Neutral Citation No. - 2023:AHC:151014-DB

A.F.R.

Court No. - 39

Case :- FIRST APPEAL No. - 623 of 2022

Appellant :- Garima Singh

Respondent: Pratima Singh And Another

Counsel for Appellant: Ram Kishore Pandey

Counsel for Respondent: Prem Singh, Ghanshyam Dwivedi

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vinod Diwakar, J.

(Per Hon'ble Vinod Diwakar, J.)

1. Heard Shri Ram Kishore Pandey, learned counsel for the defendant/ appellant and Shri Ghanshyam Dwivedi, learned counsel for the plaintiff/respondent no.1.

2. Before we advert to the question of law raised in the instant first appeal by Smt. Garima Singh- the second wife, it would be convenient to have a bird's eye view of the facts of the case.

3. Succinctly, the facts of the case are that on 06.05.2002, Smt. Pratima Singh married Raghvendra Singh in accordance with Hindu rites and ceremonies. Owing to certain matrimonial disputes, Raghvendra Singh filed a Matrimonial Case No.24 of 2012 titled as Raghvendra Singh Vs. Smt. Pratima Singh under Section 13 of the Hindu Marriage Act, 1955, before the court of Principal Judge, Family Court, Chitrakoot, for dissolution of marriage. In the aforesaid matrimonial case, Smt Pratima Singh filed a counter-claim under section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rites. The Matrimonial Case No.24 was rejected, and the counter-claim filed by Smt. Pratima Singh was allowed with the direction to Raghvendra Singh to bring Smt. Pratima Singh to his house within one month from the date of order to perform matrimonial obligation.

4. Meanwhile, Smt. Pratima Singh learnt that Raghvendra Singh married Smt. Garima Singh and two children are born out of that wedlock, namely, Akshay Singh and Anaya Pratap Singh. It is also revealed that Shri Raj Narayan Singh- her father-in-law - had registered a will deed on 16.2.2018 in favour of Smt. Garima Singh and her two children and bequeathed all his movable and immovable properties in their names and got recorded her name as the wife of Raghvendra Singh in the family register.

5. That aggrieved by the same, Smt. Pratima Singh- the first wife - filed a Criminal Complaint No.8 of 2019, under Sections 494, 495, 496 I.P.C., before the court of competent jurisdiction at Mau, District Chitrakoot titled as Smt. Pratima Singh Vs. Raghvendra Singh and another, and the same is pending trial.

6. The first wife had also challenged the registered will deed dated 16.2.2018 in Original Suit No.037 of 2019 titled as Pratima Singh Vs. Garima Singh before the learned Civil Judge, Mau. The suit was dismissed *ex-parte* vide judgement and order dated 12.2.2022.

7. The first wife being aggrieved by the solemnization of a second marriage by her husband with Smt. Garima Singh, during her lifetime, filed a Matrimonial Case No.97 of 2020 before the family court, under section 11 of the Hindu Marriage Act, 1955, to declare the second marriage as null and void being performed in contravention of section 5 of the Hindu Marriage Act, 1955.

8. During the pendency of this case, Shri Raghvendra Singh died on 10.1.2021. The second wife was also made respondent in the case, and she took a preliminary objection that the first wife couldn't file a case under section 11 of the Hindu Marriage Act, 1955 against her husband and second wife. The learned Principal Judge, Family Court decided the preliminary objection in favour of the first wife and listed the matter for recording of evidence.

9. The learned Principal Judge, Family Court construed the word *"either party thereto"* mentioned in section 11 of the Hindu Marriage Act, 1955 in

the light of the surrounding text and declared that the first wife can file a suit of declaration of the second marriage as illegal and void.

10. Aggrieved by the same, the second wife preferred the instant first appeal before this Court with the plea that the first wife could not file a case under section 11 of the Hindu Marriage Act, 1955 against the second wife and her husband.

11. To buttress his argument, learned counsel for the second wife - the appellant herein, has placed reliance in the case ***Lakshmi Ammal Vs. Ramaswami Naicker and another[1]; Amar Lal Goru Vs. Vijayabai, Pusa Singroda[2]; Kedar Nath Gupta Vs. Sm. Suprava[3]; Harmohan Senapati Vs. Smt. Kamla Kumari Senapati and another[4]; Smt. Sheel Wati Vs. Smt. Ram Nandan[5]; and Birendra Bikram Singh and others Vs. Kamala Dev[6].***

12. Shri Ram Kishor Pandey, learned counsel for the second wife, has primarily relied upon the *Lakshmi Ammal (supra)* , in which the learned single judge of the Madras High Court had dismissed the appeal filed by Lakshmi Ammal- the first wife, against the order of the learned District Judge, as not maintainable under sections 11 & 17 of the Hindu Marriage Act, 1955, for declaring the marriage of her husband Ramaswami Naicker with Krishnammal– the second wife, as void and illegal.

13. The facts of *Lakshmi Ammal (supra)* case are similar to the facts of the instant appeal; for the sake of illustration, relevant facts of that case are extracted herein as:

> *"Lakshmi Ammal, the appellant, was admittedly the legally wedded wife of Ramaswami Naicker. She had no children. Ramaswami Naicker married the second respondent, Krishnammal, as his second wife after Act XXV of 1955 had come into operation. Lakshmi Ammal wanted to get this marriage of her husband with Krishnammal declared void and illegal under S. 17 of the Act by filing this application under S. 11. Both the re-*

1 *AIR 1960 Mad 6*

2 *AIR 1959 0 (MP) 400*

3 *AIR 1963 Pat 311*

4 *AIR 1979 Orissa 51*

5 *AIR 1981 Allahabad 42*

6 *AIR 1995 Allahabad 243*

spondents contended that she had no right to file an application under S. 11, as she was not "a party to the second marriage" sought to be declared illegal and void. Accepting this contention, the learned District Judge dismissed the petition with costs."

14. The learned single judge of the Madras High Court dismissed the appeal filed by the first wife and acquired a strict construction to the phrase *"either party thereto"* and held that section 11 of the Hindu Marriage Act, 1955, can only apply to those two persons who are entered into the marriage. The Court was of the view that *"either party thereto"* would mean two persons, namely, the actual parties to the marriage, as any marriage requires only two parties and no third party. The relevant part of the judgment dated 29.10.1958 is extracted herein below:

"The phrase is "either party thereto". That can only mean two persons, namely, the actual parties to the second marriage—Ramaswami Naicker and Krishnammal. Any marriage requires only two parties and no third party. It will be contrary to sense and commonsense alike to bring in a co-wife, co-husband, concubine, keep etc., on the ground that they also perform much the same functions as the husband and wife, the parties to the void marriage. The fact is that the law does not take facts to mean the same things. Thus, a concubine may, for many purposes, no doubt, serve the purpose of a wife but will not be a wife-in-law. So too, a co-wife cannot become "a wife under the second marriage," for she is already a wife under the first marriage and cannot be married again to her husband, at any rate, without the intervention of a divorce and cessation of marriage for some time. The void second marriage was only between Krishnammal and Ramaswami Naicker, and the phrase "either party thereto" in S. 11 can only apply to those two persons, and not to the appellant Lakshmi Ammal, the first wife, or to any others."

15. By placing reliance upon the inference arrived at by the learned single judge of Madras High Court, the learned single judges of various High Courts have taken similar view. It would be apt and fair to discuss, in brief, the findings of various High Courts on the question of maintainability of an application under section 11 of the Hindu Marriage Act, 1955, by the first wife against the second wife and husband to apply equality jurisprudence in social context judging.

16. The rationality of the learned single judge in the ***Lakshmi Ammal (supra)*** case has been adopted by the single bench of this Court in ***Amarlal Goru Vs. Vijayabai, Pusa Singroda, Misc. (First) Appeal No.98 of 1957,*** which was decided on 11.2.1959. The learned single judge has observed as follows:

"The respondent as a previously married wife of the appellant No.1 Amarlal was entitled under section 10 of that Act only to a decree for judicial separation so far as she was concerned. She could not prefer any application to have the marriage between the appellants declared void under section 11. That section can be invoked by only those persons who are party to a marriage as would clearly appear from the words "either party thereto" used therein. The relief of declaring a marriage void has been intentionally confined to the parties to the marriage, and it is not open to any other person to make an application under section 11. It is true that the marriage between the appellants was contrary to the provisions in section 5 of the Act and was, therefore, invalid, but that is not the point in the case. The real question is whether any third party has a right to file an application under section 11 to declare the marriage null and void. The language used in that section admits of no doubt that the right cannot be exercised by anyone except the parties to the marriage, which is challenged. Under these circumstances, it was not open to the Court to declare the marriage between the appellants null and void."

17. The division bench of the Patna High Court in ***Kedar Nath Gupta (supra)*** case has also relied on the judgment of ***Lakshmi Ammal (supra)*** case and observed as follows:

"It was, therefore, conceded at the bar that, if the marriage of the appellant with Radharani took place on the 26th April 1957, it would be null and void. The question, however, is whether the Court was competent to grant a declaration under S. 11 on a petition presented by the first wife of the appellant. According to S. 11, the petition must be presented by "either party" to the marriage solemnized after the commencement of the Act. It is plain, therefore, that such a petition can be entertained only if it is made by either of the two parties to the marriage. This was the view expressed by a Single Judge of the Madhya Pradesh High Court in Amartal Gour v. Aijayabai, AIR 1959 Madh Pra 400 and a Single Judge of the Madras High Court in Lakshmi Ammai v. Ramaswami Naicker, AIR 1960 Mad 6; and we are of the opinion that this is the correct view. Hence, in the instant case, only the appellant or his second wife, who were the parties to the marriage in question, could file such a petition; and as the first wife, Suprava Gupta (the respondent) was not a party to this marriage, she was not entitled to present a petition under Section 11."

18. The learned single judge of Orrisa High Court has also taken a consistent view in ***Harmohan Senpati (supra)*** case and observed as follows:

"The aforesaid view of mine is fortified by the decisions of the Allahabad High Court, Andhra Pradesh High Court, Madras High Court, Patna High Court and Madhya Pradesh High Court. In Jokhan Prasad Shuklav. Lakshmi Devi, ILR (1973) 2 All 853, has been held that a suit filed by the previous wife for a declaration that the second marriage of her husband was null and void is not barred by Section 19 of the Act. 'Either party thereto' clearly means either party to the marriage sought to be declared null and void. A petition by a person who is not a party to the marriage sought to be declared null and void will not lie under S. 11; reliance has been placed on the case reported in Lakshmi Ammal v. Ramaswarni Naicker, AIR 1960 Mad 6.

A Division Bench of the Patna Court in Kedar Nath Gupta v. Sm. Supraya, AIR 1963 Pat 311, has also held that a petition for the annulment of second marriage under Section 11 of the can be presented only by the

husband or his second wife, who were the parties to the marriage in question and the first who is not a party to the second marriage, is not entitled to present such petition under the Act. She may seek her remedy, it any, under the general law. In this case, the decision reported in Lakshmi Ammal's case (supra) has also been followed. A decision of the Madhya Pradesh High Court in Amarlal Goru v.Vijayabai, AIR 1959 Madh Pra 400, which is on the very same point, has also been followed by the Patna High Court."

19. The learned single judge of this Court in ***Smt. Sheel Wati (supra)*** case, by relying upon earlier judgments, has taken a consistent view and observed as below:

"I have, therefore, no hesitation in reiterating the view expressed by me in the referring order dated 27th September, 1979, for the reasons given therein and the further reasons given hereinabove, that marriage though null and void for contravening any of the conditions prescribed, by clauses (i), (iv) and (v) of Section 5 of the Act, has yet to be regarded a subsisting fact, and in that sense it cannot be said to be wholly non est in law, or a nullity, so long as it is not declared to be null and void by a decree of Nullity of the District Court on a petition presented by either party thereto against the other party to the marriage. No third person can treat the marriage to be void or have it adjudged to be null and void in any other suit or proceeding unless it has, already been declared to be so by a decree of Nullity of a District Court in accordance with the procedure prescribed by and under the Act; the only exceptions being the case where the aggrieved spouse of the first marriage on account of whose being living the second marriage is void, prosecutes the other spouse for being punished for bigamy under Section 406 or 495 of the Penal Code, 1860, read with Section 17 of the Hindu Marriage Act; or the case where the aggrieved spouse prosecutes the guilty spouse for a contravention, of clauses (iv) and (v) of Section 5 under Section 18(b) of the Act."

20. The leaned single judge of this Court again relied upon the findings of ***Lakshmi Ammal (supra)*** case in ***Birendra Bikram Singh (supra)*** case and observed as follows:

"In the case of Smt. Aina Devi v. Bachan Singh reported in AIR 1980 All 174 it was held:

"Section 11 specifically enables either party to the marriage to have it declared null and void by a decree of nullity against the other party. Section 11 does not confine the right to present a petition thereunder to the aggrieved party alone. On the other hand, it expressly confers the right to sue on either party to a marriage which contravenes any of the conditions of clauses (i), (iv) and (v) of Section 5".

It was also held; "the petitioner, having proved by positive evidence that the first respondent already had a married wife living in the person of respondent 2 was entitled to a decree declaring it as null and void. It could not be said that the petitioner was taking any advantage of her own wrong, for the petitioner's allegation that she was already married thrice before had been denied by the first respondent, which meant that even if it were a fact that the petitioner had three husbands of previous marriages living when the first respondent married her, the first respondent was not at all aggrieved by that fact."

In the case of Lakshmi Ammal v. Ramaswami Naicker (sic) and another. It was held;

"The phase "either party thereto" can only mean two persons namely, the actual parties to the marriage. Any marriage requires only two parties, and no third party. It will be contrary to sense and commonsense alike to bring in a co-wife, co-husband, concubine, keep, etc., on the ground that they also perform much the same functions, as the husband and wife, the parties to the void marriage. A co-wife cannot become "a wife, under the second marriage" for she is already a wife under first marriage, and cannot be married again to her husband, at any rate without the intervention of a divorce and cessation of marriage for some time. Hence the first wife cannot apply under Section 11 for declaring the marriage of the second wife as void under Section 17. The first wife is however not left remediless. She can file a suit, under the ordinary law, for a declaration that the marriage of her husband with the second wife is illegal and void, under Act XXV of 1955. The law, in its wisdom, has given a preferential treatment to the husband and wife vitally affected, and that comes under "Proper classification" cannot be called an "illegal discrimination offending Art. 14 of the Constitution, or any other Articles of the Constitution."

21. Whereas, Shri Ghanshyam Dwivedi, learned counsel for the first wife, respondent herein, relying upon ***Smt. Ram Pyari Vs. Dharam Das and others[7] and Balram Yadav Vs. Fulmaniya Yadav[8],*** submits that in ***Smt. Ram Pyari (supra)*** case, a co-ordinate bench of this Court considered the issue that evolved in ***Lakshmi Ammal (supra)*** case*, as was* consistently followed, pre-enactment of the Family Courts Act, 1984. Thereafter, it took a different view and held that the second wife can also file a case under section 11 of the Hindu Marriage Act, 1955, even a third party to the marriage can also approach to the Court for declaring the marriage as illegal and void when they are affected with the marriage until it is barred by statute. One may at once bring a suit of one's choice, and not only the first wife but also anyone who is affected by the marriage performed in contravention of sub-section (i), (iv) & (v) of section 5 of the Hindu Marriage Act, 1955 would be entitled to bring a civil suit. The relevant portion of the judgment is extracted herein below:

"At this place it appears relevant to refer to the distinction between a void and voidable marriage. We have noted above that section 12 of the Hindu Marriage Act deals with cases where a marriage is void at the option of either party thereto. Its object is to lay down that until avoided, a voidable marriage should be regarded as good for all purposes. It also lays down the circumstances under which a marriage shall be held to be voidable and annulled by a decree of nullity. Sections 11 and 17 deal with void marriages. Under section 17 a person committing breach of Clauses (i),

7 *AIR 1984 Allahabad 147*

8 *(2016) 13 SCC 308*

(iv) and (v) of Section 5 after the commencement of the Hindu Marriage Act is liable to be punished under Sections 494 and 495 of the Penal Code. It is true that the two sections deal with and lay down that the marriages performed in contravention of the clauses referred to above would be void, but it would be folly to think that the legislature has enacted two provisions for the same purpose. Section 11 declares a marriage to be void, whereas Section 17 makes a party contravening Clauses (i), (iv) and (v) of Section 5 liable to punishment. These two sections, however, cannot be read as confining the rights only of the parties to a void marriage. There is a distinction between a void and voidable marriage. A void marriage is regarded as non-existent or as never having taken place. Both parties could so treat it to it without the existence of any decree annulling the said marriage.

A marriage is void where there is bigamy, consanguinity or within the degrees of prohibited relationship. In these cases, the Court will regard the marriage as never having taken place and no status of matrimony as ever having been conferred. Consequently, the parties, never having been husband and wife, either is competent to be called against the other. Consent of the parties performing the marriage in breach of Clause (i) of Section 5 cannot validate it. Such is not the position in case of a voidable marriage. A voidable marriage is regarded as valid and subsisting unless a competent Court annuls it until the decree of nullity is obtained in accordance with Hindu Marriage Act. The lis remains binding. So long as there is no decree, they will live and die as married persons with all the incidents attached to that estate. The expression 'void means null, ineffectual, having no force or binding effect. Since a marriage performed in contravention of Clauses (i), (iv) and (v) of Section 5 is void, it is incapable of being cured or ratified.

Precisely, for the above reason, it has been recognized by the Courts that a third party can bring a suit in a Civil Court for its annulment even after their death. If this is not held, the third party's rights would be seriously prejudiced without having any right to seek redress in a Court of law. As stated above, the case of a voidable marriage stands on a different footing. The right given to annulment of marriage is confined to the parties.

In Twenty v. Twenty (1946) 1 All ER 564, it has been held:

"Where the marriage is void ab initio, any person who has got any interest in the matter can challenge the marriage by filing a regular civil suit for the declaration that the marriage is a nullity. Such a marriage is no marriage at all and any spouse can ignore such a marriage".

In R. v. Algar (1953) 2 All ER 1381, a distinction between a void and voidable marriage has been brought about, and it has been laid down that a void marriage has no existence in the eye of the law. Therefore, our view is that where a marriage is bigamous, the marriage is regarded as null and void from the very beginning. The Law Commission, while considering the question of amending Section 11 observed:

"The Hindu Marriage Act is a piece of matrimonial law, and decrees of nullity, contemplated by it, are decrees passed by matrimonial Courts. Fundamentally, matrimonial Courts have concern only with the marital rights of the parties to the marriage (and incidentally with the rights of the children) but with nothing else. A petition for a decree of nullity in respect of a void or a voidable marriage can be made only by either the husband or the wife. It would not be appropriate to provide that a petition for the purpose can be made by a stranger to the marriage. A third party (for example, a person interested in the estate of either the husband or the wife) can certainly question the validity of their marriage in a civil suit and ob-

tain a finding, or he may even bring a suit for a declaration that the marriage was void. But such a decree made by a civil court will not be a decree of nullity, as contemplated by matrimonial law."

22. Before adjudication of the question of law, it would be appropriate to recite the undisputed facts that emerged between the parties. The brief facts are as follows:

22.1 On 5.5.2006, Smt. Pratima Singh solemnized marriage with late Raghvendra Singh as per Hindu rites and ceremonies.

22.2 Raghvendra Singh married Garima Singh during the lifetime of his first wife, and two son's were born out of the said wedlock.

22.3 Owing to certain matrimonial differences, Raghvendra Singh filed a suit for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955, against his first wife, Smt. Pratima Singh. The Principal Judge, Family Court, vide judgment and order dated 24.3.2018 dismissed the Matrimonial Case No.24 of 2012, and allowed the petition filed by the first wife under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights with a direction to bring his wife within one month from the date of order besides other directions.

22.4 Raj Narain Singh- father of Raghvendra Singh- executed a registered will deed dated 16.2.2018 in favour of his grandsons and their mother, Smt. Garima Singh, and also got registered the name of Smt. Garima Singh as the wife of Raghvendra Singh in the family register.

22.5 The first wife challenged the said will deed dated 16.2.2018 in Original Suit No.037 of 2019 titled as Pratima Singh Vs. Garima Singh before the Civil Judge (Junior Division), Mau, Chitrakoot, which was dismissed *ex-parte* vide judgment and decree dated 12.2.2020.

23. Finding a conflict between the judgment of the division bench of the Patna High Court in ***Kedar Nath Gupta (supra)*** case and a co-ordinate bench of this Court in ***Smt. Ram Pyari (supra)*** case, the legal question has arisen

before us, post-enactment of the Family Courts Act, 1984. That legal issue is formulated as follows:

> *"Whether the first wife is entitled to file a case under sections 11 & 17 of the Hindu Marriage Act, 1955, for declaring her husband's marriage with another woman, as null and void?*

24. Learned counsel for the appellant- the second wife- heavily relied upon the series of judgments and ratio culled out in ***Lakshmi Ammal (supra)*** case and buttressed his argument by stating that the phrase *"either party thereto"* strictly means two persons who are actual parties to the second marriage - Raghvendra Singh and Smt. Garima Singh only. But he fairly submits that the first wife's legitimate children would acquire some rights, and their shares in the property may be affected by the children born out from the second wife, which are considered to be legitimate. The legislature as has extracted the summary remedy of an application under section 11 of the Hindu Marriage Act, 1955, to the actual parties to the void marriage so that a third party may not have interfered harassingly by taking advantage of this cheap remedy of an application. He further submits that the first wife had been given the remedy to apply for divorce or judicial separation by taking rescue of sections 5, 11 & 17 of the Hindu Marriage Act, (XXV) of 1955, and further could file a declaratory suit for declaring the second marriage, as null and void.

25. *Per contra*, learned counsel for the first wife, respondent herein, submits that the Hindu Marriage Act, 1955, is a social welfare legislation and the rule of restrictive interpretation would not be made applicable in the interpretation of the phrase *"either party thereto"* for deciding the first wife's right as accrued under section 11 of the Hindu Marriage Act, 1955 to declare the second marriage as illegal and void. He further submits that after the enactment of the Family Courts Act, 1984, all the suits and petitions pending before the civil courts shall be tried and dealt with in accordance with the provisions of the Family Courts Act, 1984 and further invited our attention to section 7 of the Family Courts Act, 1984. The relevant portion of section 7 of the Family Courts Act, 1984, is extracted herein under:

"7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit of proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

26. Before adverting to the contentions raised by the learned counsel for the parties, it is judicious to deal with the statement of objects and reasons for enacting the Family Courts Act, 1984. In its 59th report (1974), the Law Commission stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or

proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure. The courts continue to deal with family disputes in the same manner as other civil matters, and the same adversary approach prevails. Therefore, the need was felt in the public interest to establish Family Courts for the speedy settlement of family disputes.

27. The objective of the Act is to provide for the establishment of family courts to settle family disputes and matters related to marriage, divorce, custody, guardianship, maintenance and other familial issues in a more efficient and specialized manner and thereby the Family Courts Act, 1984 came into existence.

28. The key objectives of enacting the Family Courts Act, 1984 would include; (i). Simplification and expeditious resolution; (ii). Family courts are designed to handle exclusively family- related matters; (iii). Promotion of conciliation; (iv). Protection of womens' rights; (v). The welfare of children; (vi). Accessibility and affordability; and (vii) Quick and effective disposal of cases.

29. The Hindu Marriage Act, 1955 is a social and welfare legislation, and it has to be interpreted in a manner that advances the object of the legislation. It intends to bring about social reforms. It is a settled principle of the interpretation that this Court cannot interpret socially beneficial legislation on the basis as if the words therein are cast in stone. The Supreme Court has time and again cautioned the courts to adopt a purposive approach while dealing with the interpretation of statutes related to social welfare pragmatically and practically. Section 11 of the Hindu Marriage, Act provides that:

> *"11. Void marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto (against the other party), be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5."*

30. Before coming to the statutory interpretation of the phrase *"either party thereto"* used in section 11 of the Hindu Marriage Act, 1955, it is

instructive to place reliance on the Hon'ble Supreme Court in ***Badshah Vs. Urmila Badshah Godse***[9] the Court has observed as under:

> *"Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as a mere "adversarial approach" may not be very appropriate. There are a number of social justice legislations giving special protection and benefits to vulnerable groups in society. Prof. Madhava Menon describes it eloquently:*
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> *"It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process operates to the disadvantage of the weaker party. In such a situation, the judge has to be sensitive to the inequalities of the parties involved and positively inclined to the weaker party if the imbalance were not to result in the miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."*

31. The legislature's intention is to be gathered from the words they employ. The Court should give restrictive meaning only to the words used in the statutes to avoid absurd results and hardships. However, the rule of strict construction says that while interpreting even penal statutes, the judge should adopt that meaning which confers the benefit of the doubt to the accused.

32. The meaning of the statutory term can be gathered from its associated words. A word or phrase in an enactment must always be construed in the light of the surrounding text. As Lord Simmonds said in ***A-G v. HRH Prince Ernest Augustus of Hanover***[10], words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. Or as *Stamp J. put it in* ***Bourne (Inspector of Taxes) v. Norwich Crematorium Ltd.***[11] The relevant part is extracted as:

> *"English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put*

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9 *(2014)1 SCC 188*

10 *(1957) AC 436 at 461*

11 *(1967) 1 WLR 691 at 696 [Ref: Bennion on Statutory Interpretation by Diggory Bailey and Luke Norbury, 7th Edition (Lexis Nexis)]*

back into the sentence with the meaning you have assigned to them as separate words."

33. Where a string of words is followed by a general expression that applies to the first and the other words and to the last, that expression is not limited to the last but applies to all. It is a rule in the construction of the statute that if particular words are followed on those which are more general, the more general word shall receive a confined construction, as what is first mentioned must be supposed to have been chiefly in the contemplation of the legislature.

34. In English, the word *"either"*, when used as a determiner, generally signifies two choices or possibilities. According to the Cambridge dictionary, the noun that follows "*either*" should be a familiar countable noun. The phrase "either party thereto" commonly refers to one of the parties involved in a contract or legal agreement. By combining all the elements, *"either party thereto"* can be understood as *"one of the parties to that contract or legal agreement."* This interpretation clarifies the specific role of one of the parties in the context of the mentioned statute or provision.

35. The Court's primary objective is to achieve the intended effect and interpretation of the enactment, considering the aims and objectives of the Act. By employing these various interpretative tools, the Court can arrive at a well-reasoned and comprehensive understanding of the phrase *"either party thereto"* within the specific context of the statute.

36. Among its various objectives, the Family Courts Act, 1984, was primarily enacted to streamline the culmination of proceedings initiated under the Hindu Marriage Act, 1955 effectively and efficiently under one umbrella. If two statutes are enacted with the purpose of supporting and collaborating with each other to achieve a common objective, the courts should primarily adopt a harmonious and purposive rule of construction to aid in interpreting the statutes, including the words and phrases used therein. Recognizing that words possess a dynamic nature rather than being fixed, the Court should embrace a dynamic approach that upholds the validity and intent of the legislation or scheme. Statutory interpretation is an exercise

wherein the Court must discern the contextual meaning conveyed by the words in question.

37. The term *"either party thereto"* shall be interpreted in harmony with *"against the other party"*. The inclusion of the phrase *"against the other party"* was intended to provide a clear and purposeful understanding of the section's scope. The provision aims to ensure that anyone aggrieved by the solemnization of a second marriage has the option to file a suit in the family court, aligning with the objectives for which the Family Courts Act, 1984, was established. The underlying intention behind enacting the Family Courts Act, 1984 was to consolidate all litigation pertaining to marital disputes, including matters related to marriage, divorce, custody, guardianship, property partition, maintenance, and other familial suits, under one comprehensive platform. This consolidation was aimed at facilitating the efficient resolution of such cases.

38. The earlier judgments, either by the single bench or by the coordinate benches of the High Courts, have derived their strength from the interpretation given effect to the phrase *"either party thereto"* from the ***Lakshmi Ammal (supra)*** case. The findings of the learned single judge could be summarised as follows:

38.1 The learned single judge was of the view that the phrase "*either party thereto"* in section 11 can only apply to those two persons who were party to the marriage and not to the first wife or any others.

38.2 The second view taken by the learned single judge has been based on the premise that if the first wife had not been given a right to file an application under section 11 of the Act, she would otherwise not have lacked remediless. Under ordinary law, she can file a suit for a declaration of her husband's marriage with the second wife as illegal

and void under Act (XXV) of 1955. She must pursue the costlier remedy of filing a suit under ordinary law.

38.3 Further, the Court was of the view that there is nothing extraordinary or illegal in this. Nor is the principle of equal law and equality before the law, guaranteed under Article 14 of the Constitution, effected. The legislature has restricted the summary remedy of an application under section 11 to the actual parties to the void marriage so that third party may not interfere harassingly by taking advantage of this cheap remedy of an application.

39. Through a comprehensive examination of the objectives laid out in both the Hindu Marriage Act, 1955, and the Family Courts Act, 1984, it becomes evident that the former endeavour to foster social stability, safeguard individual rights, and promote the well-being of families. To effectively realize these noble goals, the Court must embrace a pragmatic and harmonious interpretation of the provisions within the Acts.This approach harmoniously blends legal principles with the ever-evolving dynamics of contemporary society, thereby ensuring equitable and impartial resolutions for all parties involved. By striking this delicate balance, the Court can uphold the spirit of the laws while adapting to the changing needs and complexities of modern times.

40. Pragmatic construction entails a practical and realistic interpretation of the law, taking into account the actual implications and consequences of its provisions. On the other hand, harmonious construction involves interpreting different provisions in a manner that aligns with the overarching purpose and spirit of the legislation. Courts aim to reconcile conflicting provisions, thereby avoiding contradictions and ensuring coherence within the legal framework. By adopting a dynamic approach, the Act can adapt and evolve over time while

staying true to its fundamental principles. This allows it to effectively address the diverse and ever-changing needs of contemporary society. As India's societal landscape continues to evolve, the pragmatic and harmonious construction of the Act will remain crucial in achieving its underlying objectives efficiently. Embracing these interpretative methodologies will help in crafting just and relevant legal outcomes that uphold the Act's intended goals amidst the dynamic complexities of the modern era.

41. The Court must endeavour to develop a pragmatic and practical solution that effectively minimizes societal conflict while promoting harmonization of societal values with compassion and affordability. Unfortunately, the learned single judge failed to acknowledge a significant rationale behind the enactment of the Hindu Marriage Act, 1955, which was to eliminate the prevalent practice of polygamy in Indian society. Additionally, the Act aimed to establish a systematic mechanism to address such issues in a consistent and efficient manner. Recognising the historical context and objectives behind the enactment, the Court should strive to interpret and apply the law in a manner that upholds the Act's intent of eradicating polygamy while offering a fair and uniform resolution to related matters. By doing so, the Court can play a vital role in fostering social cohesion and promoting values that align with the principles of compassion and affordability for all parties involved.

42. The provisions of the Family Courts Act, 1984, as discussed earlier, establish family courts specifically to handle jurisdiction related to matrimonial disputes. Section 7 of the Family Courts Act outlines the jurisdiction exercisable by district courts or other subordinate civil courts for suits and proceedings referred to in the Explanation. This provision should be interpreted harmoniously in conjunction with the

phrase *"either party thereto"* used in section 11 of the Hindu Marriage Act, 1955.

43. The phrase *"either party thereto"* draws meaning from the Explanation provided in section 7 of the Family Courts Act. Moreover, when examining the surrounding text and context, it becomes evident that the intention is to give full effect to and interpret the Act purposefully. The remedy proposed by a learned single judge in the ***Lakshmi Ammal (supra)*** case, which is more expensive and time-consuming, has lost its efficacy over time, especially after the enactment of the Family Courts Act in 1984.

44. The narrow interpretation given to the phrase *"either party thereto"* should not apply in cases where provisions of social welfare legislation are invoked. Such a restrictive interpretation would affect the principle of equal protection of laws and equality before the law, guaranteed under Article 14 of the Constitution. It would also negatively impact the rights of the first wife, as guaranteed under Article 14 and the provisions of the Family Courts Act, 1984.

45. If the first wife is deprived of seeking a remedy under Section 11 of the Hindu Marriage Act, it would defeat the very purpose and intent of the Act. The protection offered to legally wedded wives under sections 5, 11, and 12 of the Hindu Marriage Act would become insignificant in such a scenario.

46. Even if the meaning of the phrase *"either party thereto"* is considered to be unclear or ambiguous, the principle of beneficial construction should be applied to determine its intent. There is no justification for interpreting section 11 in a way that restricts its scope or narrows down its meaning. The purpose of granting a decree of nullity is to identify flaws in the marriage and subsequently declare it as void.

47. In the process of beneficial construction, the Court should lean towards an interpretation that serves the interests of justice and aligns with the broader objectives of the law. By doing so, the Court can ensure that the remedies available under section 11 are not unduly limited, and individuals seeking relief are not unjustly deprived of their rights. The ultimate aim of granting a decree of nullity is to annul a marriage that is found to be invalid from its inception, effectively treating it as if it never existed. Therefore, it is essential to interpret the relevant provisions in a manner that facilitates a fair and just outcome for the parties involved.

48. In conclusion, we uphold the family court's decision, which grants the first wife, the respondent in this case, the right to file an application under section 11 of the Hindu Marriage Act. This application seeks the declaration of the second marriage as illegal and void. The Court affirms the validity of the impugned ruling, allowing the first wife to pursue legal recourse to nullify the second marriage on the grounds of its illegality. Accordingly, appeal is dismissed.

Order Date :- 27.7.2023

Anil K. Sharma

(Vinod Diwakar, J.)

I agree.

(S.D. Singh, J.)