2025:AHC:213837-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 493 of 2025

[redacted] .....Appellant(s)

Versus

[redacted] .....Respondent(s)

Counsel for Appellant(s)	:	Vinod Kumar Pandey
Counsel for Respondent(s)	:	Pawankumar Dubey, Rajesh Kumar, Saurabh Kumar Pandey

Court No. - 39

HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.

(Per : Arindam Sinha, J.)

1. Appellants lost their son, who died in the line of duty while serving in the army. Respondent obtained impugned judgment dated 28th April 2025 from the Family Court, inter-alia, declaring her to be the widow. In context of above, the marriage was said to have been solemnized on 12th May, 2007 and the son died on 14th January, 2008, of gun shot in encounter with terrorists. A further allegation is that only engagement took place on 12th May, 2007 as opposed to marriage and the latter was to have taken place on 24th April, 2008.

2. The appeal was presented in time and admitted on 18th July, 2025. Since respondent had been served on caveat lodged, it was discharged and formal notice of appeal, waived. Mr. Vinod Kumar Pandey, learned advocate appearing on behalf of appellants files English translation of impugned judgment. Mr. Saurabh Pandey, learned advocate appears on behalf of respondent.

3. We have heard learned advocates for the parties and perused impugned judgment. It appears to us, appellant no. 2 (mother of the deceased) had first made Special Civil Application no. 2163 of 2009 in the High Court of Gujarat. In paragraph 6 she had not disputed that her son married respondent on 12th May, 2007. Her contention was, the marriage was never consummated. Part of paragraph 6 in the application is reproduced below.

> "*6.* ***It is not in dispute that the son of the petitioner married Sadhnadevi on 12th May, 07*** *but the marriage has never consummated as according to the custom and usage the marriages are generally consummated after a period of 1 to 3 years of marriage and that too after performing the religious function.* ***Though the marriage did take place on 12th May, 07, it was never consummated*** *and the bridegroom never came at the residence of the petitioner. It is also required to be mentioned that the* ***petitioner and her husband has performed last ritual ceremony of her son Shri Arve Shanker Yadav and in the last ceremony also Smt. Sadhnadevi never appeared to perform the rituals ceremony as the marriage was never consummated. The petitioner's son Shri Arve Shanker was borne on 2-3-1983 at Mehsana in Gujarat and marriage took place on 12th May, 07 and she never came at the residence of the petitioner and she never met even her late husband Shri Arve Shanker Yadav. ……..."***
>
> (emphasis supplied)

Said High Court disposed of the application on order dated 12th March, 2009 through a Division Bench. A paragraph from the order is reproduced below.

> "*It is the claim of the petitioner that the marriage of the deceased to the respondent no.3 was not yet consummated. Besides, she being very young, the respondent no.3 will soon get remarried. Being the mother of the deceased and the nominee in his service record, the petitioner is entitled to receive 'Shaurya Chakra' and to the terminal benefits.*
>
> ***We see no substance in the claim made by the petitioner. Petition is summarily rejected."***
>
> (emphasis supplied)

4. Subsequent to rejection of the first application there was investiture ceremony held in Rashtrapati Bhawan at New Delhi on 19th April, 2009, wherein, amongst others, respondent received from The President of India the posthumous award, as widow of the deceased. Appellant no. 2 filed another Special Civil Application no. 9697 of 2009 in the High Court of Gujarat. The application is not in the record but there is illumination from order dated 22nd February, 2010 of a different Division Bench, disposing of it. As such, it is necessary for us to reproduce below the entire order.

> "*The present petition is filed by the mother of the deceased Employee whose post death reliefs were to be granted to the family of the deceased. There came a dispute and respondent No.7 appeared before the respondent-authorities as widow of the deceased.* ***In the initial enquiry which was conducted respondent No.7 was found to be married wife of the deceased. However, on second enquiry, it was found that she was not legally married wife of the deceased.*** *She was unable to produce any proof of the marriage.* ***The matter was relegated to the***

> ***review authority. In the review proceedings, respondent No.7 did not remain present though she was called.*** *It has been concluded by the respondents that she has not been able to prove that she is entitled to receive the benefits. Therefore, it was ordered that for whatever rights the other relatives are entitled to, they be appropriated accordingly.* ***Even before this Court, Rule was served on respondent No. 7, but she has not chosen to appear before this Court. Therefore, this matter is decided ex parte against her and with the consent of the parties. In view of the report of the respondents, it would be concluded that respondent No. 7 is not wife of the deceased Sepoy****, and therefore whatever are the post death benefits of the Sepoy will have to go to other relatives who are natural successors and claimants in accordance with the Rules of the Department. In that view of the matter,* ***respondent-authorities will distribute the amount*** *in accordance with law prevailing the situation* ***considering that respondent No. 7 is not wife of the deceased Sepoy.***
>
> ***The same analogy will be applied to the honours conferred upon the deceased Sepoy.***
>
> *In the view of the aforesaid observations and directions petition is disposed of."*
>
> (emphasis supplied)

Respondent filed for review on delay. The applications for condonation and review were rejected as meritless on order dated 7th May, 2010. Here we note that appellants are residents of Mehsana in Gujarat. They had made their applications to the High Court of Gujarat. Respondent's parental home is in Azamgarh, Uttar Pradesh. The said different Division Bench was of the view that respondent not having appeared before the authority and subsequently also before the Court, could not ask for trial of the question of fact, for it to be held by the Court to conclude that she is legally wedded wife. The Division Bench said, these are questions of fact which cannot be gone into at least in the review application, which is time barred. Respondent then petitioned for special leave to appeal to the Supreme Court. There were two petitions. Both were dismissed summarily on order dated 1st September, 2010. It is in the mean time that respondent had filed the matrimonial case resulting in impugned judgment.

5. The Family Court framed seven issues. They are reproduced below.

> "*12. After hearing both the parties in the matter, the court has framed the following issues on 11-10-2011-*
>
> *1- Whether on the basis of pleadings in plaint, the plaintiff is the legally wedded wife/widowed (wife) of the deceased Arbeyshankar, if yes, then its effect?*

2- Whether the suit is maintainable?

3- Whether this court have the jurisdiction to hear the suit?

4- Whether the suit undervalued and the court fees paid is insufficient? This issue has been decided in negative by the court on 21-03-2025.

5- Whether the suit is barred by the doctrine of estoppel?

6- Other reliefs which the plaintiff is entitled to?

7- Whether the suit is barred by Order 7 Rule 11?"

(emphasis supplied)

The Family Court held exhaustive trial. There were pleadings filed, as aforesaid issues framed, both sides laid evidence and several documents were tendered as exhibits. There was examination of witnesses in full, i.e. examination-in-chief by affidavit and cross-examination. The Family Court having considered the materials before it, came to answer the main issues in favour of respondent.

6. Having ourselves perused impugned judgment and gone through the materials on record we find, apart from admission of appellant no. 2 by her first pleading before the Gujarat High Court, there was marriage invitation card printed by respondent's side. One such marriage invitation card, tendered as exhibit, bore hand-writing of appellant no. 1. There was oral evidence of witnesses on side of respondent, positively asserting the marriage as witnessed by them on 12th May, 2007 and not contradicted in cross-examination. There was also evidence of a motorcycle having been gifted from respondent's side to the husband and later found to be registered in name of the son-in-law of appellants (the daughter's husband). Much emphasis was laid on side of appellants to urge that there was no 'V*idai*'. The Family Court found clear distinction between the marriage held as solemnized and the rituals of 'V*idai*'. There does not appear to be any positive evidence to show assertion, let alone corroboration that there was only engagement ceremony held on 12th May, 2007. The Family Court also concluded that the deceased, because had applied for leave to get married was required to produce photograph(s). On perusal of materials on record it does appear that alleged future date of marriage, as to have been held on 24th April, 2008, was after thought and correctly disbelieved by the Family Court.

7. In the circumstances, we see clearly that acquaintance of respondent with the deceased was very brief, as mainly at the time of her marriage taken place at her paternal home in Azamgarh, Uttar Pradesh.

Documentary evidence includes fact of leave taken by appellant no. 1 from his employer, the Railways, to be present for the occasion taken place on 12th May, 2007 at Azamgarh. The deceased soon thereafter left for his place of work. Hence, contention of appellants that the marriage was not consummated. During period 12th May, 2007 till 14th January, 2008 there is nothing on record for us to find that the husband had a grievance or such a contention against respondent.

8. Mr. Vinod Kumar Pandey submits, disputes between the parties is civil in nature and the Family Court had no jurisdiction to adjudicate. He relies on **judgment dated 16th January, 2018** of the Supreme Court in **Civil Appeal no. 432 of 2018 (R. Kasthuri and Ors. vs. M. Kasthuri and Ors.)**, paragraph 8 (Indian Kanoon print). Mr. Saurabh Pandey submits, the Supreme Court, in that case, clearly stated in paragraph 7 that there is no family dispute between the plaintiffs and the defendants, to hold that the High Court erred in taking view that the adjudication made by the City Civil Court was without jurisdiction as it ought to have been adjudicated by the Family Court under Family Courts Act, 1984. In the context, paragraphs 6 to 9 (Indian Kanoon print) in **R. Kasthuri** (supra) are reproduced below.

> "*6. Sections 13, 14 and 15 of the Act spell out a special procedure. The other provisions of the Act i.e. Section 4(4) would indicate that a major objective behind the enactment of the Act is to have a specialized body to preserve and save the institution of marriage.*
>
> *7.* ***In the present case, there is no family dispute between the plaintiffs and the defendants****. The dispute arose after the demise of Gunaseelan to whom both the plaintiff No.1 and the defendant No.1 claim to be married. The other plaintiffs and defendant No.2 are the children claimed to be born out of the respective marriages.*
>
> *8.* ***The above would indicate that the dispute between the parties is purely a civil dispute and has no bearing on any dispute within a family which needs to be resolved by a special procedure as provided under the Act. No issue with regard to the institution of marriage and the need to preserve the same also arises in the present case****. That apart, the dispute between the parties can only be resolved on the basis of evidence to be tendered by the parties, admissibility of which has to be adjudged within the four corners of the provisions of the Indian Evidence Act, 1872. In such a proceeding it would be clearly wrong to deprive the parties of the benefit of the services of counsels.*
>
> *9. Taking into account all that has been said above* ***we are of the view that the High Court was not correct in holding the suit***

> ***filed by the plaintiffs – appellants to be not maintainable in law****. Accordingly, we set aside the order of the High Court dated 15th June, 2015 passed in S.A. No.725 of 2005 and remand the matter to the High Court for a decision on merits of the Second Appeal filed by the defendants.*"
>
> (emphasis supplied)

9. Section 4 in the Act of 1984 provides for appointment of judges to the Family Courts. Sub-section (4) says, endeavour shall be made to ensure such persons are appointed as provided. There is no controversy between the parties regarding the administration of the High Court of Judicature at Allahabad having had made appointments of the Judicial Officers as Family Court judges. Section 13 bars a party to a suit or proceeding before a Family Court from claiming to be entitled, as of right, to be represented by a legal practitioner with the proviso that the Family Court may appoint Amicus Curiae. In this case both appellants and respondent had been represented before the Family Court. Neither of them opposed the other from having such representation. Though section 14 empowers the Family Court to receive as evidence any report, statement, documents, information or matter as in its opinion would assist to effectually deal with the dispute, at trial the Family Court dealt with the oral and documentary evidence as per applicable law. Same goes for the provision in section 15, regarding record of oral evidence.

10. Having said as we have in last preceding paragraph, we accept the distinction pointed out on behalf of respondent to be that the Supreme Court found in **R Kasthuri** (supra), there was no family dispute between the plaintiffs and defendants. Both sides were claiming property of the deceased, as married to him (the two wives and their respective children). It follows, the Supreme Court in paragraph 8 of the judgment said, no issue with regard to the institution of marriage and the need to preserve the same also arose in that case. In this case, the controversy is whether respondent had been married to her husband, since deceased. **R Kasthuri** (supra) is not applicable for us to say that the Family Court did not have jurisdiction as it was with the civil Court on a civil dispute. Furthermore, the main issues are issue nos. 1 to 3. All of them were decided in favour of respondent. We ascertained that appellants did not insist on issue no. 3 being tried as preliminary issue under order XIV in Code of Civil Procedure, 1908. Except for issue no. 4 on Court fees and valuation decided earlier, the other issues were dealt with and answered by

impugned judgment. Here we reproduce below paragraph 17 from the English translation of impugned judgment.

> "*17. Disposal of Issue No.-3*
>
> *The point in question is whether this court has jurisdiction to hear the case?*
>
> *In view of this point, no argument has been presented during the arguments of both the parties. In the case in question, the suit has been filed for declaration of marriage between plaintiff and the opposite party Arbeyshankar (deceased). Under Explanation (b) of Section 7 of the Family Courts Act, 1984, the Court has jurisdiction to entertain any suit or proceeding for declaration of the legality of a marriage or marital status of a person.*
>
> *Hence, this issue is also decided negatively against the defendants."*

11. Mr. Vinod Kumar Pandey submits further, respondent was under age when the marriage was allegedly solemnized on 12th May, 2007. There ought to have been issue framed because even the alleged marriage was void. On query he submits, the fact was discovered from the documents tendered in evidence. He relies on rule 3 in order XIV. The rule is reproduced below.

> *"**3. Materials from which issues may be framed.***
>
> *The Court may frame the issues from all or any of the following materials-*
>
> ***(a)** allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;*
>
> ***(b)** allegations made in the pleadings or in answers to interrogatories delivered in the suit;*
>
> ***(c) the contents of documents by either party. "***

(emphasis supplied)

12. Contention of appellants is, omission by the Family Court to frame issue on validity of the marriage, particularly because respondent was under age. This contention was never raised before the Gujarat High Court nor at trial before the Family Court. It is necessary for us to reproduce below sub-rule (1) in rule-1 of order XIV.

> *"1. Framing of issues.— (1) Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.*
>
> *xxx xxx xxx "*

We have not been shown that there was an allegation made in the written statement saying, respondent was under age at the time of solemnization of the marriage. Accordingly, there was no issue framed before going to trial. We are mindful that there is proviso in rule 17 under order VI

enabling framing of issue even after commencement of trial. The provision is reproduced below.

> "***17. Amendment of pleadings.***—*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> ***Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*** *"*
>
> (emphasis supplied)

13. Appellants say they discovered from documents tendered at trial that respondent was underage, rendering the marriage void. No application was made by appellants for framing of additional issue. On going through the lower Court record it is revealed, *inter alia*, there is an identity card identifying respondent as widow/war widow of ex-service men and giving her date of birth as 20th July, 1989. Taking the date for reckoning her age at the time of marriage on 12th May, 2007, it puts her two months short of 18 years. Sub-clause (iii) under section 5, providing for conditions for a Hindu marriage requires, *inter alia*, the bride to be age of 18 years at the time of marriage, increased from 15 years by amendment, w.e.f., 1st October, 1978. Section 11 is reproduced below.

> *"11. Void marriages.-****Any marriage*** *solemnised 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****."*
>
> (emphasis supplied)

The Legislature consciously omitted to include clause (iii) under section 5 in the provision of section 11. Furthermore cause of action in section 11 is only available to a spouse in a marriage. Appellants are parents of the deceased husband. Section 12, providing for voidable marriages, does not mention clause (iii) in section 5, for contravention of which a ground can be urged saying the marriage is voidable and be anulled by a decree of nullity. In the premises, appellants are presumed to have been advised that

they applying for framing additional issue would not yield result. Hence, this belated contention at the appellate stage. It is without substance and cannot be acted upon.

14. It may well have been that appellant no. 2 had filed second application for receiving the death benefits and honours, posthumously bestowed on their deceased son and given to respondent. The Gujarat High Court finding that the authorities had on second inquiry not been satisfied with respondent's claim of having married the deceased, must be viewed in context of its subsequent review order, referring to allegations of fact in issue and, the fact of the honours posthumously bestowed, given to respondent in the investiture ceremony held at Rashtrapati Bhawan on 19th April, 2009.

15. We appreciate the manner, in which the Family Court held the trial and confirm impugned judgment. The appeal is dismissed.

(Arindam Sinha,J.)

(Satya Veer Singh,J.)

November 28, 2025
sailesh/Shiraz