

Deepraj Vs Vijay Laxmi

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Court : Delhi

Decided On : Aug-13-2010

Judge : Mr. Aruna Suresh, J.

Appeal No. : MAT APP. NO. 7/2009

Appellant : Deepraj

Respondent : Vijay Laxmi

Advocate for Def. : Mr.P.K.Shrivastava, Adv.

Advocate for Pet/Ap. : Mr. Aditya Agarwal, Adv.

Judgement :

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? Yes

(3) Whether the judgment should be reported in the Digest Yes

1. Under challenge in this appeal is the judgment and decree of the learned Additional District Judge dated 6th November 2008, whereby petition of the appellant filed under Section 9 of the Hindu Marriage Act (hereinafter referred to as the 'Act') for restitution of conjugal rights was dismissed.

2. In brief, facts of the case are that parties to the petition were married on 16th April, 2004 at Gorakhnath Temple, Gorakhpur, UP. Parties were in love with each

other for about four years but since parents of the respondent were not in favour of the marriage, appellant's parents arranged the marriage and the marriage was performed in the temple. This marriage was also got registered. Since 28th May, 2004, respondent deserted the company of the appellant in his absence and left the house without any sufficient cause.

3. Respondent challenged the maintainability of the petition on the ground of territorial jurisdiction of this Court. She has alleged that she was kidnapped by the appellant when she was only 14 years and 7 months old. She was a minor at the time of alleged marriage. Appellant had intoxicated her by administering some drug, kidnapped her and took her to Gorakhpur for which a complaint was also lodged by her father. She has claimed that since no marriage was solemnized between her and the appellant, petition was not maintainable. 4. Following issues were framed by the Trial Court for consideration:-

1. Whether marriage between the parties was solemnized on 16.4.2004 according to Hindu rites and ceremonies? OPP 2. Whether this court has no territorial jurisdiction to entertain this petition as respondent is not residing at Delhi? OPR

3. Whether respondent has without any reasonable excuse withdrawn from the society of the petitioner? OPP

4. Whether petitioner is entitled to the relief claimed? OPP

5. Relief. Findings of the Trial Court on issue No. 2 have been accepted as correct by the appellant, hence it needs no adjudication in this appeal. Issues No. 1, 3 and 4:-

6. Since these issues are inter related and on the basis of findings on issue No. 1 Court has decided issues No. 3 and 4 against the appellant, they are taken up together for consideration.

7. It is submitted by Mr. Aditya Aggarwal, counsel appearing for the appellant that the Trial Court failed to appreciate that respondent had been making contradictory statements in her examination-in-chief and cross-examination. He asserted that the Trial Court failed to appreciate the Courts observations recorded during the

cross-examination of the respondent that photo depicted in Ex.PW-1/B7 and Ex.PW-1/C at point-A appeared to resemble the respondent and that Trial Court wrongly rejected evidentiary value of the photographs on the ground that negatives of the photographs were not placed on record and the photographer had also not been examined to prove the photographs. Trial Court has also failed to appreciate that respondent did not place on record any evidence to prove her age whereas appellant had placed sufficient evidence on record to prove that respondent was 20 years of age at the time of marriage. He has further argued that Trial Court did not properly appreciate the documentary evidence placed on record by the appellant to show that a legal and valid marriage was performed between the parties and therefore, dismissal of the petition by the Trial Court is erroneous in law.

8. Mr.P.K.Shrivastava, counsel appearing on behalf of the respondent has refuted the submissions made by counsel for the appellant.

9. Documents submitted by the appellant on record are:-

(1) Marriage photographs Ex.PW-1/B1 to Ex.PW- 1/B12.

(2) Original application for registration of marriage Ex.PW-1/C.

(3) Application receipt Ex.PW-1/D.

(4) Kalandara under Sections 107/150 Cr.P.C. Mark PW-1/D.

10. Documents placed on record by the respondent are:-

(1) Progress card mark RW-1/A.

(2) ESI Hospital record Ex.RW-2/A.

11. Appellant claimed that he had performed marriage with the respondent according to Hindu Rites on 16th April, 2004 at Gorakhnath Temple, Gorakhpur.

12. Trial Court has fairly appreciated and analyzed the testimonies of various witnesses examined by the parties while deciding these issues against the

appellant. Trial Court was right when it rejected to accept the application dated 17th May, 2004 Ex.PW-1/C filed by the appellant for registration of marriage and its receipt dated 22nd May, 2004 to hold that marriage between the parties was duly registered. Admittedly, marriage certificate is not placed on record. Appellant could have summoned the record from the Registrar's office to prove that his marriage with the respondent was duly registered.

13. Trial Court while assessing the evidence of the appellant on registration of marriage observed in paras 34 to 37:-

"34. Even otherwise a perusal of file would reveal that Ex.PW1/C is photocopy of application for registration of marriage. It is dated 17/05/2004. On the reverse side of the application as against particulars of bride's father-guardian, name of Murari Lal has been mentioned. These particulars are purported to have been signed by Murari La. It is significant to note that said Murari Lal is no father of the respondent. It has come in the evidence of the petitioner that these particulars are of his maternal grandfather. There is nothing on record to explain as to how particulars of maternal grandfather of the petitioner came to be recorded in the column meant for bride's father-guardian and how the particulars came to be signed by him. Father's name of the respondent is also Murari Lal. He or his wife did not agree for any such marriage.

35. In view of this fact, it can safely be said that name of Murari Lal in the above referred to column appears to have been mentioned so as to make the concerned authorities believe that father of the respondent had also agreed for solemnization of the marriage of the respondent.

36. The column below the aforesaid column is meant for particulars of officiating priest. Name of Ramdhan Mishra, priest has been given in this column. However, petitioner has not examined said Sh.Ramdhan Mishra, for the reasons best known to him.

37. Names of Ram Chander and Shankar Prasad find mentioned at the bottom of the application as witnesses but none of them has been examined to prove submission of the application Ex.PW1/C by the parties to the concerned officer.

Non-examination of the priest and any of the attesting witness to the application creates doubt if this application was signed by the respondent voluntarily. In view of this fact, even if respondent stated in her cross examination that she was not given any intoxicant/drugs by the petitioner, it does not come to the aid of the petitioner. Consequently, certificate Ex.PW1/D issued by the office of Registration of Hindu Marriage is no avail to the petitioner."

14. Counsel for the appellant has argued that original marriage certificate was placed on record but the court failed to consider the same in evidence. However, I do not find any original marriage certificate or its certified copy on record. In the absence of the marriage certificate, it cannot be said that parties were legally married by way of a registered marriage and that respondent was 20 years old at the relevant time.

15. Therefore, I find no reason to interfere in the observations of the Trial Court made in paras 34 to 37 while considering the genuineness and validity of the registration of marriage Ex.PW-1/C.

16. Under the Hindu Marriage Act 'HOMA' and 'Saptapadi' are essential attributes of a valid marriage. Marriage becomes complete and binding when the seventh step is taken. It is not in dispute that in this case both the parties were governed by provisions contained in Section 7 of the Act. It is not the case of the appellant that their customary rights and ceremonies did not include the 'Saptapadi'. Appellant has failed to produce any evidence to prove that 'HOMA' and 'Saptapadi' were performed at the time of solemnization of the marriage.

17. If the marriage is not a valid one according to law applicable to the parties i.e. Section 7 of the Act, it is not a marriage in the eyes of law. Traditional meaning of the word 'solemnisation' is 'to celebrate the marriage with proper ceremonies and in due form', as defined in the Shorter Oxford Dictionary. Thus, it is obvious that unless their marriage is performed with proper celebrations and in due form, it cannot be said to have been solemnized.

18. In similar circumstances, in 'Mousumi Chakraborty v. Subrata Ghua Roy', 95 CWN 380' while holding that the marriage between the parties was void, it was

observed:-

"12. In this particular case the appellant had filed a suit stating that there had been no marriage at all between her and the respondent. On the contrary the respondent claimed that there was a valid marriage. It is a well settled principle that the burden of proof lies upon the party who substantially asserts the affirmative of the issue. The evidential burden in matrimonial case is that the burden is on the proponent, or in other words, the party, who claims that there was a valid marriage has to prove that marriage. The question is whether the production of marriage registration certificate raises a presumption and even if a presumption is there, whether the same could be rebutted. Section 8 of the Hindu Marriage Act 1955 provides for registration of Hindu marriages; registration has been introduced for the purpose of facilitating the proof of Hindu Marriage. The registration is not the sole proof of marriage in order to become a valid marriage. Section 7 of the said Act provides that the validity of a marriage will depend on observance of "customary rites and ceremonies". The expression "customary rites and ceremonies" means such Shastric ceremonies, which the caste or community to which party belongs is customarily following. Customary rites and ceremonies to be accepted must be shown to have been followed definitely as an essence of marriage ceremony from ancient times and recognised such ceremonies as obligatory. Two essential ceremonies to the validity of a marriage are (a) Invocation before the sacred fire and (b) Saptapadi. Absence of these essential ceremonies invalidates the marriage. In our view, two ceremonies essential to the validity of a marriage, as stated above, have to be proved and that where the factum of marriage is disputed essential ceremonies constituting the marriage must have to be pleaded and proved. Evidence regarding the performance of marriage according to Hindu rites must be brought on record to show that there had been a valid marriage "

19. In the instant case, appellant has only produced photographs Ex.PW-1/B1 to Ex.PW-1/B12 to emphasize that he had solemnized marriage with the respondent according to Hindu Rites and Customs within the ambit of Section 7 of the Hindu Marriage Act. None of these photographs indicate that 'Saptapadi' was performed in the marriage i.e. seven steps were taken by the parties jointly before the sacred

fire. The photographs depict only the appellant and some other people besides a bride. Respondent has denied that the photographs depict her. The photographs in fact are not properly proved in evidence as neither the photographer who had taken the photographs was examined as a witness nor negatives of the photographs had been placed on record and proved in evidence by the appellant. Simply because the photographs have been exhibited in evidence for identification purposes cannot, in any manner, be construed as proved documents in evidence. In the absence of the negatives, genuineness of the photographs becomes doubtful. Under the circumstances, any observation made in the court, while recording evidence, that photograph depicted in Ex.PW- 1/7 and Ex.PW-1/C appears to resemble the respondent has lost its significance. Trial Court was, therefore, right in rejecting the photographs as a substantive piece of evidence to prove validity of the marriage.

20. From the evidence on record, it is clear that two ceremonies i.e. invocation before the sacred fire and 'Saptapadi', essential to the validity of the marriage, are wholly absent. Intriguingly, even the Pujari, who allegedly performed this marriage was not examined as a witness. Appellant when asked could not disclose the name of the Priest who had performed the alleged marriage. Parents of the respondent were not agreeable to this marriage. This kind of marriage, which is unknown in the society in which customary rites and ceremonies are not performed at all, cannot take place of a regular and solemnized Hindu marriage, which is accepted in the society. This at the best can be said to be a fake marriage and a fake marriage cannot be considered as a valid marriage under the provisions of the Act.

21. Respondent has claimed herself to be a minor at the time of the alleged marriage. However, the said documents were not properly proved in evidence and therefore, the same were not taken into consideration by the court. The other witness examined by the respondent to prove her date of birth is RW-2 Kanta Prashad, Record Clerk, ESI Hospital, who produced and proved on record entry Ex.RW-2/A from the Birth Register w.e.f. 13th November, 1990 to 30th October, 1991 containing the registration of birth of a female child mentioned at page No.61 at serial No. 180. The date of birth of the female child born to Smt.

Usha wife of Sh. Murari Lal i.e. the mother of the respondent is 17th January, 1991. True that, a question was put to the witness if the said entry belonged to another female child born to Smt. Usha, subsequent to the birth of the respondent, to which witness could not give any satisfactory reply. The fact remains, it was for the appellant to prove that respondent was of age at the time of alleged marriage. Marriage with a minor child is avoid marriage in law unless it is performed with the consent of the child. In this case, respondent has disputed her consent to the marriage with the appellant.

22. Since appellant failed to prove the documents placed on record, even if they are exhibited, the said documents cannot be read in evidence in his favour.

23. Under these circumstances, I do not find any reason to interfere in the judgment and decree of the Trial Court as it has assessed the oral as well as documentary evidence in the right perspective. Hence appeal is hereby dismissed being without any merits.

24. Trial Court record be sent back forthwith.

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