

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	FIRST APPEAL NO.1197 OF 2018
Parties Name	Smt. Nirmala Devi vs. Anil Kumar Tiwari
Date of order	30/11/2021
Bench Constituted	Division Bench : Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav
Order passed by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes
Name of counsel for parties	For Appellant: Shri Kamal Singh Baghel. For Respondents/ : Shri Dileep Kumar Pandey
Law laid down	Held: Section 5 (i) and Section 11 of the Act of 1955, makes it clear that if either party has a spouse living at the time of the marriage and if such marriage is solemnized after commencement of the Act of 1955, the same is void <i>ipso-jure</i> . The fact that whether the other party had the knowledge of existing spouse living at the time of marriage is immaterial. Section 11 of the Act of 1955 only prescribes marriages which are solemnized after commencement of the Act, as null and void, if such marriages contravene any of the conditions specified in Clauses (i), (iv) and (v) of Section 5. The Scheme of Section 11 of the Act of 1955 does not envisage that the

	<p>contravention of Section 5 (iii) of the Act of 1955 will entail in marriage to be void, neither Section 12 of the Act of 1955 envisages such marriage as voidable.</p> <p>The only consequences of contravention of Section 5 (iii) of the Act of 1955 is prescribed under Section 18 of the Act of 1955 where the contravention of such condition is made punishable which may extend to two years or with fine which may extend to one lakh rupees or both and there is no other consequences provided under the Act of 1955.</p>
Significant paragraph numbers	9

J U D G M E N T
(30/11/2021)

1. This is a wife's appeal under Section 19 of the Family Courts Act 1984, against the judgment and decree dated 13th April 2018, passed by the Principal Judge, Family Court, Rewa in Civil Suit No.48-A/2015, by which the petition of the respondent-husband under Section 11 of the Hindu Marriage Act 1955 [hereinafter in short '**the Act of 1955**'] has been allowed and the marriage solemnized between the parties has been declared as null and void.
2. Some of the admitted facts for the decision of the present appeal are as under:-

(i) On 18.05.2014, the marriage between the parties was solemnized at village Khandora, Tahsil Deosar, District Singrauli (M.P) according to Hindu rites and rituals.

(ii) The appellant-wife had already been married in the year 1984 as per Hindu rites and rituals with one Amarjeet Pandey, when she was only aged about 8-10 years.

(iii) The marriage of appellant-wife with her earlier husband Amarjeet Pandey, was dissolved on 15.07.2015 (Ex-D-7) vide judgment and decree under Section 13(B) of the Act of 1955, passed by Additional District Judge Deosar, District Singrauli.

(iv) On 14.05.2015, the respondent-husband preferred a petition under Section 11 of the Act of 1955, before the Family Court for declaring the marriage with the appellant as null and void on the ground that the same is in contravention of Section 5 (i) of the Act of 1955, as on the date of marriage, the appellant had a living spouse which has been decreed by the impugned judgment and decree, hence this appeal is presented by wife.

3. Learned counsel appearing for the appellant-wife has mainly raised the following grounds:-

(i) The earlier marriage of appellant with Amarjeet Pandey, was very much in the knowledge of the respondent-husband and despite the said fact, the marriage was solemnized, therefore, the respondent can not subsequently take the plea of earlier marriage.

(ii) According to Section 5(iii) of the Act 1955, for any legal marriage, the age of bride and bridegroom must be 18 and 21 years respectively at the time of marriage. Since in the instant case, the marriage of the

appellant in the year 1984 was solemnized when she was only aged about 8-10 years, therefore, such illegal marriage cannot be construed to be a valid marriage in the eye of law.

(iii) On the date of the impugned judgment and decree dated 13.04.2018, the earlier so called marriage of the year 1984 was already dissolved by the competent Court under Section 13 (B) of the Act of 1955 by judgment and decree dated 15.07.2015 (Ex-D-7) and, therefore, on the date of passing of the impugned judgment and decree, there was no living spouse of the appellant.

4. Learned counsel appearing for the respondent-husband has vehemently contradicted the submissions made by the appellant-wife and has made the following submissions:-

(i) The respondent was not aware of the fact of earlier marriage of the appellant with Amarjeet Pandey and even otherwise also, such knowledge is immaterial in view of the specific provision of Sections 11 and 5 (i) of the Act of 1955.

(ii) The requirement of provision of Section 5 (i) of the Act of 1955 is that neither of the party should have a living spouse at the time of marriage between two Hindus and the consequences of contravention of the provision of Section 5(i) of the Act of 1955, is very much prescribed in Section 11 of the Act of 1955, which says that any such marriage solemnized after the commencement of the Act shall be null and void on a petition presented by either party thereto against the other party.

(iii) The fact of declaring the earlier marriage of the appellant as dissolved vide judgment and decree dated 15.07.2015 (Ex-D-7) further

strengthen his case and proves beyond doubt that on the date of marriage of the respondent with the appellant i.e. on 18.05.2014, the appellant had a living spouse.

5. We have heard the learned counsel for the parties and perused the record.

6. The following questions arise for our consideration in this appeal:-

(a) Whether on the date of marriage i.e. on 18.05.2014 between the parties their exists a living spouse of the appellant/wife ?.

(b) Whether the marriage of the appellant-wife solemnized in the year 1984 with Amarjeet Pandey, is null and void in view of Section 5 (iii) of the Act of 1955 and, therefore, cannot attract provision of Section 5 (i) of the Act of 1955 ?.

7. The respondent-husband has examined himself as witness before the Family Court, who was extensively cross-examined by the appellant-wife. In his evidence before the Family Court he has clearly stated that on the date of his marriage with the appellant on 18.05.2014, he had no knowledge about the earlier marriage of the appellant with Amarjeet Pandey. On 15.05.2014, i.e. about two months before the present marriage, the appellant did file a case for dissolution of her earlier marriage with Amarjeet Pandey and on the said date she executed an affidavit, however, said petition was not prosecuted and, therefore, it is again on 15.07.2015 vide Ex-D-7, the earlier marriage was dissolved under Section 13 (B) of the Act of 1955. The respondent also examined one Shyam Kishore Dubey, who has also supported the fact of existence of earlier marriage of the appellant with Amarjeet Pandey. Certified

copy of the petition under Section 13(B) filed by the appellant and Amarjeet Pandey before the Court of Addl. District Judge Deosar, District Singruli dated 15.05.2014 has been produced by the respondent-husband as Ex-P-2.

8. The appellant-wife herself appeared as a witness and has also examined Purnendra Prakash Chaturvedi and Gulab Prasad Pandey as witnesses to substantiate her case before the Family Court. According to the evidence produced by the appellant her case was that she never lived with Amarjeet Pandey and the marriage with Amarjeet Pandey was solemnized when she was only 8-10 years old. Since her marriage with Amarjeet Pandey was illegal as per Section 5(iii) of the Act of 1955, therefore, although there was no requirement of decree and divorce, however, she did apply before the competent Court under Section 13(B) of Act of 1955 and finally the decree of divorce dissolving her marriage with Amarjeet Pandey was passed.

9. The question-wise discussion follows as under:-

Discussion with respect to question No.(a) whether on the date of marriage i.e. on 18.05.2014 between the parties there exists a living spouse of the appellant ?

(i) It is seen from the evidence of the parties that the fact of earlier marriage of the appellant with Amarjeet Pandey in the year 1984 is not disputed. The decree of divorce under Section 13 (B) dated 15.07.2018 (Ex-D-7) clearly proves that the appellant had a living spouse namely; Amarjeet Pandey, as on 18.05.2014. The marriage was dissolved only on 15.07.2015 and, therefore, on the basis of material available on record, it is concluded that as on 18.05.2014, the appellant had a living spouse.

(ii) A careful reading of Section 5 (i) and Section 11 of the Act of 1955 makes it clear that if either party has a spouse living at the time of the marriage and if such marriage is solemnized after commencement of the Act of 1955, the same is void *ipso-jure*. The fact that the other party had the knowledge of existing spouse living at the time of marriage, is immaterial. The Supreme Court in the case of ***Lily Thomas and others vs. Union of India and others***¹ has held that Section 5 (i) read with Section 11 indicates that any marriage with a person whose previous marriage was subsisting on the date of marriage, would be void ab initio. The Supreme Court further held in the case of ***Krishnaveni Rai vs. Pankaj Rai and another***² that a marriage which is null and void is no marriage in the eyes of law.

(iii) Although as per the law laid down by the this Court in the matter of ***Mst. Rajula Bai vs. Suka Dukal***,³ existence of spouse living at the time of performance of the second marriage need not be established by direct evidence and that fact may be inferred from other facts, however, in view of the aforesaid discussion and on the basis of material available on record, it is concluded that there exists a living spouse of the appellant-wife on 18.05.2014 i.e. on the date of her marriage with the respondent-husband.

Discussion with respect to question No.(b), whether the marriage of the appellant solemnized in the year 1984 with Amarjeet Pandey, can be said to be null and void in view of Section 5 (iii) of the Act of 1955 ?

(i) Section 11 of the Act of 1955 only prescribes marriages which are solemnized after commencement of the Act as null and void if such

1 (2000) 6 SCC 224

2 (2020) 11 SCC 253

3 AIR 1972 MP 57

marriages contravene any of the conditions specified in Clauses (i), (iv) and (v) of Section 5. Clause (i) of Section 5 talks about a living spouse at the time of marriage, Clause (iv) of Section 5 talks about the parties within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two and Clause (v) talks about the parties should not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between two. It is, therefore, seen that the Scheme of Section 11 of the Act of 1955 does not envisage that the contravention of Section 5 (iii) of the Act of 1955 will entail in marriage to be void, neither Section 12 of the Act of 1955 envisages such marriage as voidable.

(ii) It is, therefore, clear that the marriage of appellant in the year 1984 with Amarjeet Pandey, is neither void nor voidable. The only consequences of contravention of Section 5 (iii) of the Act of 1955 is prescribed under Section 18 of the Act of 1955 where the contravention of such condition is made punishable which may extend to two years or with fine which may extend to one lakh rupees or both and there is no other consequences provided under the Act of 1955.

(iii) In the instant case, it is true that in the year 1984, the appellant was not of the marriageable age, as per Section 5 (iii) of the Act of 1955 but when the law does not provide for any consequences except the one as prescribed under Section 18 of the Act of 1955, it cannot be presumed that such marriage is a nullity. If the legislature intended otherwise, the Act certainly would have made a specific provision in that regard in the like manner, as it has been done in the case of contravention of Clauses (i), (iv) and (v) of Section 5 of the Act of *Gindan* vs. *Barelal*⁴ 1955. Thus, the marriage of the appellant which was solemnized in the year

4 AIR 1976 MP 83.

1984 with Amarjeet Pandey would remain valid, enforceable and recognized.

10. In view of the aforesaid, it is thus concluded that the judgment and decree passed by the trial Court is based upon proper appreciation of evidence and law. Hence, the appeal is accordingly dismissed. No order as to the costs.

[SHEEL NAGU]
Judge

[PURUSHAINDR KUMAR KAURAV]
Judge

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