

Narendra Kumar. Vs. Sujata Devi.

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Court : Patna

Decided On : Oct-29-2010

Judge : H.K. Srivastava, J.

Acts : [Hindu marriage Act, 1955](#) - Section 25(3), 5(i); Marriage Laws Amendment Act, 1976 - Section 17

Appeal No. : Misc. Case No. 9/1994; Misc. Case No. 10 /1004

Appellant : Narendra Kumar.

Respondent : Sujata Devi.

Advocate for Def. : Ms Sujata Devi, Adv.

Advocate for Pet/Ap. : M/s Vijay Kumar; Vishundeo Narayan; Mani Shankar Narayan, Adv.

Judgement :

1. Both the above stated miscellaneous appeals have arisen out of common judgment dated 12.8.2004 passed by Principal Judge, Family Court, Patna in Misc. Case No. 9 of 1994 and Misc. Case No. 10 of 1994 by which and whereunder Misc. Case No. 9 of 1994 filed by the respondent- Sujata Devi was allowed and her maintenance allowance was enhanced from Rs 700/- to Rs 1000/- per month from the date of above stated judgment and maintenance allowance granted to the son of the respondent- Sujata Devi was stopped as he had already attained the age of majority whereas Misc. Case No. 10 of 1994 filed by the

appellant was dismissed on contest.

2. We have already heard learned counsels for the parties on the points of admission and limitation petition i.e. I.A. No. 725 of 2007 and in our opinion both the above stated miscellaneous appeals and I.A. No. 725 of 2007 may be disposed of at admission stage itself. Since both the above stated miscellaneous appeals have been preferred against the common judgment dated 12.8.2004, the said miscellaneous appeals are being disposed of by this common order.

3. Though, there is delay in filing of above stated Miscellaneous Appeals but admittedly, earlier appellant husband had filed Miscellaneous Appeal No. 364 of 2004 and Miscellaneous Appeal No. 365 of 2004 against the impugned judgment dated 12.8.2004 but subsequently, he was permitted to withdraw those appeals by this court vide order dated 10.1.2007 and, thereafter, he preferred First Appeals and the said appeals were converted into the instant Miscellaneous Appeals. Therefore, in view of the aforesaid facts, the delay is condoned and accordingly, the I.A. No. 725 of 2007 stands disposed of.

4. The brief facts leading to these miscellaneous appeals are that the respondent (who is hereinafter referred to as wife) filed Misc. Case No. 9 of 1994 against the appellant (who is hereinafter referred to as husband) for enhancement of maintenance amount. She pleaded in her miscellaneous case that her husband had filed divorce case bearing Matrimonial Case no.18 of 1984 before the District Judge, Patna and the said case was decreed by the lower court but the Hon'ble court set aside the decree and judgment of the lower court vide First Appeal no. 206 of 1987 and also pleaded to allow maintenance of Rs 500/- to her as well as Rs 200/- to her child. Subsequently, the lower court enhanced maintenance amount to the tune of Rs 700/- to her as well as to the tune of Rs 300/- to her child vide Misc. Case No. 10 of 1991 which was disposed of on 11.10.1991. But her husband paid maintenance amount up to month of October, 1993 and thereafter stopped the payment. She filed Misc. Case No. 124(M) of 1993 before the Principal Judge, Family Court, Patna for increasing the maintenance amount but the Principal Judge, Family Court, Patna suggested and directed her to file fresh petition and thereafter she filed the above stated miscellaneous case.

5. The husband filed rejoinder to the above stated case stating therein that his wife, namely, Sujata Devi solemnized her second marriage with one Raju Sao son of Ram Lakhan Sao resident of Mohalla Mussalahpur Chai Tola P.S. Kadamkuan Dist. Patna and she has been residing with her second husband since 6.12.1993 on which date the second marriage of his wife had taken place. Furthermore, he stated in his rejoinder that he is junior lawyer practicing at Danapur civil court and he earns only Rs 600/- to Rs 700/- per month and as such he is not in a position to pay heavy amount of maintenance to his wife.

6. The husband filed Misc. Case No. 10 of 1994 under section 25(3) of the [Hindu marriage Act, 1955](#) and specifically pleaded that his wife solemnized her second marriage with above stated Raju Sao on 6.12.1993 in the temple of Bari Patan Devi and the marriage register was maintained by Mahant Vijay Shankar Giri and the marriage register was signed by his wife namely Sujata Devi @ Rani as well as her second husband Raju Sao. Witnesses Raghbir Prasad and Yugendra Sao had identified above stated signatures. He further stated in the above stated miscellaneous case that on 15.12.1993 he came to civil court for payment of maintenance allowance of November, 1993 and contacted Sri Kameshwar Narain Singh, lawyer of his wife, who informed that his client had already remarried and she had not turned up on that day and furthermore, Sujata Devi had sent a message to him through her lawyer namely, Jamil Ahmad to come to civil court on 18.1.1994 and thereafter he came to civil court with Mr Harish Chandra Sao and Mr Abbas and contacted her and in presence of the aforesaid lawyers, she admitted that she had solemnized her second marriage with the above stated Raju Sao and as such she wants to get divorce and for that consent divorce petition should be filed but the aforesaid proposal could not be materialized on the point of custody of their child who was at that time only aged about 12 years. On the basis of the aforesaid pleadings, husband prayed before the lower court that the maintenance order dated 11.10.1991 be rescinded and opposite party (wife) be directed to give custody of minor son namely, Mukund Kumar to him.

7. The wife filed rejoinder to the aforesaid petition and she specifically pleaded in her rejoinder that she never married with the above stated Raju Sao nor she has any alias name as Rani rather the aforesaid story was concocted by her husband

with a view to stop payment of maintenance. She specifically pleaded that her husband had already solemnized his second marriage with another woman and, therefore, custody of the child cannot be given to her husband.

8. Both the parties adduced oral as well as documentary evidence. Altogether seven witnesses were examined on behalf of the husband whereas six witnesses were examined on behalf of wife. Apart from that a series of documents were exhibited on behalf of the parties.

9. The Principal Judge, Family Court, Patna having heard both the parties passed the impugned judgment in the manner as stated above.

10. Learned counsel appearing for the husband assailed the impugned judgment on the ground that the Principal Judge, Family Court, Patna did not appreciate the evidence available on records in proper way and ignored the important exhibits while delivering his judgment. In course of hearing, learned counsel appearing for the husband referred to depositions of witnesses as well as documents exhibited on behalf of the appellant-husband as well as respondent- wife. Learned counsel appearing for the husband referred AIR 2005 SC 422 (Ramesh Chandra Rampratapiji Daga vs. Rameshwari Ramesh Chandra Daga) but the aforesaid judgment does not help the learned counsel appearing for the husband rather the aforesaid judgment clearly goes in favour of wife-respondent. Paragraph 20 of the aforesaid judgment speaks as follows:

It is well known and recognized legal position that customary Hindu Law like Mohammendan Law permitted bigamous marriage which were prevalent in all Hindu families ad more so in royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in

breach in marriage relationship.

11. Another decision cited on behalf of the husband is AIR 1999 page 69 (Smt Sunita Singh vs Raj Bahadur Singh & another) in which it has been held by the Hon'ble Allahabd High Court that if the wife is found to have illicit relationship after marriage, she is not entitled to litigation expenses and maintenance expenses.

12. On the strength of the aforesaid decisions, learned counsel appearing for the husband argued that in the instant case, husband successfully proved this fact that his wife solemnized second marriage with another man and, therefore, she is not entitled for any maintenance.

13. On the other hand, learned counsel appearing for the wife- respondent supported the impugned judgment and argued that husband could not succeed to prove the factum of remarriage but even if it is assumed for the sake of argument that his wife solemnized remarriage, then also she is entitled to get maintenance from her husband.

14. Having heard the rival contentions of both the parties, we went through the records along with the lower court records. Admittedly, learned Principal Judge, Family court has held that the husband could not succeed to prove the factum of remarriage and furthermore, the learned Principal Judge, Family court enhanced maintenance amount from Rs 700/- to Rs 1000/- per month in favour of wife.

15. Now the questions arise for determination as to whether the wife has solemnized her seocnd marriage with one Raju Sao or not and if so what would be the impact of the aforesaid second marriage on the maintenance amount earlier granted to her by the court.

16. As we have already stated above that altogether seven witnesses were examined on behalf of the husband and out of the aforesaid seven witnesses , Pw1 Mahant Vijay Shankar Giri has proved the entry of marriage register of Patan Devi as well as signature of one Sudhakar Jha as exhibits I and I/A respectively. Deposition of the aforesaid witness has been discussed by learned lower court at paragraph 9 of the impugned judgment and it is apparent from the above stated

discussion that the learned lower court discarded the evidence of this witness on several grounds including non-examination of above stated Sudhakar Jha as well as non- presence of this witness at the time of above stated entries. Similarly, deposition of Pw 2 Raghbir Prasad was also disbelieved by the learned court below on the ground that the signature of father of respondent wife does not tally with the alleged signature which finds place in the marriage register. The depositions of Pw 3 and Pw 4 were also discarded by the learned Principal Judge, Family court considering several circumstances emerging from the depositions of the aforesaid witnesses.

17. Similarly, deposition of Pw 5 Raju Sao, alleged second husband of respondent-wife has also been discarded by the learned Principal Judge, Family court on several grounds and the deposition of Pw 6 Narendra Kumar who is appellant here has been discarded treating him as hearsay witness. Pw 7 is a formal witness and he is not a witness on the point of so called second marriage of wife- respondent.

18. Learned counsel appearing for the appellant-husband heavily relied upon exhibit 6 which is deposition of one Indradeo Prasad in Matrimonial Suit no. 18 of 1984 in which at paragraph 3 of the deposition, the aforesaid witness has admitted that respondent-wife has alias name as Rani. Learned counsel appearing for the appellant- husband submitted that the aforesaid witness Indradeo Prasad was examined on behalf of wife in Matrimonial Suit no. 18 of 1984 and the aforesaid witness was examined in the year 1986 much prior to the second marriage of the wife and the aforesaid witness has clearly admitted that Sujata Devi has alias name as Rani. He further argued that the aforesaid admission of the above stated witness clearly supports the case of the husband. Apart from that he also drew our attention towards exhibit 6/B which is deposition of wife (Sujata Devi) in Matrimonial Suit no. 18 of 1984. Learned counsel appearing for the appellant-husband, specifically, drew our attention towards paragraph 17 of the aforesaid deposition and submitted that wife was examined in Matrimonial Suit no. 18 of 1984 in which she fairly admitted that her alias name is Rani and therefore, the aforesaid admission clearly belies the case of the wife-respondent but the learned court below completely ignored the aforesaid materials while delivering the

impugned judgment and as a result of which the learned court below came to wrong conclusion. To controvert the aforesaid submissions, learned counsel appearing for the wife-respondent submitted that wife respondent does not have any alias name as Rani but, as a matter of fact, her in-laws as well as her parents used to call her as Sujata Rani and that is why she stated in Matrimonial Suit no. 18 of 1984 that she is also called as Rani.

19. Now the question arises for determination as to whether the respondent-wife does have any alias name as Rani or not. To prove the aforesaid fact, certain documents were produced on behalf of the husband before the learned court below. Exhibit 4 is an affidavit said to have been sworn by Pw 5 Raju Sao who is allegedly said to be the second husband of the respondent- wife. In the aforesaid affidavit, he has stated that his wife Rani Devi does have alias name as Subita Devi. Apart from the aforesaid document exhibit 5 is said to be an affidavit sworn by the wife in Complaint case no. 202C of 1996 in which she has sworn affidavit in the name of Sujata Devi @ Rani @ Subita Devi. Exhibit 6/A is certified copy of deposition of one Ram Lakhan Sao father of above stated Raju Sao and exhibit 7 certified copy of Complaint case no. 202 C/1996 filed by Raju Sao against Rani @ Sujata Devi and others in the year 1996. Exhibit 8 is photograph of wife of Sujata Devi along with two others women.

20. Although the wife- respondent has specifically denied her alias name as Rani but the aforesaid documents, particularly, her admission in exhibit 6/B clearly suggest this fact that she has alias name as Rani. Therefore, it can easily be said that the husband successfully proved this fact that his wife Sujata Devi has alias name as Rani but mere proving the aforesaid fact does not amount to proof of the factum of second marriage because the so called entry in marriage register appears to be doubtful as held by the learned court below. We also perused exhibit 1/C, the so called signature of Raghubansh Mani, the father of the wife-respondent on marriage register and found that the aforesaid signature does not, at all, tally with the signature of the aforesaid Raghunbansh Mani on the deposition of this case. So the very entry of the aforesaid marriage register becomes doubtful and apart from the aforesaid marriage register, there is no documentary evidence on the entire record to prove the factum of second marriage of wife-Sujata Devi

with the aforesaid Raju Sao. So far the other documents exhibited on behalf of the husband are concerned, the same are of no help to the husband for proving the factum of second marriage of wife-respondent and, therefore, we are of the considered opinion that the learned court below rightly held that the husband could not succeed to prove the factum of second marriage of the wife-respondent with the above stated Raju Sao.

21. Now the question arises as to whether husband's prayer to rescind maintenance allowance order is fit to be allowed, as prayed for, or not. In our considered opinion, the learned court below rightly refused to rescind the aforesaid order because the husband could not succeed to prove the factum of second marriage of his wife. For the sake of arguments even if it is assumed that the wife respondent solemnized her second marriage with above stated Raju Sao, and then also, in our opinion, the maintenance order cannot be stopped. In this connection, section 25(3) of the Hindu Marriage Act, 1955 is relevant which runs as follows:

"If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock; [It may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

22. Admittedly, section 25(3) of the Hindu Marriage Act, 1955 was amended by section 17 of the Marriage Laws Amendment Act, 1976 and under the unamended section the liability to pay maintenance was restricted to the period during which the applicant remained unmarried. After the aforesaid amendment the words "while the applicant remains unmarried" were omitted. By this amendment the court is empowered not only to rescind order but to vary or modify it in such manner as it deems just. Therefore, mere remarriage by the wife does not restrict the court to pass an order for maintenance in favour of the wife. In the aforesaid circumstances even if it is assumed for the sake of arguments that wife respondent has solemnized her second marriage with the aforesaid Raju Sao,

then also, the court is not handicapped to provide maintenance to her. Moreover, as we have already held that the husband could not succeed to prove the factum of second marriage of his wife with the aforesaid Raju Sao, therefore, the question of rescinding her maintenance amount does not arise.

23. Now, so far the question of quantum of maintenance is concerned, the quantum of maintenance amount has not seriously been challenged by the husband before this court. Admittedly, the wife respondent does not have any independent source of her income and she is fully dependent upon her husband who has already solemnized his second marriage with another woman and has three children from his second wife and, therefore, in our opinion, the learned court below has rightly enhanced maintenance amount to the tune of Rs 1000/- per month and we do not feel proper to interfere with the same.

24. On the basis of the aforesaid discussions both the above stated miscellaneous appeals i.e. Miscellaneous Appeal No. 8 of 2010 and Miscellaneous Appeal No. 9 of 2010 are dismissed and the impugned judgment passed by the learned principal Judge, Family Court, Patna is, hereby, confirmed.

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