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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment delivered on: 27.08.2025***

\+ MAT.APP.(F.C.) 317/2023
VINOD KUMAR .....Appellant

Through: Mr. Deepak Kumar Sharma, Advocate

versus

MS. GEETA .....Respondent

Through: Mr. S.P. Yadav and Mr.Deepak Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

1. In this Appeal under Section 19 of the Family Courts Act, 1984, the Appellant-Husband prays for setting aside the impugned judgment passed by the learned Family Court, Karkardooma Courts, Delhi [hereinafter referred to as "Family Court"], on 10.05.2023 [hereinafter referred to as "Impugned Judgement"] in Case No. 14/2019 titled ***Vinod Kumar vs. Geeta***, wherein his suit seeking to declare the marriage with the Respondent-Wife as null and void, on the account that *Saptapadi* was not performed and permanent injunction, was dismissed.

2. The brief facts, as per the pleadings, are that the parties

exchanged garlands at Delhi on 19.06.2016. The Appellant has claimed that ceremonies according to applicable custom, including *Saptapadi*, were never performed. The marriage was duly consummated, and a daughter was born out of the said wedlock.

3. It has been alleged by the Appellant that, though he lived with the Respondent till 11.10.2016, the marriage was not valid as, at the time of their marriage, no *Saptapadi* was performed. The Respondent has claimed that she was thrown out of the matrimonial home on 02.10.2017.

4. On appreciation of the evidence, oral and documentary, the learned Family Judge concluded that the suit of the Appellant was without merit and therefore liable to be dismissed. The Appellant was held not entitled to a decree of declaration. Being aggrieved, the Appellant has filed the present appeal.

5. Learned counsel for the Appellant contends that the Respondent failed to produce the marriage album; hence, an adverse inference should have been drawn against her. He submits that the Respondent has failed to prove that *Saptapadi* at their marriage was performed.

6. *Per contra,* the learned counsel for the Respondent submits that it is the positive case of the Respondent that the various ceremonies, including *Saptapadi,* were performed. The burden lies upon the Appellant to prove that no *Saptapadi* was performed; however, he miserably failed to discharge this onus. Moreover, a daughter has already been born out of wedlock.

7. A perusal of the learned Family Court Record shows that during evidence, the Appellant stepped into the witness box as PW1 and filed an affidavit in evidence on the lines of the plaint in support of his

claim that no *Saptapadi* was performed; however, he, notably, did not examine the priest, any guest or elderly person to prove the same.

8. As per Section 7 of the Hindu Marriage Act, 1955 [hereinafter referred to as "HMA"], which outlines the 'Ceremonies for a Hindu marriage', the marriage may be solemnised in accordance with the customary rites and ceremonies of either party. Section 7(2) of the HMA provides that where such rites and ceremonies include the *Saptapadi*, that is, taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding with the seventh step.

9. Sub-section (1) of Section 7 confers discretion on the parties to solemnise marriage as per the customs and ceremonies of either party, without mandating any particular ceremony. Thus, performance of *Saptapadi* is not an indispensable requirement in every case to establish a valid marriage. Sub-section (2) only clarifies that where *Saptapadi* is a part of the customary rites performed, the marriage attains completeness and binding force with the seventh step.

10. Learned counsel for the Respondent has rightly pointed out that a heavy burden lay on the Appellant to prove that the essential ceremony of *Saptapadi* was not performed. However, as rightly recorded by the learned Family Court, the Appellant did not examine any witness to substantiate this plea. Moreover, in the facts of the present case, the presumption of a valid marriage comes into play, which further weakens the Appellant's contention. A Single Bench pronouncement of Bombay High Court in the Judgement of ***Ningu Vithu Bamane v. Sadashiv Ningu Bamane***[1] observed as follows:-

[1] 1986 SCC OnLine Bom 30

"18. Mr. Sawant, learned Advocate appearing on behalf of the plaintiffs, submitted that the burden of proving marriage between defendants Nos. 1 and 4 and the legitimacy of defendants Nos. 2 and 3 lies on defendants Nos. 1 to 4 and that the evidence adduced on their behalf does not show that they have discharged this burden. I am afraid, Mr. Sawant is not correct in his submission inasmuch as when the plaintiffs alleged and averred that defendant No. 4 was not legally wedded wife of defendant No. 1 the burden of proof was on the plaintiffs to establish their assertion. It was held by this Court in case of Hoovayya Kanthappa Shetty v. Renuka S. Shetty [AIR 1984 Bom. 229.] that there was legal presumption in favour of marriage and legitimacy and the burden of proving a fact existing otherwise is on the party who challenged the marriage between two persons and the legitimacy of the children born of such marriage.

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20. I am of the opinion that in a well organised, orderly and civilised society like ours which is not of loose and uncertain morals, the institution of marriage occupies an important place and plays a very vital role in the process of development of human personality. We have definite views and strong convictions about marital relations. The law as to presumption in favour of marriage under section 50 and 114 of the Evidence Act is well crystallised. Thus when a man and a woman live together as husband and wife for sufficiently long time and were treated as husband and wife by friends, relatives and neighbours, there is always a presumption in favour of their marriage. If children are born to such a couple, there is a further presumption in favour of their legitimacy. The presumption in favour of marriage does not get mitigated or weakened merely because there may not be positive evidence of any marriage having taken place. But if there is some evidence on record that the couple had gone through some form of marriage, the presumption gets strengthened. Therefore, though marriage ceremony said to have taken place may not be valid, the marriage can be held to be valid by force of habit and repute and the onus of rebutting such a marriage would be on the person who denies the marriage. It may also be stated here that this presumption of law in favour of marriage and legitimacy is not to be repelled lightly by mere balance of probability. The evidence for that should be strong, satisfactory and conclusive. If the presumption is permitted to be rebutted lightly, the weaker and vulnerable sections of the society viz. the women and the children could be the victims of the vagaries of uncertainties as to their positions and status in life. This would be very much detrimental in the development of their human personality. They would be the worst sufferers in the society."

(Emphasis supplied)

11. It is admitted that the parties have been residing together, although the date of separation is disputed, and a child was born to the parties. When a child is born to such a couple, there arises a strong presumption that the marriage is legitimate. The presumption of a valid marriage is not diminished simply because there is no direct or positive proof of the ceremony of *Saptapadi* having taken place. On the contrary, if there is even some evidence showing that the parties went through a form of marriage, the presumption becomes stronger.

12. The Appellant himself has admitted that he was residing with the Respondent as husband and wife and only ceased cohabitation after 11.10.2016, upon learning that *Saptapadi* had not been performed.

13. The burden of proof being on the Appellant to establish that no *Saptapadi* was performed, an adverse inference cannot be drawn against the Respondent for not producing the marriage album to demonstrate the ceremonies. Even assuming such an album were produced, it cannot conclusively establish whether *Saptapadi* was performed.

14. In view of the above discussion, we do not find any reason to interfere with the impugned Judgement because the conclusion of the Family Court is plausible and possible. The appeal is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 27, 2025/sg/er