Salig Ram Vs. Niranangmo

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Court : Delhi

Decided On : Jun-12-1968

Reported in : 6(1970)DLT265

Judge : I.D. Dua, C.J.

Acts : Himachal Pradesh (Courts) Order, 1941

Appeal No. : Civil Revision Application Appeal No. 75 of 1967

Appellant : Salig Ram

Respondent : Niranangmo

Advocate for Pet/Ap. : H.S. Thakur,; A.C. Sud and; K.D. Sood, Advs

Judgement :

I.D. Dua, C.J.

(1) This revision has been presented in this Court under paragraph 35 of the Himachal Pradesh (Courts) Order 1948 read with section 115, Civil Procedure Code from the judgment and decree of the learned District Judge, Kinnaur dated 4th August 1967 allowing the appeal of Smt. Nira Zagmoo defendant and dismissing the suit of Salig Ram Plaintiff for a declaration that the defendant Nira Zagmoo was nto his legally wedded wife. It may be pointed out that the trial Court had decreed the plaintiff's suit.

(2) One conclusion of the lower Appellate Court, which has been described nto to be disputed, is that the defendant had lived with the plaintiff for about five years and during this period, the defendant had given birth to a daughter. If this conclusion is upheld, as, in my opinion, it must be upheld on revision, then the inference of legal marrirge between the parties becomes irresistible, and merely because affirmative evidence of the actual performance of the cere monies is nto forthcoming, would nto be of any avail to the party who wants to assure that the relationship between the man and the woman in question was incestuous or adulterous and the child born is illegitmate.

(3) Shri Thakur, the learned counsel for the plaintiff-petitioner has drawn my attention to paragraph 35 of the Himachal Pradesh (Courts) Order. 948 and has submitted that the power of this Court under clause (l)(b) of this paragraph is much wide' than that conferred bysection 115, Civil Procedure Code which is embodied in clause l(a) of this paragraph. According to him the aforesaid clause (b) converts this Court into a Court of appeal and it can make any order which it thinks fit in the circumstances of the case. The argument virtually amounts to this that it is nto section 115, Code of Civil Procedure, which is to be looked at for the purposes of this Court's revisional power in regard to cases from the Himachal Pradesh, but it is paragraph 35 of the aforesaid order which alone is to be looked at. Whether or nto this extreme contention is justiied is nto necessary for me to decide in this case it is, however, necessary to see as to how far this revision justifies interference with questions of fact or of law, as suggested by the learned counsel. Let us now read paragraph 35 :-

(51)The Court of the Judlicial Commissioner may call for the record of any case which has been decided by a Civil Court subordinate to it and in which no appeal lies to it, and (a) if the Civil Court by which the case was decided appears to have exercised a jurisdiction nto vested in it by law, or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction with material irregularity, or (b) if on an application made to it the Court of the Judicial Commissioner is of opinion that there is an important question of law or custom involved and that such question requires further consideration, the Court of the Judicial Commissioner may make such order in the case as it thinks fit : Provided

that: - (i) no application under sub-paragraph (b) shall be admitted after the expiration of ninety days from the date of the order in respect of which the application is nude, unless the applicant satisfies the Court of the Judicial Commissioner that he had sufficient cause for nto making the application within that period ; (ii) no such application shall be admitted in a small cause suit under the value of one thousand rupses or in an unclassed suit under the value of two hundred rupees ; (iii) on and such application the Court of the Judicial Commissioner shall nto revise the decision of the Court below except in so far as such decision involves the question of law or custom in respect of which the application has been admitted, and (iv) when any such application has been admilted the Court of the Judicial Commissioner shall, subject to proviso (iii) treat the matter of the application as if it were an appeal. Explanationn. A question of procedure is rto a question Of law or custom within the meaning of sub-paragraph (b). (2) In computing the period of limitation mentioned in proviso (i) of sub-paragraph (1), and in all toher respects nto herein specified, the period of limitation of the application shall be governed by the provisions of the Indian Limitation Act, 1908. (3) Section 115 of the Code of Civil Procedure 1908. shall nto apply to Himachal Pradesh.'

It is obvious that in cases covered by paragraph 35 (l)(b) the Court of the Judicial Commissioner and l am asuming now this Court, has to form an opinion that theie is an important question of law or custom involved and that such question requires further consideration before the Court of revision is empowered to make the order contemplated by clause (b). It is argued by Shri Thakur that the opinion need nto be expressed in the order of the Court and that mere admission of the revision is sufficient. As at present advised, I am disinclined to agree with this submission. No decided case has been brought to my ntoice and the question has to be decided on first impression. I roviso (iii) and (iv) to clause (b) suggest that the Court of the Judicial Commissioner is nto empowered to revise the decision of the Court below except in so far as such decision involves the question of law or cusicm in respect of which the application has been admitted and on the admission of such application, the Court of the Judicial Commissioner has to treat the matter of the application as if it were an appeal. From this, it is obvious that the admitting order must, on the face of its disclose the opinion of the Judicial Commissioner,

toherwise it is to be left to be guessed by the Court which is required to finally determine on revision as to whether or nto the Judicial Commissioner; while admitting the revision, had formed that opinion. prima facie therefoic, it appear to me that unless that opinion is expressed in the admilting order, the Court hearing the revision after ntoice would nto be justified in assuming that such an opinion had been formed. The revision would in those circumstances have to be confined to clause (a) of paragraph 35(1).

(4) I am, thereforee, of the view that in this case this revision has to be considered from the narrow point of view embodied in clause (a).

(5) Now, the question, thereforee, arises whether there is any jurisdictional infirmity in the order of the Court below. Once the viev of the Court below is upheld that for five years the man and the woman had teen living together and during this period, a child was also born from their union, then as observed earlier, the conclusion is irresistible that they must have been looked up on by the society as husband and wife. Legal presumtoion his always been raised from such a relaitionship in favor of marriage and Ieginimtcy of children My attention has also been drawn by the learned counsel for the respondent to a decision of the Privy Council in Mahabbat Ali v Md lbrahin Khan where the general principle, that law presumes in favor of marriage and against concubinage when a man and a woman have conabited continuously for a number of years, has been laid down On the conclusions of the lower Appellate Court and the facts and circumstances of this case, l cannto help upholding the view that the plaintiff and the defendant were living together as a result of marriage and their off spring is a legitimate child whom the plaintiff is bound to maintain. Indeed, in the order of the learned District Judge, it was nto disputed that the child was entitled to receive maintenance from the plaimiffand that the order of the Panchayat awarding maintenance to the child 'as valid which could nto he set aside even if the defe dant was held nto to be the wife of the plaintiff

(6) Before concluding, I may also observe that before the the Panchayat. the parties had on an earlier occasion apoeared in proceedings for maintenance under section 488. Criminal Procedure Code and there too. the Panchayat had granted a

sum of Rs. 40 per month for btoh the defendant and the child. From the recod it appears that some of the members of the Panchayat also appeiredas witnesses and they deposed about the admission made by the plaintiff in regard to the woman having lived with him for a number of years and the child having been born from their union. In fact of this formidable material on the record, I am wholly unable to find any cogent ground for interference on revision, with the result that this revision fails and is dismissed with costs.