 285) and Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav, AIR 1988 SC 644.

10. In the authorities cited by the learned respondent's counsel, it is held that marriage with person having a living spouse, is null and void under Section 5(i) of the Hindu Marriage Act which is not voidable under Section 12 of the Act, but this case is governed by Section 29(2) of the Act. From the pleadings as well as from the evidence adduced by the respondent-husband, it is clear that he admits that in the caste of the parties where in recognized customary mode of marriage by 'Chader Andazi' that is a Chuni ceremony and also recognized mode of dissolution of marriage by brotherhood. He obtained a dissolution of marriage against his second wife (another Rita Rani). His case stands at par with the appellant-wife's case Ramesh Kumar PW 3 has categorically admitted that before his marriage with the appellant, he was informed by her parents that she was married to Ajay Kumar but she has obtained divorce in the brotherhood. He has himself proved the agreement Ex. A-3 which is executed by Ajay Kumar PW 6 and the appellant. He has examined even the Notary Public PW 6 Shri Jang Bhadur who got this document executed by both the parties and entered its execution in his register copy thereof is at. Ex. A-6 No doubt, appellant Rita Rani has denied her marriage with Ajay Kumar and execution of agreement Ex. A-3, but this will not help the respondent Ramesh Kumar. Rita Rani has examined Asha Rani RW 2 who has stated on oath that she was married to Ajay Kumar on 8th October, 1985. Ajay Kumar was earlier married to Rita Rani (appellant) in February, 1982 but Ajay Kumar told her that he has made a settlement with Rita Rani in the 'Biradari

Panchayat' and that settlement had been reduced to writing. He has not taken any divorce in the Court. These divorce papers were shown to her family members also.

11. From the decisions reported as Balwinder Singh's case and Smt. Sudershan Kaur's case (supra), it is evident that if there is a local custom by which marriage can be dissolved either by brotherhood or by executing an agreement, such a dissolution of marriage is saved under Section 29 of the Hindu Marriage Act and the parties are not to be required to obtain a decree of divorce through Court. The trial Court has failed to scan the pleadings as well as the evidence adduced by Ramesh Kumar. In his petition, he has categorically stated that no issue was born out of this wed-lock, but on oath he has admitted that fact. No doubt, Rita Rani has not stated true facts before the Court, but from the evidence on record, it is proved that Rita Rani-appellant was married to Ajay Kumar 8-2-1982. Out of this wed lock, she gave birth to a child and by executing agreement Ex. A3 their marriage was dissolved on 18-9-1982 in Biradari. Thereafter, Ajay Kumar PW married Asha Rani RW 2 on 8-10-1985. It is also proved on record that Ramesh Kumar married Rita Rani appellant on 15-2-1985 under customary mode of marriage i.e. 'Chader Andazi' or 'Chuni ceremony'. Out of this wed-lock, she gave birth to a female child on 26-4-1986. On 27-4-1988. Ramesh Kumar gave notice Ex. R-1 to appellant and her father and on 31-5-1988, he filed this petition under Section 11 of the Act for a decree of nullity. Even during the pendency of the trial on 24-9-1988, Ramesh Kumar made a statement in the Court that he is prepared to keep his wife i.e. appellant Rita Rani. On the aforesaid ground, I find that Ramesh Kumar has failed to prove that his marriage with appellant Rita Rani is void under Section 11 of the Act as it is performed in violation of condition 5(i) of the Act. I find that Ramesh Kumar himself has proved that appellant Rita Rani got her earlier marriage with Ajay Kumar dissolved by executing agreement Ex. P-3 in Biradari and hence this case is squarely covered by the provisions of Section 29(2) of the Act.

12. Accordingly, the appeal is hereby allowed with costs. The judgment and decreepassed by the trial Court are set aside.

13. Appeal allowed.

