

HIGH COURT OF MADHYA PRADESH : JABALPUR

SB : HON'BLE MS. JUSTICE VANDANA KASREKAR.

SECOND APPEAL No.710/1999

Ganga Ram & another

vs.

Dibba & another

Shri R.K. Thakur, learned counsel for the appellants. .

None for the respondents.

JUDGMENT
(18 /10/2016)

Appellants have filed the present appeal challenging the judgment and decree dated 10.03.1999 passed in Civil Appeal No.46-A/1998 by Second Additional District Judge, Sagar, Camp Khurai, whereby reversing the judgment and decree dated 31.01.1997 passed in Civil Suit No.127-A/1992 by IInd Civil Judge, Class-II, Khurai.

2. Respondent no.1 and his brother Kadora had purchased a land bearing khasra no.11/6 area 3.35 acre by registered sale-deed dated 22.5.1963. The suit land is recorded in joint name of the plaintiff/respondent no.1 as well as his brother Kadora. Thereafter, respondent no.2 sold this land to defendant no.3 i.e. appellant no.2. The plaintiff had filed a suit on the ground that the plaintiff has

purchased the disputed property from own income and since then the plaintiff is in possession of the suit property. Kadora had died one year before filing of the suit, he died issue less. After the death of the Kadora, defendant no.2/respondent no.2 claiming herself of wife of the Kadora has entered her name in the revenue record and sold this property to the appellant no.2 and therefore, the said sale-deed is null and void as defendant no.2 has no right or title to sold this disputed land. On the basis of the said sale-deed, defendant no.2 i.e. appellant tried to dispossess the plaintiff/respondent no.1 from the suit land. Plaintiff/Respondent no.1, therefore, filed civil suit for declaration of title as well as permanent injunction.

3. Respondent no.1, 2 and 4 filed their separate written statement and have stated that the plaintiff is the owner of the half portion of the property and Kadora was the owner of the remaining part of the disputed land. After the death of the Kadora respondent no.2 is in possession of the suit property. There was a partition between the Kadora and the plaintiff 25 years ago and since than they are in possession of that part of the property. They have denied that the property has been purchased from the self acquired income of the plaintiff. It has been further stated that respondent no.2 is the legally married wife of the Kadora and therefore, being a legal heir of Kadora her name was recorded as Bhumi Swami in the disputed property and therefore, the sale-deed executed by her in the name of respondent no.3 is a legal document.

4. The trial Court after framing the issues dismissed the suit on the ground that the plaintiff has failed to prove that the land

bearing khasra no.11/6 area 3.35 acre has been purchased from self acquired income of the plaintiff. The plaintiff has also failed to prove his possession and title over the disputed property. The trial Court has further found that respondent no.2 is the legally married wife of Kadora and consequently the sale-deed executed by respondent no.2 in favour of the appellant is legal.

5. Against the said judgment and decree passed by the trial Court the plaintiff/respondent no.1 had filed an appeal before the first Appellate Court on the ground that the trial Court has erred in holding that respondent no.2 is the legally married wife of the Kadora. The trial Court has further failed to consider that the appellant is in continuous possession of the disputed property.

6. After hearing both the parties, learned First Appellate Court vide judgment and decree dated 10.03.1999 has allowed the appeal preferred by respondent no.1 and set aside the judgment and decree passed by the trial Court. Being aggrieved by the said judgment and decree, the appellant has filed the present appeal.

7. The appeal is admitted vide order dated 4.10.1999 on the following substantial question of law.

“ Whether the approach of the Ist Appellate Court in reversing the finding of the trial Court on the point that Gulabrani was a legally wedded wife of Kadori, has been perverse ?

8. Learned counsel for the appellants argues that the first Appellate Court has erred in reversing the judgment and decree

passed by the trial Court. He further submits that the Gulabrani/respondent no.2 is legal married wife of Kadora. He further submits that respondent no.2 live for more than 25 years as wife of the Kadora and thus, she is entitled to sold the property of Kadora. He further submits that respondent no.2 had married to Kadora as per 'Kari Pratha' and all rituals have been executed as per Kari Pratha. He further submits that the first Appellate Court has failed to consider that the deceased Kadora was serving in the PWD and after his death the appointment has been given to respondent no.2 being his wife. He further submits that as per Section 114 of the Indian Evidence Act, if the man and woman resides together for a longer time then the presumption will arises that they are husband and wife, therefore, the first Appellate Court has erred in reversing the findings given by the trial Court.

9. None for the respondents.

10. I have heard learned counsel for the appellants and perused the record as well as the judgment passed by both the Courts below.

11. From the facts which has been given in the judgment, it appears that, the disputed land is a land bearing khasra no.11/6 area 3.35 acre situated at Gram Khadesra Tehsil Khurai the said land was purchased by the plaintiff in the name of his brother Kadora. Kadora had died one year before filing the suit, he was died issue less. During the lifetime of the Kadora, he was married to defendant no.2 as par 'Kari Pratha', on that basis defendant no.2 has recorded her name in the revenue record and after recording

the name she has executed a registered agreement in the name of minor son Kamlesh of defendant no.1. The plaintiff had filed the suit on the ground that defendant no.2 is not a legal married wife of Kadora and therefore, she has no right or title to execute the registered agreement in favour of minor son of defendant no.1. The trial Court after recording the evidence has found that defendant no.2 is a legal married wife of the Kadora. The said findings had been reversed by the Appellate Court. As per section 114 of the evidence Act if the man and woman lives together as a husband and wife then the presumption will be drawn that they are being husband and wife. In the present case, the Kadora and defendant no.2 were resides together as husband and wife and therefore, the counsel for the appellant submits that the defendant no.2 is wife of the Kadora. It has been further stated that defendant no.2 has entered into the marriage with the Kadora as per the Kari Pratha. The Section 4 of the Hindu Marriage Act provides that if a Second Marriage has entered during the lifetime of husband or the wife then the said marriage is voidable.

12. From perusal of the record as well as the statement of defendant no.2, it is levelled that she failed to prove that her first husband was dead and the burden of prove is on defendant no.2 to prove the death of her husband as per Section 106 of the Evidence Act. In her statement she has also stated that she had resided with her previous husband for 2 or 3 years and whether he is alive or not she had no knowledge about him. It is for defendant no.2 to prove that she is entered into the married with the Kadora after the

death or divorce of her first husband, but she had not produced any evidence to show that her marriage with Kadora was legal. As per Section 4 of the Hindu Marriage Act provides that any text rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to the matter for which the provision is made in this Act.

13. As per the aforesaid provision of the Hindu Marriage Act, the Second Marriage during the lifetime of husband or the wife of the first marriage is voidable.

14. Thus, in the present case defendant no.2 has failed to prove whether her first husband is alive or not and she has also failed to prove that whether she has taken divorce from her husband, therefore, in the light of the said provision of law even the second marriage which is solemnized as per Kari Pratha is impermissible. In light of the aforesaid observations, the question of law is answered in negative i.e. against the appellant.

15. Consequently, the appeal is dismissed and the judgment and decree passed by the first Appellate Court is affirmed. There shall be no order as to costs.

(MS. VANDANA KASREKAR)
JUDGE

S.A. No.710/1999