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FA-1998-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 27th OF NOVEMBER, 2025

FIRST APPEAL No. 1998 of 2024

***BRAHMSWAROOP SHARMA (DEAD) THROUGH LR ASHWINI
KUMAR***

Versus

SMT KIRAN SHARMA

.....
Appearance:

*Shri Harish Dixit- learned Senior Counsel assisted by Shri Parth Dixit- learned
Counsel for appellent.*

Shri Madan Mohan Shrivastava- learned Counsel for respondent.
.....

ORDER

Per. Justice Hirdesh

Instant First Appeal under Section 19 of the Family Courts Act, 1984 has been preferred by Ashwini Kumar, legal representative (son) of original plaintiff late Brahmswaroop Sharma assailing the judgment and decree dated 02.09.2024 passed by Additional Judge to the Court of Principal Judge, Family Court, Gwalior in RCSHM No. 429-A/2021 [hereinafter it would be referred to as " the Trial Court"] whereby suit filed by original plaintiff seeking a declaration that respondent is not his legally wedded wife and for permanent injunction has been dismissed.

2. A few facts for adjudication of present appeal, as narrated therein, are that original plaintiff, a 75-year-old retired Company Commander, lost his wife Pusha Devi. He has one son and two married daughters. Feeling



lonely, he published an advertisement in Dainik Bhaskar newspaper seeking a bride for his son. After this advertisement, respondent contacted him and began visiting his house. Plaintiff alleges that respondent took undue advantage of his loneliness and started blackmailing him. She allegedly concealed her previous marriages and managed to obtain a fabricated marriage certificate dated 26.03.2012 from Arya Samaj Mandir, Loha Mandi, Gwalior, showing her marriage with plaintiff.

3. Plaintiff asserts that respondent was already married to Ashok Sharma, as revealed during her arrest on 19.02.2013 in connection with Crime No.57 of 2013 under Immoral Traffic (Prevention) Act. During her arrest, she disclosed name of Ashok Sharma, as her husband. Charge-sheet filed under Section 370(2) IPC and Sections 4 to 8 of Immoral Traffic (Prevention) Act also mentions "Ashok Sharma" as her husband.

4. Plaintiff states that respondent had earlier married one Aashiq Kalbhor, son of Chandrakant Kalbhor. This marriage was dissolved on 19.07.2008 by mutual consent before the Family Court. Plaintiff contends that by giving false and misleading statements, respondent obtained a marriage certificate from the Registrar of Marriages, Municipal Corporation, Gwalior, showing a marriage with him on 26.03.2012, even though her former husband was alive. Plaintiff further alleges that respondent forged documents and photographs with malicious intention. Plaintiff points out that there is a 30-year age difference between them, he being 75 years old and respondent 45 years old. According to him, this itself indicates a preplanned conspiracy and immoral intentions behind the alleged marriage.



5. Plaintiff further alleges that respondent is in habit of blackmailing and of having more than one husband at the same time to obtain unlawful monetary benefits, including pensionary benefits. It is pleaded that since respondent's earlier marriage was still subsisting, any subsequent marriage with him is void under Section 5 of Hindu Marriage Act.

6. Plaintiff alleges that respondent married Aashiq Kalbhor twice—first on 10.12.1991 and again on 05.07.1992 and that this marriage was dissolved only on 19.07.2008. Therefore, according to him, her marriage with him in 2012 was invalid.

7. Plaintiff seeks cancellation of alleged fake and forged marriage certificate. He seeks a declaration that respondent is not his legally wedded wife. He also seeks a permanent injunction restraining her from interfering in his personal life or claiming any right based on alleged fake marriage certificate. He further prays that alleged marriage be declared null and void.

8. Respondent denies all allegations of plaintiff. She contends that the suit is not maintainable as no notice under Section 80(2) CPC was served before filing suit. She also states that plaint does not mention date, month or year of cause of action, and therefore, it is liable to be dismissed. Respondent denies that she ever married Ashok Sharma. She states that she has never been his wife and that, plaintiff has filed no document to support this allegation.

9. Respondent asserts that plaintiff himself accepted her as his wife by mentioning her name as his spouse in an application submitted to his Department. This application also contains plaintiff's signature and details of



his elder son, which according to her clearly proves that plaintiff acknowledged her as his legally wedded wife. She therefore seeks dismissal of suit with costs of Rs. 25,000/-.

10. Respondent contends that advertisement allegedly published on 15.12.2011 in Dainik Bhaskar is fabricated. She states that plaintiff lived in a rented house in Kampoo, Lashkar, Gwalior, where her friend was landlord's daughter. According to her, plaintiff informed her that his wife had passed away, his son and daughter-in-law did not support him, and he wished to remarry due to his old age. Being a divorced woman, she accepted his proposal and legally married him through Arya Samaj.

11. Respondent admits that she was married to Aashiq Kalbhor but states that marriage was dissolved by mutual consent on 19.07.2008 by Family Court, Gwalior. Respondent states that she married Aashiq Kalbhor on 05.07.1992 according to Hindu rites, but after obtaining divorce decree on 19.07.2008, she legally married plaintiff on 26.03.2012. She reiterates that she never married Ashok Sharma. She argues that plaintiff lacks proper knowledge of her previous marriage and arrest details. Therefore, plaint is vague, devoid of necessary particulars, and liable to be dismissed. Respondent prays that suit filed by plaintiff be dismissed in its entirety as false, baseless, and unsustainable.

12. Upon framing issues and evaluating evidence on record, the trial Court dismissed plaintiff's suit and held that burden of proving allegations lay upon plaintiff, and he failed to establish that respondent was not his legally wedded wife. Plaintiff also failed to prove that respondent had more



than one husband or that her marriage with Aashiq Kalbhor, solemnized on 5th July, 1992, had not been dissolved. On contrary, documents produced by respondent, along with testimony of her witness Ramprakash (DW2), established that marriage between plaintiff and respondent stood proved on basis of Arya Samaj marriage certificate, photographs, and other supporting documents.

13. Challenging impugned judgment and decree dated 02.09.2024 passed by Trial Court, learned Senior Counsel appearing for appellant contends that Trial Court failed to properly determine validity and legality of alleged marriage between plaintiff and respondent. It is submitted that where a Hindu marriage is not performed in accordance with prescribed rites and ceremonies, including *Saptpadi* where it forms part of customary practice, such a marriage cannot be construed as a valid Hindu marriage under law.

14. It is argued that there is not even a whisper in statements of respondent herself, or in testimonies of DW-1 Ramprakash and DW-2 Purohit Ravindra Kushwah, regarding performance of *Saptpadi*. Photographs produced by respondent also do not reflect performance of *Saptpadi* by parties. In absence of proof of this essential ceremony, plaintiff is entitled to a declaration that respondent is not his legally wedded wife, irrespective of whether she was already married to Ashok Sharma or Aashiq Kalbhor.

15. Placing reliance on judgment of Hon'ble Supreme Court in **Dolly Rani v. Manish Kumar Chanchal**, (2025) 2 SCC 487, learned Senior Counsel appearing for appellant submits that the Trial Court misdirected itself even at stage of framing issues. It is argued that a marriage certificate by itself is not



proof of a valid marriage; factum of marriage must be independently proved. Therefore, the entire approach of learned Trial Court stands vitiated.

16. It is further argued that certificates Exhibits D-3 and D-4 are not valid marriage certificates within meaning of Section 8 of Hindu Marriage Act, 1955. Therefore, finding of the Trial Court regarding alleged marriage between plaintiff and respondent, based solely on such certificates, is illegal and liable to be set aside. The Trial Court also failed to properly address Issue No.3 concerning validity of alleged marriage in accordance with law.

17. It is further contended that there is no evidence on record to show that either party was an Arya Samaji or that any customary or religious rites were duly performed as required under Arya Samaj rituals. The Trial Court also erred in ignoring significant documentary evidence, including FIR and charge sheet, which disclosed that respondent had mentioned Ashok Sharma as her husband. The trial Court further failed to appreciate respondent's criminal background under Immoral Traffic (Prevention) Act, her attempts to obtain pensionary and other benefits of plaintiff, and her overall conduct demonstrating *mala fides*.

18. It is also contended that Hindu marriage dated 05.07.1992 between respondent and Aashiq Kalbhor was never dissolved, and therefore, any subsequent marriage was void under Section 5 of the Hindu Marriage Act. For all these reasons, it is submitted that impugned judgment and decree of Trial Court is contrary to law, suffers from serious legal infirmities, and is liable to be set aside. Consequently, the suit of plaintiff deserves to be decreed.



19. On other hand, learned Counsel for respondent submits that appeal is wholly baseless and deserves dismissal. Marriage between deceased-appellant Brahmaswaroop Sharma and respondent- Kiran Sharma was duly solemnized on 26.03.2012 at Arya Samaj, Loha Mandi, Gwalior, strictly in accordance with Section 7 of Hindu Marriage Act and Vedic *Saptpadi* ritual. The Arya Samaj institution is duly recognized by the Madhya Bharatiya Arya Pratinidhi Sabha, as supported by documents Exhibits R-1 to R-5, and the Hon'ble Supreme Court has already stayed contrary observations of the High Court in SLP No. 15315/2022. Appellant's reliance on the decision of Hon'ble Apex Court in **Doli Rani (supra)** is misplaced, as that case concerned a certificate issued by Vedic Jan Kalyan Samiti, an institution not recognized by the Arya Samaj, and where the parties themselves admitted that no rituals were performed. The facts of that case are fundamentally different from present matter, where a valid Vedic *Saptpadi* marriage was performed and proved by priest and witnesses, along with the Arya Samaj certificate and Municipal registration. Allegation of plaintiff that respondent was married to Ashok Sharma is wholly unsubstantiated. A mere mention of his name in an FIR cannot constitute proof of marriage, and criminal case filed against respondent was based on false and fabricated allegations. Respondent's earlier marriage with Aashiq Kalbhor had already been dissolved by decree dated 19.07.2008, hence, no question arises of any subsisting marriage. The learned Trial Court correctly held that appellant failed to discharge burden of proving invalidity of marriage or existence of any prior subsisting marriage. Evidence on record, including Exhibits D-1 to D-4 clearly established the



valid performance of marriage. Therefore, appeal is devoid of merit and the impugned judgment and decree dated 02.09.2024 passed by the Trial Court deserves to be affirmed.

20. We have heard learned counsel for both sides at length and perused the entire record.

21. The pivotal issue arises in the present appeal is whether the marriage between plaintiff and defendant was validly solemnized as per provisions of Section 7 of the Hindu Marriage Act.

22. The Hon'ble Apex Court in the case of *Dolly Rani (supra)* has observed as follows:-

"14. We have perused the other terms and conditions mentioned in the joint application. We find the same to be lawful and we do not find any legal impediment in accepting the terms and conditions of the joint application. But before granting the reliefs sought for by the parties, we wish to make certain observations.

15. Section 7 of the Act reads as under:

'7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

16. Section 7 of the Act speaks of the ceremonies of a Hindu marriage. Sub-section (1) uses the word 'solemnised'. The word 'solemnised' means to perform the marriage with ceremonies in proper form. Unless and until the marriage is performed with appropriate ceremonies and in due form, it cannot be said to be 'solemnised'. Further, sub-section (2) states that where such rites and ceremonies include Saptapadi, i.e., the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. Therefore, the requisite ceremonies for the solemnisation of a Hindu marriage must be in accordance with the applicable customs or usage and, where Saptapadi has been adopted, the marriage becomes complete and binding when the seventh step is taken.

17. Where a Hindu marriage is not performed in accordance



with the applicable rites or ceremonies, such as Saptapadi when included, the marriage will not be construed as a Hindu marriage. In other words, for a valid marriage under the Act, the requisite ceremonies have to be performed, and there must be proof of performance of the said ceremonies when an issue or controversy arises. Unless the parties have undergone such ceremonies, there would be no Hindu marriage according to Section 7 of the Act, and a mere issuance of a certificate by an entity, in the absence of the requisite ceremonies having been performed, would neither confer any marital status upon the parties nor establish a marriage under Hindu law.

18. A perusal of the marriage certificate produced in the instant case along with the application filed under Article 142 of the Constitution of India states that the 'marriage' between the parties was solemnised according to Hindu Vedic rites and customs. The certificate issued by the Vaidik Jankalyan Samiti (Regd.), in the absence of any indication as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act were complied with, would not be a certificate evidencing a Hindu marriage in accordance with Section 7 of the Act.

19. In the absence of any ceremony being performed, such a certificate could not have been issued. It is on the basis of the said certificate that the Marriage Registration Officer issued a certificate under the Uttar Pradesh Marriage Registration Rules, 2017, stating that the parties had presented themselves on 07.07.2021 and had declared that their marriage was solemnised on the said date at Vaidik Jankalyan Samiti (Regd.), Ghaziabad. On the basis of that certificate, the Marriage Registration Officer registered the marriage under Section 8 of the Act.'"

23. Plaintiff's witness, Ashwini Kumar, in his affidavit, stated that Brahma Swaroop was his father and had filed a suit for declaration and permanent injunction on 14-03-2016. After death of his father, Brahma Swaroop, on 24-05-2017, he was impleaded as party. According to him, respondent -Smt. Kiran Sharma, was already married to Ashok Sharma, and an earlier criminal case filed against respondent mentions name of her husband as Ashok Sharma. This witness further alleged that without obtaining divorce from Ashok Sharma, respondent's marriage with his father Brahma Swaroop was void and in violation of Section 5 of Hindu Marriage



Act. He further deposed that respondent - Kiran Sharma had earlier undergone Court marriage with Aashiq Kalbhor on 10-12-1991, which was dissolved on 19-07-2008, and she married Aashiq Kalbhor again on 05-07-1992 as per Hindu rites, which marriage was never dissolved. The marriage certificate issued by person who performed her alleged second marriage with Brahma Swaroop, during lifetime of her former husband Ashok Sharma, is thus void. Therefore, plaintiff is entitled to decree of permanent injunction.

24. Plaintiff's witness, Ashwini Kumar Sharma (PW-1), further, in order to prove his case in examination-in-chief, had filed before the Trial Court several documents, namely, certified copy of marriage certificate issued by Arya Samaj Mandir, Loha Mandi, Kila Gate, Gwalior (Ex.P-1); certified copy of judgment dated 19-07-2008 dissolving marriage of Aashiq Kalbhor and Kiran Sharma before Lok Adalat (Ex.P-2); certified copy of bail order passed by this Court dated 10-05-2013 (Ex.P-3); certified copy of FIR registered at P.S. Kampoo (Ex.P-4); certified copies of other documents, including complaints and marriage card dated 05-07-1992 (Ex.P-15); press report in Dainik Bhaskar regarding allegations of coercion and prostitution (Ex.P-16); and certified copy of statement of respondent Kiran Sharma before Family Court (Ex.P-17). Plaintiff had also filed application Ex.P-6, wherein Aashiq Kalbhor is shown as former husband of respondent. In Exhibit P-4, her husband's name is mentioned as Ashok Sharma.

25. Respondent- Kiran Sharma, in her evidence, deposed that she had married Aashiq Kalbhor but had never married Ashok Sharma. She claimed that, in order to escape social pressure, she had once used name Ashok



Sharma, although she did not know him. Respondent deposed that after receiving bail from Court, she was persuaded by social members to register her marriage in Municipal Corporation. In support of her evidence, she filed documents Exhibits D-1 to D-4, all relating to marriage. Exhibit D-1 is a group photograph; Exhibit D-2 is a marriage certificate; Exhibit D-3 is a marriage certificate of Arya Samaj, Loha Mandi, Gwalior; and Exhibit D-4 is marriage register of Municipal Marriage Office. In support of her evidence, respondent also produced Ramprakash (DW-2), who deposed that he was present during Arya Samaj marriage and identified his own signatures as well as those of plaintiff Brahma Swaroop, and respondent Kiran Sharma on Exhibits D-3C, D-2C, and D-4C. Ramprakash in his evidence deposed that he identified affidavits submitted by parties before him for purpose of marriage registration. Respondent- Kiran Sharma, in her testimony, further deposed that she married plaintiff Brahma Swaroop only after her divorce from Aashiq Kalbhor. In cross-examination, she admitted that she had married Aashiq Kalbhor twice: a Court marriage on 10-12-1991 and a ceremonial marriage on 05-07-1992. Respondent denied ever marrying Ashok Sharma.

26. In Hindu religion, marriage is a sacrament and has a sacred character. Marriage is not an event for mere “song and dance” or “wining and dining.” Hindu marriage is conducted as per Vedic procedure, which includes customs and rites such as Kanyadana, Panigrahan, Saptapadi, and chanting of mantras while applying vermilion. Any Hindu marriage solemnized in accordance with Vedic procedure constitutes a valid marriage



if it fulfills requirements of Section 7 of Hindu Marriage Act. Hindu marriage facilitates procreation, consolidates unit of family, and strengthens spirit of fraternity within various communities. Marriage is sacred in that it provides a lifelong, dignity-affirming, equal, consensual, and healthy union of two individuals, acknowledging both material and spiritual aspects of lives of married couple.

27. On perusal of evidence of both parties as well as impugned record, it reveals that witnesses Purohit Ravindra Kushwah and Pradhan of Arya Samaj, Ramprakash, as well as respondent herself, never stated that *Saptpadi* or any other essential ceremony was performed. The photographs produced on behalf of respondent before the Trial Court do not depict any sacred fire, *pheras*, or *Saptpadi*. There is no evidence that both parties were followers of the Arya Samaj or that rituals prescribed under the Arya Marriage Validation Act were followed. Consequently, material on record fails to establish factum of valid “Hindu marriage” as defined under Section 7 of the Hindu Marriage Act. In such circumstances, following ratio of *Dolly Rani (supra)*, mere issuance of Arya Samaj certificate cannot confer status of husband and wife.

28. Therefore, it is found that the Trial Court erred in treating Arya Samaj certificate (Ex.D-3) and register entry (Ex.D-4) as conclusive proof of marriage. Essential ceremonies of Hindu marriage, particularly *Saptpadi*, were not proved. Consequently, alleged marriage between original plaintiff and respondent is not established in law. Declaration sought by plaintiff ought to have been granted. The Trial Court’s judgment suffers from misreading of evidence and incorrect application of law, and therefore,



cannot be sustained.

29. Accordingly, the judgment and decree dated 02.09.2024 passed by Additional Judge to the Court of Principal Judge, Family Court, Gwalior, in RCSHM No.429-A/2021 is **set aside**. The suit filed by original plaintiff (through his legal representative) is decreed with observations that respondent is not legally-wedded wife of late Brahma Swaroop Sharma. The alleged Arya Samaj certificate dated 26.03.2012 and corresponding registration entry do not establish any valid marriage. Decree of permanent injunction is granted, restraining respondent from interfering in personal life of plaintiff (represented by his legal heir) or claiming any marital rights against him.

30. Accordingly, the instant first appeal is **allowed**. No order as to costs.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

MKB