

AFR

Court No.18

Reserved on: 1.3.2023

Delivered on: 5.4.2023

Second Appeal No.1087 of 2015

Appellant :- Sarnam Singh Lekhpal Chakbandi
Respondent :- Preetam Kumari and Another
Counsel for Appellant:- Mr. Manoj Kumar Sharmam, Smt. Krishna Singh
Counsel for Respondent :- Mr. Manoj Kumar Gupta, Mr. Mahesh Narain Singh

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Manoj Kumar Sharma and Smt. Krishna Singh, learned counsel for the appellant and Mr. Manoj Kumar Gupta, Advocate, holding brief of Mr. Mahesh Narain Singh, learned counsel for defendant-respondent no.1.
2. The instant second appeal has been filed against the part of the judgment and decree dated 17.10.2015, by which the permanent alimony has been granted to defendant / respondent no.1 (Preetam Kumari) against plaintiff-appellant (Sarnam Singh) in Civil Appeal No. 44/2010 and Civil Appeal No.45/2010, decided by a common judgment arising out of Original Suit No.257/1997.
3. Original Suit No.257/1997 has been filed by plaintiff-appellant (Sarnam Singh) for declaring the marriage as void and ineffective. Original Suit No.213 of 2003 was filed under Section 9 of the Hindu Marriage Act by defendant respondent no.1 (Preetam Kumari) for restitution of conjugal rights.

4. Plaintiff case of O.S. No.257 of 1997 in brief is that talk of marriage between the plaintiff and defendant has taken place but due to fraudulent act of the wife- Preetam Kumari and their family members, the mediation has taken place and the proposal of the marriage has come to an end but the father of the Preetam Kumari has illegally kidnapped the plaintiff (Sarnam Singh) and illegally solemnized the marriage which is not a legal marriage as prescribed under the Hindu Marriage Act. It is also mentioned in the plaint that there was no relation of husband and wife between them, as such, the alleged marriage be declared null and void. In the written statement, Preetam Kumari denied the plaint allegations and submitted that the valid marriage has taken place, as such, the suit for declaring the marriage null and void be dismissed. Plaintiff case of O.S. No.213 of 2003 in brief was that Preetam Kumari was married to Sarnam Singh according to the custom on 5/6.7.1997 but husband Sarnam Singh has deserted her, as such, the instant suit for restitution of conjugal rights has been filed by wife Preetam Kumari. In the written statement, husband Sarnam Singh denied the plaint allegations and stated that no valid marriage according to the Hindu Marriage Act has taken place between them, as such, the plaintiff is not entitled to the relief claimed in the suit for restitution of conjugal rights. It is also mentioned in the written statement that defendant has already filed a Suit No.257/1997 for declaring the marriage as null and void.

5. Both the aforementioned suits were consolidated and heard together. Parties filed oral and documentary evidence in support of their cases. The trial court vide judgment and decree

dated 26.8.2010 decreed the Suit No.257/1997 and declared the marriage as null and void and dismissed the Suit No.213/2003 (Preetam Kumari vs. Sarnam Singh) filed for restitution of conjugal rights. Against the judgment and decree dated 26.8.2010, passed by the Civil Judge (S.D.), Etah, Preetam Kumari filed two civil appeal i.e. Civil Appeal No.44/2010 and Civil Appeal No.45/2010 in respect to Suit Nos. 213/2003 and 257/1997. Both the civil appeals were consolidated and heard together by the District Judge, Etah. The District Judge, Etah vide judgment and decree dated 17.10.2015 dismissed both the appeals but directed that respondent (Sarnam Singh) shall pay Rs.6500/- per month as maintenance and Rs.2 lacs to the appellant (Preetam Kumari) towards permanent alimony. Hence this second appeal on behalf of Sarnam Singh (plaintiff).

6. No second appeal has been filed by defendant Preetam Kumari before this Court.

7. This Court on 15.12.2015 admitted the second appeal after formulating the substantial questions of law and granted the interim order to the effect that half of the amount of the order of the maintenance granted by the 1st appellate court shall remain stayed. The records of the district courts were also summoned by this Court. The substantial questions of law are quoted hereunder:-

"1.Whether the order of maintenance under Section 25 of the Hindu Marriage Act can be passed without such relief being asked by the person in whose favour such order is being passed ? If so, its affect.

2. Whether the first appellate court had not afforded opportunity of hearing to parties on the point of maintenance under Section 25 of the Hindu Marriage Act. ? If so, its affect.

8. In pursuance of the order dated 15.12.2015, records of the district courts have been received to this court which has been perused by me. The respondent – Preetam Kumari has already put in appearance through caveat in this appeal.

9. Counsel for the appellant submitted that once the suit for declaring the marriage as null and void / ineffective, has been decreed and decree has been affirmed in 1st appeal, the grant of maintenance by the 1st appellate court is manifestly erroneous. He further submitted that the appellate court has not formulated point of determination while deciding the 1st appeal as provided under Order 41 Rule 31 of the C.P.C., as such, the order for grant of maintenance by the 1st appellate court is manifestly erroneous. He also submitted that the order of maintenance under Section 25 of the Hindu Marriage Act cannot be passed unless there is an application and relief claimed by the party concerned in the proceeding. He further submitted that no opportunity has been afforded by the appellate court on the point of maintenance under Section 25 of the Hindu Marriage Act, as such, the judgment and decree passed by the lower appellate court is erroneous. Counsel for the appellant placed the finding of the trial court recorded while deciding the issue no.2 in Suit No.213 of 2003 and issue no.1 in Suit No.257/1997 to the effect that marriage between Sarnam Singh and Preetam Kumari has not taken place according to the Hindu Marriage Act, as such, the marriage is held to be void

and ineffective. The oral and documentary evidence were taken into consideration by the trial court while decreeing the suit of the appellant Sarnam Singh and dismissing the suit of respondent Preetam Kumari. The finding of fact recorded by the trial court was affirmed in appeal but the appellate court has arbitrarily granted monthly maintenance of Rs.6500/- and a lumpsum amount of maintenance of Rs.2 lacs to the respondent Preetam Kumari which is manifestly erroneous. Counsel for the appellant placed reliance upon the decisions of the other High Courts, which are hereunder:-

1. **Abbayolla M. Subba Reddy vs. Padmamxna, 1998 0 Supreme (AP) 477;**

2. **J. Rajeshwarkant Shahdev vs. Neelam Shahdev, 1980 0 Supreme (MP) 364;**

3. **Jai Krishan Pandita vs. Nana Kumari, 2007 0 Supreme (J & K) 190; &**

4. **Amar Chand Sharma vs. Smt. Sita Devi, 2005 0 Supreme (Raj) 291.**

10. On the other hand, learned counsel for the respondent submitted that the appellant has not complied the conditions of the interim order passed by this Court for paying the half of the maintenance amount to the respondent, as such, the appellant is not entitled to be heard and the second appeal is liable to be dismissed. He further submitted that the monthly maintenance / lumpsum maintenance has been granted by the lower appellate court in accordance with law as appellant has failed to maintain the respondent on the basis of valid marriage taken place between them. He also submitted that the finding of fact recorded by the lower appellate court cannot be interferred with

in the second appeal and the second appeal is liable to be dismissed. He also submitted that the substantial questions of law as framed by this Court are not involved in the second appeal, as such, the second appeal is liable to be dismissed. He further submitted that the amount of maintenance of Rs.500/- granted by the trial court during the pendency of the proceedings, has not been timely paid to the respondent, as such, the appellant is not entitled to any relief in the matter.

11. In reply, counsel for the appellant submitted that the monthly amount of maintenance granted during the pendency of the proceeding before the trial court has been paid to the respondent and the receipt has been annexed along with the affidavit filed in support of the stay application along with the second appeal, as such, it cannot be said the appellant has not complied the conditions before the trial court. He further submitted that so far as the compliance of the additional interim order passed by this Court is concerned, the appellant has filed a modification application no.332915 of 2017 to modify the order dated 15.12.2015 which is still pending before this Court. He further submitted that no counter affidavit to the stay application has been filed by respondent no.1 denying the averment made in the affidavit to the effect that plaintiff has complied the condition imposed during the trial.

12. I have considered the arguments advanced by learned counsel for the parties and perused the records.

13. The instant second appeal has been admitted on the following two substantial questions of law, as such, the same shall be heard on the substantial questions of law which were

framed at the time of the admission of the appeal, same are as under:-

"1. Whether the order of maintenance under Section 25 of the Hindu Marriage Act can be passed without such relief being asked by the person in whose favour such order is being passed ? If so, its affect.

2. Whether the first appellate court had not afforded opportunity of hearing to parties on the point of maintenance under Section 25 of the Hindu Marriage Act. ? If so, its affect.

14. In order to answer the substantial question of law as framed by this Court, the perusal of the relevant portion of finding of fact recorded by trial court will be necessary which are as under:-

वाद सं०-213/03 के वाद बिन्दु सं०-2 एवं वाद सं० 357/97 के वाद बिन्दु सं०-1 का निस्तारण:-

वाद सं० 213/03, श्रीमती प्रीतमकुमारी बनाम सरनामसिंह में वाद बिन्दु सं०-2 इस आशय का विरचित है कि,- “ क्या वादनी के पिता व सहयोगियों ने विपक्षी का अपहरण करके बिना विपक्षी की सहमति के, जबरन शादी सम्पन्न करायी ?” जबकि वाद सं. 357/97 सरनामसिंह बनाम प्रीतम कुमारी में वाद बिन्दु सं०-1 इस आशय का विरचित किया गया है कि- “ क्या वादी की शादी, प्रतिवादिनी के साथ अनुचित दबाव डालकर सम्पन्न करायी गयी?”

"उपरोक्त विवेचना एवं पत्रावली पर उपलब्ध मौखिक व अभिलेखीय साक्ष्य से यह तथ्य साबित पाया जाता है कि, वादिया प्रीतमकुमारी के पिता व सहयोगियों ने विपक्षी सरनामसिंह का अपहरण कर उस

पर अनुचित दबाव डालकर जबरन उक्त शादी सम्पन्न करायी। तद्नुसार वाद सं० 213/03 का वाद बिन्दु सं०-2 व वाद सं० 357/97 का वाद बिन्दु सं०-1 सकारात्मक रूप में निर्णित किया जाता है।"

Operative portion of the judgment of trial court is as under:-

जहां तक वाद सं० 357/97 का प्रश्न है, ऊपर की गयी विवेचना से यह निष्कर्ष निकलता है कि , वादी सरनामसिंह की शादी प्रतिवादिनी प्रीतमकुमारी के साथ अनुचित दबाव डालकर, उसकी इच्छा के विरुद्ध सम्पन्न करायी गयी थी। ऐसी स्थिति में पक्षों के मध्य सम्पन्न हुयी उक्त शादी,शून्य व निष्प्रभावी घोषित किये जाने योग्य है। इस प्रकार यह वाद सव्यय आज्ञप्त किये जाने योग्य है।

आदेश

वाद सं० 213/03 प्रीतमकुमारी बनाम सरनामसिंह, स्वयय खारिज किया जाता है।

वाद सं० 357/97 सरनामसिंह बनाम प्रीतमकुमारी आदि सव्यय आज्ञप्त करते हुये याची व विपक्षी प्रीतमकुमारी के मध्य हुये वाईडेविल विवाह को शून्य व निष्प्रभावी घोषित किया जाता है।

इस निर्णय की एक प्रति वाद सं० 357/97 सरनामसिंह बनाम प्रीतमकुमारी में रखी जाये।

दिनांक:26.08.2010

(वंशबहादुर यादव)

सिविल जज(सी.डि.)

एटा।

आज यह निर्णय मेरे द्वारा खुले न्यायालय में दिनांकित व हस्ताक्षरित करके उद्धोषित किया गया।

दिनांक:26.08.2010

(वंशबहादुर यादव)

सिविल जज(सी.डि.)

एटा।

The relevant / operative portion of the judgment of lower appellate court by which judgment and decree of trial court was maintained but decree of permanent alimony was granted is as under:-

पक्षकारों की बहस को सुनकर तथा पत्रावली का अवलोकन करने से यह विदित होता है कि चूंकि इस अपील में पक्षकार सन् 1997 से ही अलग रह रहे हैं और उन्हें अलग रहते हुए लगभग 18 वर्ष का समय व्यतीत हो चुका है तथा वे मुकदमें के विचाराधीन रहने के दौरान भी कभी साथ-साथ नहीं रहे और इस बीच उनके सम्बन्धों में भी काफी कड़वाहट आ चुकी है और अब ऐसा प्रतीत होता है कि दोनों पक्षकार, पति व पत्नी की तरह साथ-साथ रह कर भी, एक-दूसरे के प्रति वैवाहिक दायित्वों का पालन नहीं कर सकते और ऐसा करना उनके लिये असंभव है। अतः मैं विद्वान अधीनस्थ न्यायालय द्वारा पारित तलाक की डिक्री को निरस्त किये जाने योग्य नहीं पाता हूँ, अपितु उसकी बजाय तलाक की डिक्री ज्यो-की त्यों रखते हुए, धारा-25 हिन्दू विवाह अधिनियम के तहत, श्रीमती प्रतिमा कुमारी के लिये स्थाई भरण-पोषण की धनराशि की व्यवस्था किया जाना न्योयोचित होगा।

पक्षकारों को यह स्वीकार है कि सरनाम सिंह लेखपाल के पद पर नियुक्त है और उसे इस पद पर नौकरी करते हुए, लगभग 18 वर्ष का समय व्यतीत हो चुका है, इसलिये उसका वेतन इस समय किसी भी दशा में 20,000/- रुपये से कम नहीं होगा, अतः धारा 25 हिन्दू विवाह अधिनियम के तहत, श्रीमती प्रतिमा कुमारी के लिये, सरनाम सिंह मुव० 6500/- रुपये प्रतिमाह अदा करता रहेगा। यदि 3 माह तक यह धनराशि अदा करने में उसको ओर से डिफॉल्ट किया जाता है तो श्रीमती प्रतिमा कुमारी, इस संबंध में इजराय दाखिल कर सकती है।

इसके साथ ही साथ, चूंकि पक्षकारों के मध्य पहले मूलवाद और फिर अपील चलते हुए लगभग 18 वर्ष का समय व्यतीत हो चुका है, इसलिये एकमुश्त धन राशि भी श्रीतमी प्रतिमा को दिलाया जाना न्यायोचित होगा और यह धनराशि मुव० 2 लाख रू० आज से अंदर 2, सरनामसिंह के द्वारा उसे प्रदत्त कर दी जायगी।

उपरोक्त विवेचना के आधार पर, दोनों अपील निरस्त किये जाने योग्य हैं।

तदनुसार, दोनों सिविल अपीलस, निरस्त की जाती है, किन्तु विपक्षी- सरनाम सिंह को यह निर्देश दिया जाता है कि वह, इस निर्णय व आदेश की दिनांक से मुव० 6500/- रूपये प्रतिमाह, बतौर भरण-पोषण धनराशि, प्रत्येक माह की 10 तारीख तक श्रीमती प्रीतम कुमारी को अदा करें। यदि 3 माह तक यह धनराशि अदा करने में उसकी ओर से डिफॉल्ट किया जाता है तो श्रीमती प्रीतम कुमारी, इस संबंध में इजराय करके यह रकम प्राप्त कर सकती है।

इसके अतिरिक्त विपक्षी- सरनामसिंह, एकमुश्त धनराशि के रूप में, मु० 2 लाख रू० आज से 2 अंदर माह, श्रीमती प्रीतम कुमारी को अदा करना सुनिश्चित करे।

भरण-पोषण एंव वाद व्यय की धनराशि को प्राप्त करने के लिये, श्रीमती प्रीतम कुमारी, नियमानुसार कार्यवाही कर सकती है।

मूल अभिलेख, अविलंब विद्वान अधीनस्थ न्यायालय, वापस भेजा जाय।

इस निर्णय व आदेश की एक प्रति, सिविल अपील सं०-45 सन् 2010 श्रीमती प्रीतम कुमारी प्रति सरनामसिंह की पत्रावली पर रखी जाय।

अक्टूबर 17, 2015

(कमल किशोर शर्मा)

जिला न्यायाधीश, एटा

निर्णय एवं आदेश, आज मेरे द्वारा खुले न्यायालय में हस्ताक्षरित व दिनांकित कर, उद्धोषित किये गये।

अक्टूबर 17, 2015

(कमल किशोर शर्मा)

जिला न्यायाधीश, एटा

15. The perusal of the judgment of lower appellate court reveals that lower appellate court has ordered for maintenance/permanent alimony on the ground that there was divorce decree of the trial court although trial court passed the decree declaring the marriage as void / ineffective, as such, there was no occasion to order for maintenance / permanent alimony in favour of respondent – wife while dismissing the civil appeal filed by respondent – wife, as such, judgment and decree passed by lower appellate court for maintenance/permanent alimony is vitiated by manifest error of law.

16. So far as exercise of the jurisdiction under Section 25 of the Hindu Marriage Act while dismissing the civil appeal filed by wife is concerned, the perusal of Section 25 of the Hindu Marriage Act will be necessary which is as under:-

25. Permanent alimony and maintenance.—(1)

Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the

parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under subsection (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried 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].

17. The perusal of the lower court record reveals that there was no application under Section 25 of the Hindu Marriage Act, 1955 on record, as such, exercise of power under Section 25 of the Hindu Marriage Act, 1955 by the lower appellate court while dismissing the civil appeals filed by respondent – wife, affirming the decree of trial court, declaring the marriage as void and ineffective is vitiated by manifest error of law.

18. So far as grant of monthly maintenance by trial court is concerned, the same has come to an end while passing the final judgment and decree by trial court declaring the marriage as void and ineffective, as such, no reliance can be placed upon the monthly maintenance granted by trial court.

19. Since there was no application under Section 25 of the Hindu Marriage Act, 1955 by respondent-wife in civil appeal, as such, there was no question that lower appellate court has provided opportunity of hearing to appellant – husband in civil appeal before passing order of maintenance in favour of wife.

20. The case law of the Andhra Pradesh High Court as cited by learned counsel for the appellant rendered in **Abboyolla M. Subba Reddy** (supra) is relevant. Paragraph Nos. 26, 31 & 32 of the aforementioned judgment rendered in **Abbayolla M. Subba Reddy** (supra) are as under:-

26. The learned Counsel for the respondent submitted that under [Section 25](#) of the Hindu Marriage Act, a wife whose marriage is void would be entitled, as of right, of relief of permanent maintenance once her marriage is annulled by a decree of nullity under [Section 11](#) or passing a decree of a kind envisaged under [Sections 9](#) to [14](#) of the Hindu Marriage Act, and therefore, it follows that the **Hindu Marriage Act, 1955** recognizes, notwithstanding the fact that the marriage is null and void, that the wife has the status atleast for limited purpose of applying for alimony and maintenance. This statutory intention, according to the learned Counsel for the respondent, has to be borne in mind in considering the claim of the respondent in this case to maintenance. The support of this contention the learned Counsel relied on the decision of a learned single Judge of Bombay High Court in **Smt. Rajesh Bai and others v. Shantha Bai**. In that case, the first wife of the deceased filed a suit for partition against the brothers of her deceased husband and the 2nd wife of her husband by name Rajesh Bai. The defendants in that suit took the plea that the plaintiff was divorced by her husband as per the caste custom and after divorce, he married 2nd wife Rajesh Bai. The learned single Judge while holding that the marriage of Rajesh Bai is void in view

of the subsisting first marriage of the deceased with Shantha Bai, granted maintenance to 2nd wife Rajesh Bai relying on the pari materia provisions of [Section 25](#) of the Hindu Marriage Act and also relying on the inherent powers of the Court under Section 151 C.P.C. to meet the ends of justice. The learned single Judge observed thus: "The rights recognised by [Section 25](#) of the Hindu Marriage Act can clearly be worked out in any civil proceedings subject to consideration of facts and circumstances so as to meet the ends of justice by resort to the inherent powers conferred upon the Courts by Section 151 C.P.C. The statutory references do not indicate that there is any prohibition or any specific Provision in this regard. On the other hand, the principle is statutorily recognised that upon a decree being passed for nullifying the marriage as void de jure, the Court is possessed with ample power to make order as to alimony and maintenance. What could, therefore, be available in special proceedings cannot be said to be not available when the same issue is involved collaterally in competent civil proceeding." The learned Judge further observed: "Ultimately, having based the relief under Section 151 C.P.C. with the aid of inherent powers and drawing upon the principle underlying [Section 25](#) of the Hindu Marriage Act, it is implicit that before maintenance is granted, the need to grant such must exist as well as the grantee must fulfil the ordinary conditions like that of chastity, not being married with any other person and further of not being in a position to maintain herself." With due respect, we are not in a position to accept the said reasoning of the learned Judge. Firstly, the assumption that [Section 25](#) recognizes the right of a woman bigamously married to claim maintenance at the time when a decree of nullity is passed is not correct. Secondly in the absence of a proceeding under [Sections 9 to 14](#), such a relief cannot be granted by invoking [Section 151](#). [Section 151](#) could have no application to such a situation.

31. In view of the above decision taken by us, the claim of the respondent for maintenance, whose marriage is void ab initio, against the appellant is not maintainable. Hence, the decree and judgment in O.S. No.131/87 on the file of the Principal Subordinate Judge, Chittoor, is liable to be set aside.

32. In the result, the appeal is allowed. The judgment and decree in O.S.No.131 of 1987 on the file of the Principal Subordinate Judge, Chittoor, is set aside and the suit O.S.No.131 of 1987 is dismissed. In the circumstances of this case, parties are directed to bear their costs throughout.

21. Considering the entire facts and circumstances of the case, the grant of maintenance under Section 25 of the Hindu Marriage Act in favour of Preetam Kumari when marriage has been declared null and void by the trial court, cannot be maintained in the eye of law. The suit for declaring the marriage as null and void, has been decreed by the trial court and the decree has been affirmed in the first appeal, as such, the first appellate court has committed illegality in passing the order for maintenance under Section 25 of the Hindu Marriage Act. It is also material that finding of the trial court has been maintained in the appeal, as such, there was no occasion to grant maintenance under Section 25 of the Hindu Marriage Act in favour of the respondent Preetam Kumari coupled with the fact that there was no application under Section 25 of the Hindu Marriage Act, 1955 in civil appeal by respondent-wife.

22. In view of the finding of fact recorded by the trial court declaring the marriage as void and ineffective, the grant of maintenance under Section 25 of the Hindu Marriage Act in favour of the respondent Preetam Kumari is manifestly erroneous and illegal. The substantial questions of law nos. 1 &

2 are answered in favour of appellant and against the respondent.

23. In view of above, the part of the judgment and decree of the lower appellate court by which maintenance under Section 25 of the Hindu Marriage Act has been granted by the first appellate court in Civil Appeal No.44/2010 and 45/2010 is hereby set aside. **The second appeal stands allowed.** No order as to costs.

Order Date :- 5.4.2023
C.Prakash

(Chandra Kumar Rai, J.)