

Smt. Parwati Devi Vs. Harbindra Singh

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Court : Rajasthan

Decided On : Jan-05-1980

Reported in : AIR1980Raj249; 1980()WLN66

Judge : N.M. Kasliwal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 1

Appeal No. : Civil Misc. Appeal No. 163 of 1979

Appellant : Smt. Parwati Devi

Respondent : Harbindra Singh

Advocate for Pet/Ap. : A.K. Gupta, Adv.

Disposition : Appeal allowed

Judgement :

N.M. Kasliwal, J.

1. This civil miscellaneous appeal is directed against an order of the Additional District Judge, Bharatpur, dated 6th August, 1979, whereby the appellant Smt. Parwati Devi had been restrained through an interim injunction from contracting a marriage with any other person during the pendency of the proceedings under

Section 9 of the [Hindu Marriage Act, 1955](#), for restitution of conjugal rights.

2. The respondent Harbindra Singh filed a petition under Section 9 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act') for restitution of conjugal rights against the appellant Smt. Parwati Devi. According to the husband Harbindra Singh, the marriage was solemnised between the parties on 29th July, 1978 at Bharatpur and the same was registered on 24th August, 1978, by the Registrar of Marriages. Smt. Parwati Devi wife of the respondent refused to perform marital obligations without any reason under the influence of her parents and as such a petition was filed under Section 9 of the Act for restitution of conjugal rights. Smt. parwati, appellant, contested the above petition inter alia on the ground that no marriage was solemnised between the parties and she was not the wife of the petitioner Harbindra Singh. During the pendency of the above petition Harbindra Singh filed an application under Order 39, Rules 1 and 2 read with Section 151, C.P.C. that Smt, Parwati should be restrained by an injunction not to marry another person during the pendency of the petition under Section 9 of the Act. This application was also contested by the appellant. The learned Additional District Judge after hearing the parties arrived at the conclusion that there was a prima facie case in favour of the petitioner Harbindra Singh. He also came to the conclusion that a remarriage by one of them would causa an injury which cannot be measured in terms of money. The point of balance of convenience was also decided in favour of the petitioner. Aggrieved against the aforesaid order Smt. Parwati has come in appeal to this Court.

3. Mr. Gupta, learned counsel appearing on behalf of the appellant, has contended that there is no provision in the Hindu Marriage Act under which a husband apprehending that his wife is going to perform a second marriage can apply and obtain an injunction restraining the wife from doing so. The only reliefs available in the Act are restitution of conjugal rights, a decree of divorce and a decree of nullity but there is no provision in the Act under which an injunction could be sought against the other party for restraining her from marrying with other person. It is submitted that when no such relief could be sought under any provision of the Act, in that case the Court has no power to grant any interim injunction also in this regard. Reliance in support of the above contention is placed on Umashankar

Prasad Singh v. Smt. Radha Devi, AIR 1967 Pat 220 and Trilokchand Modi v, Om Prakash Jaiswal, AIR 1974 Pat 335,

4. The Hindu Marriage Act is a special Act and if a petition is filed under the provisions of this Act, then only such reliefs could be given as are contemplated in the above Act. I find force in the contention of Mr. Gupta that there is no provision in the Act for granting an injunction against the other party restraining him or her from contracting a marriage with another person. We are at present concerned with a petition filed by Harbindra Singh under Section 9 of the Act for restitution of conjugal rights which has to be governed with the provisions of the Act. Under Section 9 of the Act a petition can be filed for restitution of conjugal rights. Under Section 10 there is a provision for judicial separation. Section 11 lays down for declaring a marriage to be null and void and Section 12 deals with passing a decree of nullity if the marriage was voidable. Section 13 lays down provisions for the grant of a decree of divorce, Section 17 of the Act lays down punishment of bigamy according to which any marriage between two Hindus solemnised after the commencement of the Act, is void if at the date of such marriage either party had a husband or wife living and in that case the provisions of Sections 494 and 495 of the I.P.C. shall be applied. Thus, though Section 17 makes such act punishable under Sections 494 and 495 of the I.P.C. but it does not contemplate any remedy of injunction under this section under the provisions of the Act There is only one provision under Sub-section (5) of Section 6 of the Act which contemplates that nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage, if in the interest of the bride for whose marriage consent is required, and the Court thinks it necessary to do so. The provisions of Section 6 only apply in case of a bride in whose case the consent of guardian in marriage is necessary under the Act, Admittedly the case before me is not governed by the provisions of Section 6 of the Act,

5. The learned Additional District Judge placed reliance on K. Varalakshmi v. K. Veeraddi, AIR 1961 Andh Pra 359, Sm. Anita Karmokar v. Birendra Chandra Karmokar, AIR 1962 Cal 88, Kusum Lata v. Kampta Prasad, AIR 1965 All 280, P.C. Jairath v. Mrs. Amrit Jairath, AIR 1967 Punj 148 and Ganga Devi v. Krushna Prasad Sharma, AIR 1967 Orissa 19. But all these cases only lay down that the

provisions of Civil P.C. are applicable in dealing with any petition under the Act by virtue of provisions of Section 21 of the Act. So far as the above proposition is concerned there cannot be any controversy but the question for consideration is that if no relief of permanent injunction can be sought for under any provisions of the Act, in that case the Court while dealing with a petition under the Act can also not grant a prayer for interim injunction. I do not mean to say that a person has no remedy of filing a suit for permanent injunction restraining the other spouse from marrying with another person on the ground that they are already married, but such suit will not come within the purview of any provisions of the Hindu Marriage Act. As already observed above, Hindu Marriage Act is a special Act and it provides for certain special kinds of remedies by filing petitions under different sections of the Act. Thus, if there is no provision in the Act for filing a suit for permanent injunction restraining the other spouse from marrying with another person, then in my view it is not permissible for any court to grant any temporary injunction also in a suit under the Act. I find support in my above view from the following observations of the Patna High Court in *Trilokchand Modi v. Om Prakash Jaiswal*, AIR 1974 Pat 335:

'Keeping in view the aforesaid, the question arises whether there is any provision in the Act which would enable the plaintiff to get the relief of permanent injunction in the present suit. From what I have said earlier it is clear that an application for an order of permanent injunction is not envisaged by the Act aforesaid. The only provision which enables the District Court to issue an order of injunction is contained in Sub-section (5) of Section 6 which is as follows:

'Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage, if in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so.'

A reference may be made to Section 5 of the Act for the purpose of showing that a marriage may be solemnised between any two Hindus, if the conditions mentioned therein are fulfilled. One of the conditions, which is Clause (vi) of the aforesaid section, is that 'where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage'.

Under Section 6, Sub-section (1) provides the list of persons entitled to give such consent as guardian. Sub-section (2), provides that such a guardian himself must have completed the age of 21 years, Sub-section (3) provides that if the guardian entitled to give consent refuses or is, for any cause unable to or unfit to act as such, the person next in order shall be entitled to be the guardian. Sub-section (4) provides that in the absence of any such person as is referred to in Sub-section (1) the consent of a guardian shall not be necessary for a marriage under this Act. Then comes Sub-section (6) which has been quoted above. It will thus appear that apart from the cases of applications for different purposes mentioned earlier, there may be a petition asking the court to grant an injunction against the intended marriage of a girl who has not completed the age of 18 years and if in her interest the court thinks it necessary, it may do so. This is thus one more relief in addition to those mentioned in Sections 9, 10, 11, 12 and 13. The result is that there is no provision in the Act which enables a person to file a petition for permanent injunction against the intended marriage to a second person of the wife of one person if she is above the age of 18 years. The conclusion is thus inescapable that a District Court has no jurisdiction to grant a permanent injunction restraining such a marriage.'

6. The above view finds support from a Bench decision of the Patna High Court in *Umashankar Prasad Singh v. Smt. Radha Devi*, AIR 1967 Pat 220. The Madras High Court in *K.P.M. Aboobucker v. K. Kunhamoo*, AIR 1958 Mad 287, also held that an interim relief granted during the pendency of a suit should not be of greater scope than what could be granted in the suit itself. Following the above decision of the Madras High Court, Delhi High Court also in *Raman Hosiery Factory, Delhi v. J.K. Synthetics Ltd.*, AIR 1974 Delhi 207; observed as under:

'It is settled law that no interim injunction would be issued if the final relief cannot be granted. As was held in *K.P.M. Aboobucker v. K. Kunhamoo*, AIR 1958 Mad 287: 'An interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated the validity of the claim or right that has been put forward. If no such claim has been put forward in the suit, it

means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit in the course of which the interim relief was sought and obtained. That is not the scope of Order 39, Rule 1.'

7. Thus, I am clearly of the view that no interim injunction restraining the appellant from contracting marriage with any other person could be passed by the learned lower Court in a petition under Section 9 of the Act. I may, however, observed that it would be for the appellant to consider whether it would be advisable for her to contract marriage with another person when a petition under Section 9 is already pending for disposal. In case it is held that the appellant was a legally married wife of the respondent Harbindra Singh and if she still performs a second marriage with another person then she would be certainly guilty of the offence of bigamy under the Indian Penal Code.

8. In the result this appeal succeeds, the order of the learned Additional District Judge, Bharatpur, dated 6th August 1979, is set aside and the application of the petitioner Harbindra Singh filed under Order 39, Rules 1 and 2 read with Section 151, C.P.C. is dismissed. There would be no order as to costs as the respondent has not appeared in this Court.