AFR

Court No. - 03

Case :- FIRST APPEAL No. - 830 of 2022

Appellant :- Ashish Morya
Respondent :- Anamika Dhiman
Counsel for Appellant :- Mamta Singh
Counsel for Respondent :- Sumit Daga

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Rajendra Kumar-IV,J.

1. Heard Ms. Vandana Singh, holding brief of Ms. Mamta Singh, learned Counsel for the Plaintiff-appellant and Sri Sumit Daga, learned Counsel for the defendant-respondent.

2. This appeal has been filed praying to set aside the judgment and order dated 09.09.2022 in Case No.269 of 2022, (Ashish Maurya versus Smt. Anamika Dhiman), under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as Act, 1955) passed by the Principal Judge, Family Court, Saharanpur whereby the case filed by the plaintiff-appellant under Section 9 of the Act, 1955 has been dismissed.

Facts:-

3. Briefly stated the facts of the present case are that the plaintiff-appellant had earlier filed **Case No.1028 of 2021**, (Ashish Maurya versus Smt. Anamika Dhiman), under Section 9 of the Act, 1955 which was subsequently withdrawn by him stating that he does not want to press the case for the reason that a compromise has been entered and satpadi ceremony was not performed for marriage. Again he filed **Case No.269 of 2022**, (Ashish Maurya versus Smt. Anamika Dhiman), under Section 9 of the Act, 1955 which has been dismissed by the impugned judgment dated 09.09.2022. Aggrieved with this judgement, the plaintiff-appellant filed the present appeal.

4. In her written statement, the defendant-respondent has clearly denied any marriage between her and the plaintiff-appellant. She made several allegation in her written statement and specifically stated the story of marriage is totally false and in fact there was no marriage at all and the plaintiff-appellant is regularly attempting to black mail her. She has also lodged FIR No.0475 of 2021, dated 04.10.2021, under Sections 384, 328, 506, 376, 427 and 504 IPC, Police Station Sadar Bazar, District Saharanpur in which charge sheet has been filed by the police.

Discussion and Findings:

5. We have carefully considered the submissions of the learned counsels for the parties and perused the appeal.

6. The submissions made by learned counsel for the parties give rise to the following questions:-

(a) Whether the Suit No.269 of 2022 (Ashish Maurya vs. Smt. Anamika Dhiman) filed by the plaintiff-appellant was barred by Order II Rule 2(3) of the Civil Procedure Code?

(b) Whether marriage certificate issued by Arya Samaj is proof of a valid marriage?

(c) Whether the plaintiff is entitled for a decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955?

Question No.(a) Whether the Suit No.269 of 2022 (Ashish Maurya vs. Smt. Anamika Dhiman) filed by the plaintiff-appellant was barred by Order II Rule 2(3) of the Civil Procedure Code?

7. We find that the plaintiff has earlier filed a Suit No.1028 of

2021 under Section 9 of the Act, 1955 in which subsequently he moved an application stating as under:

> *"निवेदन है कि प्रार्थी वाद उक्त में वादी है। श्रीमान जी प्रार्थी का समाज के चन्द मौजिज लोगों ने सुलहनामा करा दिया है। उक्त वाद प्रार्थी वापिस लेना चाहता है। उक्त विवाह के सम्बन्ध में वादी एवं प्रतिवादनी ने आर्य समाज में आवेदन किया था जिसमें वादी एवं प्रतिवादनी को दिनांक 29.06.2021 की शादी का प्रमाण पत्र दे दिया है* ***लेकिन हिन्दू रीति रिवाज के अनुसार कोई फेरे वादी व प्रतिवादनी के नहीं हुये थे। वादी अपने वाद में बल देना नहीं चाहता है इसलिये वादी का वाद बल न दिये जाने के कारण निरस्त फरमाया जाना जरुरी है। इस सम्बन्ध में पुनः कोई कार्यवाही नहीं करुंगा।*** *अतः श्रीमान जी से प्रार्थना है कि वाद उपरोक्त वादी द्वारा बल ना दिये जाने के कारण निरस्त करने की कृपा करें।"*

8. Order II Rule 2(2), C.P.C. provides as under:

> *"Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."*

9. Undisputedly, the plaintiff-appellant has earlier filed the aforesaid Suit No.1028 of 2021 in which he moved an application stating that "Saptpadi" was not conducted as per Hindu rites and rituals and that he does not want to press the suit and that he shall not reinitiate any proceeding. In the aforesaid suit, the defendant-respondent/ girl has filed a written statement. Thereafter, on the complaint of the plaintiff-appellant, the aforesaid Suit No.1028 of 2021 under Section 9 of the Act, 1955 was dismissed. Thus, the plaintiff-appellant has omitted to sue in respect of conjugal rights , therefore, he was not entitled to file a fresh suit No.269 of 2022 on the same set of facts for restitution of conjugal rights under Section 9 of the Act, 1955, inasmuch as cause of action and the relief sought in both the suits were identical and the earlier suit was got dismissed

by him as not pressed in the absence of a valid marriage. Therefore, we do not find any illegality in the impugned judgment holding that the second suit i.e. Suit No.269 of 2022 filed by the plaintiff-appellant was barred by the provisions of Order II Rule 2, C.P.C. and, therefore, the suit was rightly dismissed by the court below.

Question No.(b) Whether marriage certificate issued by Arya Samaj is proof of a valid marriage?

10. Arya Samaj, a vigorously reforming sect of modern Hinduism, founded in the year 1875 by the great saint and reformer Swami Dayanand Saraswati; is a reformist movement which believes in one God and in the Vedas as the books of true knowledge. The Arya Samaj opposes the caste system based upon birth as unvedic and insist that castes should reflect merit. The Arya Samaj has sought to revitalize Hindu life and instil self-confidence and national pride amongst Hindus with the watch word of Swami Daya Nand "Back to the Vedas".

11. In the case of **Seema vs. Ashwini Kumar, (2006) 2 SCC 578 (Paras 4, 9 and 15),** Hon'ble Supreme Court considered the provisions of Section 8 of the Act, 1955 and compulsory registration of marriages and held as under:

> *4. It has been pointed out that compulsory registration of marriages would be a step in the right direction for the prevention of child marriages still prevalent in many parts of the country.* ***In the Constitution of India, List III (the concurrent list) of the Seventh Schedule provides in Entries 5 and 30 as follows****:*
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> > *"5.* ***Marriage and divorce****; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution* ***subject to their personal law****.*
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> > ** * **

30. Vital statistics including registration of births and deaths."

> *9.* ***In exercise of powers conferred by Section 8 of the Hindu Act the State of U.P. has framed the U.P. Hindu Marriage Registration Rules, 1973*** *which have been notified in 1973.* ***In the affidavit filed by the State Government it is stated that the marriages are being registered after enactment of the Rules.***
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> *15. As is evident from narration of facts, though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnisation of marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non-registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place.* ***Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage,*** *yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage.* ***That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression "for the purpose of facilitating the proof of Hindu marriages".***

12. Thus, from the aforequoted judgment of the Hon'ble Supreme Court, it is evident that though the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value. The plaintiff-appellant has neither led any evidence nor filed any certificate of marriage as proof of marriage under Section 8 of the Act, 1955 read with the Uttar Pradesh Hindu Marriage Registration Rules, 1973 or the Uttar Pradesh Registration of Marriage Rules, 2017. Learned counsel for the plaintiff-appellant has also completely failed to place before us any statutory provisions enabling the Arya Samaj to issue a marriage certificate. Thus, we have no difficulty to hold that **Marriage Certificate issued by Arya Samaj has no statutory force.**

13. Section 5 of the Act, 1955 provides for conditions for a Hindu marriage. Section 7 of the Act, 1955 provides for ceremonies of a Hindu marriage that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto and that where such rites and ceremonies include the Saptapadi i.e. the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. Section 11 of the Act, 1955 provides for void marriages. It is admitted case of the plaintiff-appellant that the rites and ceremonies of Saptapadi had not taken place in the alleged marriage of the plaintiff with the defendant on 29.06.2021. It is also relevant to mention here that the defendant respondent has made serious allegation and filed an application under Order VII Rule 11, C.P.C. in the above Suit No.269 of 2022 that the plaintiff-appellant stolen her photographs from whatsapp and facebook and deceitfully got her signature on some papers alluring her for providing employment. The defendant-respondent has also made serious allegation of rape etc. against the plaintiff-appellant and lodged FIR No.475 of 2021 under Sections 384, 328, 506, 376, 427, 504 I.P.C.. P.S. Sadar Bajar in which chargesheet has also been filed by the police. Thus, in the absence of a valid marriage, **marriage certificate of Arya Samaj is not proof of a valid marriage** of the plaintiff-appellant and the defendant-respondent.

Question No.(c) Whether the plaintiff is entitled for a decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955?

14. Section 9 of the Act, 1955 provides for restitution of conjugal rights. It provides that when either the husband or the wife has, **without reasonable excuse**, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, **on being satisfied of the truth of the statement**s made in such petition and that **there is no legal ground** why the application should not be granted, may decree restitution of conjugal rights accordingly. The explanation appended to Section 9 of the Act, 1955 provides that where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. Since in the present set of facts, there is no proof of valid marriage, therefore, the court below has not committed any error of law to dismiss the suit. In our view, **existence of a valid marriage is precondition to ask for relief of restitution of conjugal rights.** In the absence of proof of a valid marriage, under the facts and circumstances of the case; the court below has not committed any error of law to dismiss the suit observing that mere getting a marriage certificate from Arya Samaj is not proof of a valid marriage.

15. For all the reasons aforestated, we find that **the present appeal** has no merit and is, therefore, **dismissed with costs**.

Order Date :- 17.11.2022
I.A. Siddiqui/NLY