



Shaveta v. Ajay, (Punjab And Haryana) **Law Finder Doc Id # 1558758**

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## PUNJAB AND HARYANA HIGH COURT

Before:- Jaishree Thakur, J.

RSA No. 3353 of 2018 (O&M). D/d. 02.08.2019.

Shaveta - Appellant

**Versus**

Ajay - Respondent

For the Appellant:- Mr. G.S. Ghuman, Advocate.

For the Respondent:- ex-parte.

**Hindu Marriage Act, 1955 Section 13.**

Case Referred :

Samar Kumar Roy (D) Through LR (Mother) v. Jharna Bera 2017 (4) R.C.R. (Civil) 810

### JUDGMENT

**Jaishree Thakur, J.** - The Regular Second Appeal has been filed by the appellant seeking to challenge the judgment and decree of both the courts below whereby her suit for declaration to the effect that the alleged marriage said to have taken place on 21.8.2014 between the appellant and the respondent herein is non-est, null and void as no marriage between the parties was performed according to the Hindu rites, has been dismissed.

2. The appellant/plaintiff (hereinafter referred to as 'the plaintiff') had filed a suit for declaration to the effect that the alleged marriage ceremony said to have taken place on 21.08.2014 between the plaintiff and the respondent/defendant (hereinafter referred to as 'the defendant') was null and void. It was the case of the plaintiff that she got to know the defendant through a common friend. The defendant and his family members coerced her to perform the marriage with the defendant. It is her case that the plaintiff did not enter into such relationship of her free consent. The relationship had not been solemnized as per the provisions of the Hindu Marriage Act, 1955 and the parties never lived together as husband and wife. It was further her case that the defendant used her signatures obtained on blank papers to file petition in this court seeking protection.

3. On notice, though the defendant was duly served but he did not put in appearance and was proceeded against ex-parte. The plaintiff led ex-parte evidence. On completion of the evidence, the trial Court held that though the evidence led by the plaintiff goes un rebutted, uncontroverted and unchallenged, but, as per settled law, she has to prove her own case and she cannot rely upon the weakness of the defendant and thus, dismissed the suit as not maintainable holding that the plaintiff had an efficacious remedy to get the marriage declared as null and void under the provisions of the Hindu Marriage Act, 1955.

4. Aggrieved against the judgment and decree of the trial Court, the plaintiff preferred an appeal before the first Appellate Court, who though held that a declaratory suit filed under section 34 of the Specific Relief Act was maintainable, however, observed that the plaintiff failed to prove her case that no ceremony for the alleged marriage between the parties had taken place at Gurdwara Dashmesh Pita Patshahi Dashvi, Panchkula. One of the grounds for the aforesaid finding was that the plaintiff had not examined any Granthi (Priest) of the said Gurudwara in support of her plea that no such marriage ceremony had taken place and on this premise dismissed the appeal. Aggrieved against the judgments and decree of the courts below, the plaintiff has preferred the instant appeal.

5. At the outset, it is noted that alongwith the appeal, an application under Order 41 Rule 27 of the Code of Civil Procedure was filed for placing on record an affidavit of Granthi (Annexure A1), by way of additional evidence, who has deposed that the plaintiff and defendant had just visited Gurudwara and paid obeisance before the Guru Granth Sahib but no formal marriage ceremony as per Sikh traditions was solemnized either by him or any other Priest or Sewadar, who were present in the Gurudwara on 21.08.2014. On the application for leading additional evidence, this Court on 3.12.2018 allowed the application and directed the plaintiff to appear before the Civil Judge (Sr. Division), Chandigarh, to get her statement recorded by way of additional evidence as well as of the Granthi, namely Amar Singh. The trial court was directed to send the file to this Court, which has been received and perused by this Court.

6. Learned counsel appearing on behalf of the appellants submits that though the plaintiff/appellant has established on the record by leading overwhelming evidence that no marriage had taken place between the plaintiff and defendant by performing sacred ceremony of solemnization of marriage at Gurdwara Dashmesh Pita Patshahi Dashvi, Panchkula on 21.8.2014, the courts below have still failed to grant the relief sought in the plaint. It is further submitted that the first Appellate Court had denied the relief only on the ground that the plaintiff failed to prove her case that no ceremony for the alleged marriage between the parties had taken place at aforesaid Gurudwara and now with the statement of Amar Singh, Sewadar (Granthi) available on the record, it is amply proved that no ceremony was performed. Learned counsel for the appellant relies on **Samar Kumar Roy (D) Through LR (Mother) v. Jharna Bera 2017 (4) R.C.R. (Civil) 810** in support of his arguments.

7. I have heard learned counsel for the appellant and with his assistance have also perused the pleadings of the parties.



8. As noticed above, the respondent herein had remained ex-parte despite substitute service having been effected upon him. The appellant herein, along with Ajay son of Sh. Ashok Kumar, respondent herein, had initially approached this Court by way of filing Criminal Misc. M 34828 of 2014 under section 482 of the Code of Criminal Procedure, 1973 for directing the official respondents to give police protection to them as well as for issuance of a direction to the father of the appellant not to interfere with the liberty and married life of the petitioners in any manner whatsoever. This Court by order dated 10.10.2014 disposed of the petition with a direction to the Senior Superintendent of Police, Sri Muktsar Sahib, District Sri Muktsar Sahib, to protect the lives and liberty of the petitioners in accordance with law. In the said petition, a plea had been taken that both the petitioners were in love and had performed a marriage of their own sweet will and fearing wrath of the parents of the appellant, protection was sought. The appellant had even approached the Senior Superintendent of Police, Sri Muktsar Sahib, with an application for providing protection stating that she feared harm from her father to her husband and herself, as she had performed the marriage of her own consent and without consent of her parents. Thereafter, the marriage is stated to have been solemnized at Gurdwara Dashmesh Pita Patshahi Dashvi, Panchkula, as per Sikh rites and customs. However, in November, 2016 a suit for declaration to the effect that the alleged marriage stated to have taken place on 21.8.2014 was not a legal marriage as the marriage had been performed without her consent. In the plaint, it was averred that she had no free consent whatsoever in the alleged relationship of marriage and even otherwise the said relationship had not been solemnized as per the provisions of the Hindu Marriage Act, 1955 and the parties never lived together as husband and wife and, therefore, it was prayed that the alleged relationship of marriage deserves to be declared as null and void.

9. The trial Court, on appreciation of the evidence, held that the suit was not maintainable and the appellant ought to have preferred a plaint under section 13 of the Hindu Marriage Act, 1955. It would be worthwhile to note that the respondent/defendant remained ex-parte in those proceedings as well. The first Appellate court, however, dismissed the appeal primarily on the ground that there was no evidence available on the record to establish that the marriage had not been solemnized, which led to an application being filed before this Court under Order 41 Rule 27 of the Code of Civil Procedure to lead additional evidence of the Sewadar (Granthi) from the Gurdwara where the marriage ceremony was alleged to have been performed. The application for additional evidence was allowed and the evidence by way of affidavit of Sewadar (Granthi) Amar Singh was recorded before the Civil Judge (Senior Division), Chandigarh, who categorically stated that both the appellant and Ajay respondent herein had visited the Gurudwara and paid obeisance before the Guru Granth Sahib but no formal marriage ceremony as per Sikh traditions was solemnized either by him or any other Priest or Sewadar, who were present in the Gurudwara on 21.08.2014. The statement of the Granthi remained uncontroverted as the defendant did not put in appearance for cross-examination.

10. In such a situation, would the appellant herein be entitled to declaration that the marriage between the parties on 21.8.2014 is null and void? As per provisions of the Hindu Marriage Act, 1955, certain ceremonies are required to be performed for a marriage to be declared as legal and binding, one of them being taking of steps around the holy book or a sacred fire and in the instant case around the 'Guru Granth Sahib', as per the customs followed by the Sikhs. In the instant case, there is a categorical statement of the Granthi of the Gurdwara, which goes unrebutted, stating that there was no ceremony performed at the Gurdwara on 21.8.2014 between the appellant and the respondent and that is the case that has also been set up by the appellant herein that her signatures were forged and misused, while filing a petition seeking protection before this Court. A perusal of the Criminal Misc. petition that had been filed reflects the photographs of both the appellant and the respondent before the Holy book but there is no marriage certificate as issued by the Granthi of a Gurdwara attached with the petition nor are there any photographs attached showing them taking required steps around the holy book; nor there is any certificate of marriage issued by the Registrar of Marriages. Moreover, the High Court did not opine on the validity of the marriage, while deciding the aforesaid petition seeking protection. Once the statement of the Granthi goes unrebutted, this Court can safely presume that in fact, no marriage had taken place between the parties and if no such marriage subsisted this Court is not in a position to declare the marriage null and void.

11. The judgment as relied by the learned counsel for the appellant would not be applicable in the instant case since the facts are slightly different. In Samar Kumar Roy's case (supra), the marriage had been registered, which is not so in the instant case.

12. In view of what has been stated above, this appeal is disposed of holding that there is no evidence available on the record to substantiate that a marriage had in fact taken place on 21.8.2014 between the appellant and the respondent herein. However, the defendant herein is restrained from interfering in the peaceful life and property of the appellant or claiming himself to be her husband.

13. The appeals stand disposed of on the above terms.