

Mun Mun Roy. Vs. Fiona Roy.

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Court : Kolkata

Decided On : Mar-23-2011

Judge : Maharaj Sinha, J.

Acts : Hindu Marriage Act - Rule 6(2)

Appeal No. : EOS No. 3 of 2008.

Appellant : Mun Mun Roy.

Respondent : Fiona Roy.

Advocate for Pet/Ap. : Mr. Prमित Kumar Ray; Ms. Rajrupa Chatterjee, Advs.

Judgement :

1. The above suit, EOS No. 3 of 2008, was originally instituted in Sealdah Court on 26 September 2007 by two ladies, namely Sipra Roy and Mun Mun Roy. As they failed to obtain any interim order after institution of the suit, they preferred an appeal against the order of the learned Judge of Sealdah Court in the District Court of Barasat. Even the Appellate Court of Barasat did not make any interim order, only the plaintiffs were directed to serve the notice of appeal upon the sole defendant, Fiona Angeela Roy (Das).

2. After Fiona Angeela Roy (defendant in short) came to know of the institution of the suit in Sealdah Court, she approached this Court by way of an application under Clause 13 of the Letters Patent for removal of the said suit from Sealdah Court to this Court. By an order dated 19 December 2007 a Rule was issued and

eventually by virtue of order dated 16 January 2008 the suit was removed from the Sealdah Court to this Court and was renumbered as EOS No. 3 of 2008.

3. Since the defendant intended to contest the suit, she filed her written statement with a counterclaim. Needless to mention, the written statement with the counterclaim was duly served on the advocate of the plaintiffs and since the 1st plaintiff, Sipra Roy, had died, the defendant made an application for deletion of her name as the daughter of the 1st plaintiff, Mun Mun Roy was already on record as the 2nd plaintiff. The defendant had to make this application for deletion of the name of the 1st plaintiff after her death as the 2nd plaintiff, namely Mun Mun Roy, the daughter of the 1st plaintiff, though applied to this Court for deletion of the name of the 1st plaintiff, after obtaining the order of amendment for such deletion did not take any steps to implement and/or carry out the said order.

4. After obtaining the said order of amendment of the cause title, the amended written statement was duly served by the defendant upon the surviving plaintiff, Mun Mun Roy. In spite thereof, however, the service came back with intimation from the postal authority as N.C. (Not claimed). According to the defendant, the surviving plaintiff, Mum Mun Roy also did not bother to claim the postal article that was dispatched to her known address containing the cause papers as recorded in the order dated 7 January 2010, namely the order by which the deletion of the name of the 1st plaintiff was made at the instance of the defendant.

5. According to the defendant, after the said suit was removed from the Sealdah Court to this Court and after the service of the amended written statement upon the surviving plaintiff, which the surviving plaintiff refused to accept, documents were sent by the defendant to the proper address of the 2nd plaintiff, but those documents were also not accepted or rather were refused to be accepted by the surviving plaintiff. It is submitted by Mr. Prमित Kumar Ray, learned counsel appearing on behalf of the defendant that in view of such refusal by the 2nd plaintiff and in view of the earlier order of this Court dated 7 January 2010, the amended written statement with the counterclaim should be deemed to have been duly served and declared as such in this judgment.

6. It should, however, be mentioned here that on the basis of this submission and having regard to the order of this Court dated 7 January 2010, I decided to hear the counterclaim of the defendant made in her written statement by which, as aforesaid, the defendant intended to contest the suit instituted by the plaintiffs, namely the present suit. Having regard to the fact that the defendant, after obtaining the order of amendment of the cause title of the plaint, duly attempted to serve the same upon the surviving plaintiff and the surviving plaintiff deliberately refused to accept the service of the same, a fact which was also recognized by this Court earlier, namely by Justice Sanjib Banerjee in his order dated 7 January 2010, I allowed Mr. Ray to prove the counterclaim of the defendant in court.

7. For the sake of convenience, the claims made by the plaintiffs in their suit and the counter claim(s) made by the defendant are set out below: Claims of the plaintiffs in the plaint:

a) Declaration that the Plaintiff No. 1, Smt. Sipra Roy is the legally married wife of Soumendra Prakash Roy, son of late Saroj Prakash Roy, since deceased.

b) Declaration that the Plaintiff No. 2, Kumari Mun Mun Roy is the only daughter of Soumendra Prakash Roy, son of late Saroj Prakash Roy, since deceased.

c) Declaration that the Defendant is an imposter and the Defendant has no right to claim as wife of Soumendra Prakash Roy, son of late Saroj Prakash Roy, since deceased and/or the Defendant has no right to claim over the estate left by the said deceased, pretending as wife.

d) Declaration that the Certificate in the form specified in Schedule C under Rule 6(2) issued by Sri B.P.Chatterjee, Registrar under the Hindu Marriage Act, 1955 having office at Alipur, District South 24 Parganas, certifying that a Hindu Marriage dated 19.12.1986 at 109, Kalighat Road, Calcutta 26 between Soumen Roy(Hindu), son of late Saroj Roy of AE 503, Salt Lake City, Calcutta 64, P.S. Salt Lake and Fiona Angeela Roy (Das) (Hindu daughter of Sri Bhuban Mohan Das of 65C, Theatre Road, Calcutta 17, P.S.- Beniapukur is illegal, bad in law and should be void.

e) Permanent injunction, restraining the Defendant from claiming as wife of Soumendra Prakash Roiy, son of late Saroj Prakash Roy, since deceased by virtue of a certificate in the form specified in Schedule C under Rule 6(2) issued by Sri B.P.Chatterjee, Registrar under the Hindu Marriage Act, 1955 having office at Alipur, District South 24 Parganas, certifying that a Hindu marriage dated 19.12.1986 at 109, Kalighat Road, Calcutta 26 solemnized between Soumen Roy (Hindu), son of late Saroj Roy of AE 503, Salt Lake City, Calcutta 64, P.S. Salt Lake and Fiona Angeela Roy (Das) (Hindu daughter of SriBhuban Mohan Das of 65C, Theatre Road, Calcutta 17, P.S. Beniapukur and/or to utilise the said marriage certificate dated 19.12.1986 for the purpose of her illegitimate gains in any way or any manner(SIC) till the disposal of the suit and ad interim order as prayed in separate petition.

f) For all costs of the suit.

g) Any other relief or relives.

Claims of the defendant in the counterclaim:

a) A declaration that the defendant is the only legally married wife of Soumendra Prakash Roy also known as Bagan Complex, P.O.-Rajarhat, P.S.- Airport, Kolkata 700 081.

b) The decree of declaration that the original plaintiff no. 1 is not the wife of Soumendra Prakash Roy also known as Soumen Roy having his last known address Chandpur Palli, Bagan Complex, P.O.- Rajarhat, P.S.- Airport, Kolkata 700 081. The present plaintiff no. 2 is not the daughter(SIC) of Soumendra Prakash Roy also known as Soumen Roy having his last known address Chandpur Palli, Bagan Complex, P.O.- Rajarhat, P.S. Airport, Kolkata 700 081.

c) Receiver.

d) Injunction.

e) Attachment before judgment.

f) Costs.

g) Further and/or other reliefs.

8. Relying on the said order of this Court dated 7 January 2010, Mr. Ray has submitted that in view of the said order and having regard to the admitted position that the surviving plaintiff was deliberately refusing or has refused so far to accept the service of the amended written statement as ordered on 7 January 2010 by this Court and as evident from the endorsements of the postal authority and since this Court by the said order dated 7 January 2010 permitted the defendant to treat her counterclaim as an independent suit, the counterclaim should be considered on merits. On the above basis, I think the stand of Mr. Ray as an appearing Counsel on behalf of the defendant is absolutely justifiable in the facts and circumstances of the case. However, defendant was allowed to give evidence in Court to prove her counter claim and, on that basis, the defendant herself gave evidence in Court on the last occasion, namely on 14 March 2011. The evidence of the defendant given by her in Court is on record.

9. Needless to mention, the defendant, I find, has also proved the necessary documents in support of her claims in Court which were duly tendered and marked as exhibits. Relying on the evidence including the exhibits, Mr. Ray submits today that the claims made in the counterclaim by the defendant should be allowed and the counterclaim made in the written statement should be decreed in favour of the defendant and, at the same time, since the plaintiff, namely the surviving plaintiff has not prosecuted the suit after its institution at all far from prosecuting the same with due diligence, the same should be dismissed.

10. Since the defendant gave evidence in Court in support of her counterclaim and proved the necessary documents on which the counterclaim of the defendant is based, I have considered the evidence on record in detail. I also have had the advantage of hearing the evidence of the defendant given in Court on the last occasion, namely 7 January 2010. After considering the case made out by the plaintiff in the plaint and the case of the defendant made out in her written statement with the counterclaim, I have no manner of doubt that the defendant has been able to fully prove her case for the purpose of obtaining the relief as claimed in her counterclaim. Accepting the submissions of Mr. Ray, I am also of the

opinion that the plaintiff or rather the 2nd plaintiff has not prosecuted the proceedings, namely the suit at all far from prosecuting the suit with due diligence. The plaintiff has deliberately refused to accept the service for no reason whatsoever and thereby expressed her intention not to proceed with the suit at all. This opinion of mine is based on records of the proceedings and also supported by the earlier orders of this Court, especially the order dated 7 January 2010.

11. Since, in my opinion, the defendant has been able to fully prove her case or rather her marriage with late Soumendra Prakash Roy which took place on 19 December 1986 and supported by a valid marriage certificate marked as Exhibit B in this proceedings, the defendant is entitled to the decree as claimed by her in the written statement by way of counterclaim. Before the counterclaim is decreed, it should, however, be pointed out that the husband of the defendant, Soumendra Prakash Roy, in fact, had died on 21 May 2007 and the death certificate of the late husband of the defendant is also an exhibit, namely Exhibit C in this proceedings. Thus there will be a decree as claimed in claims (a) and (b) of the counterclaim. Since I hold, having regard to the facts and circumstances of the case, that the defendant should be awarded costs of this proceedings, there will also be a decree for costs assessed at Rs. 2 lakhs and the assessed costs, it is made clear, are over and above the Court fees that the defendant had to pay for making the counterclaim. Let the decree be drawn up expeditiously. For the sake of convenience, let there also be a Xeroxed signed copy of this order and the parties including the department concerned should act on the basis of the same.

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