TULSA AND ORS. A

v.

DURGHATIYA AND ORS.

(C.A. No. 648 of 2002)

JANUARY 15, 2008 B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Evidence Act, 1872 – ss. 50 and 114 – Presumption as to marriage between two persons living together – Scope of – Held: The act of marriage can be presumed from the common C *course of natural events and the conduct of parties – Where the partners lived together for long time as husband and wife, there would be presumption in favour of wedlock – The presumption is rebuttable, but a heavy burden lies on the person who seeks to prove that no marriage took place.* D

The joint ancestral property in question was originally owned by Respondent No.1's husband and his two brothers, 'R' and 'S'. After death of 'R' and 'S', a sale deed in respect of the said property was executed in favour of Appellant No.1's mother, 'L'. E

Respondents filed suit for setting aside the sale deed claiming sole ownership of the property on the ground that 'R' and 'S' had died without leaving any legal heirs and that 'L' was only a mistress of 'R'.

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Per contra, 'L' claimed rights in the property contending that she was the widow of 'R' and had children from him.

Trial Court dismissed the suit holding that there was a presumption of valid marriage between 'R' and 'L' as for G **decades they lived together and their daughters were given in marriage by 'R'. The Court held that 'L' married 'R' after death of 'M', her first husband. First Appellate Court set aside the order of Trial Court holding that there was**

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A no presumption of valid marriage since 'L' started living with 'R' during the life time of 'M'. High Court upheld the order passed by First Appellate Court. Hence the present appeal.

Allowing the appeal, the Court

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HELD: 1. The First Appellate Court without any evidence or material came to an abrupt conclusion that the 'L' started living with 'R' during the lifetime of 'M'. There is no discussion with reference to any material as to the C basis for such a conclusion. The first appellate court held that DW2, born to 'L' and 'M', had stated that he was very young when his father died and when he was young his mother had left. From that it was inferred that during the lifetime of 'M', 'L' left her and was living with 'R'. This D conclusion is clearly contrary to the evidence on record. A bare reading of the evidence of DW 2 shows that he had clearly stated that 'M' was not alive when 'L' came and stayed with 'R'. [Paras 4, 8] [714-E, F; 716-B,C,D]

2.1. S.114 of the Indian Evidence Act, 1872 refers to E common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of ss.50 and 114 of the Evidence Act together, it is clear that the act of marriage can be F presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case. [Para 9] [716-D, E, F]

2.2. Where the partners lived together for long spell as husband and wife there would be presumption in G favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. [Para 13] [717-C, D]

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2.3. The continuous living together of 'L' and 'R' has been established. In fact the evidence of the witnesses examined by the plaintiff also established this fact. The conclusion of the first appellate court that they were living together when 'M' was alive has not been established. The evidence on record clearly shows that 'L' and 'R' were living together after the death of 'M'. [Para 15] [717-G; 718-A] A B

Badri Prasad v. Dy. Director of Consolidation and Ors. **AIR (1978) SC 1557 – relied on.**

A. Dinohamy v. W.L. Blahamy **AIR (1927) P.C. 185;** *Mohabhat Ali v. Md. Ibrahim Khan* **AIR (1929) PC 135 and** *Gokal Chand v. Parvin Kumari* **AIR (1952)SC 231 – referred to.** C

3. The judgment and decree of the first appellate court and the High Court are set aside and those of the trial court stand restored. [Para 16] [718-B] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 648 of 2002.

From the Judgment and final Order dated 20.6.2000 of the High Court of Madhya Pradesh at Jabalpur in S.A. No. 451/1988. E

Prakash Shrivastava for the Appellants.

Shiv Prakash Pandey and Raj Kumar Tanwar for the Respondents. F

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court at Jabalpur. The appeal under Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code') was directed against the judgment and decree dated 29.10.1988 passed by learned IInd Additional District Judge, Satna in Civil appeal No. 138-A of 1987. The appeal before the First appellate G H

court was directed against the judgment and decree dated 26.4.1985 passed by learned Second Civil Judge Class I, Satna in Civil Suit No. 52-A of 1982. The suit was filed by the respondents herein for nullifying and setting aside sale deed dated 10.9.1980 and also for permanent injunction of land at Sl. Nos. 4009, 4010, 4011 and 4014. The sale deed dated 10.9.1980 was in respect of lands at Sl. Nos. 3853, 3993, 4002, 4003, 4004, 4009. 4010, 4014, 4015 and 4021 of Mauza Nayagaon, Tehsil Raghurajnagar, District Satna. According to them the disputed property is the joint ancestral property of Radhika Singh, Sunder Singh and the husband of plaintiff No.1, Dadau Singh who was the father of the other two plaintiffs - Smt. Rani and Smt. Butan. Vansh Gopal had three sons, Radhika Singh, Sunder Singh and Dadau Singh. Sunder died without any legal heir. No partition had taken place between Radhika and Sunder and Radhika, Sunder and Dadau all used to do cultivation jointly. As Radhika and Sunder died without leaving legal heirs, the plaintiffs became the sole owners of the property. Loli, the original defendant No.1 is the wife of Mangal Kachhi and his daughter Tulsa Bai, the present appellant was born to Loli and Mangal Kachhi. After the birth of her daughter Tulsabai, deceased Radhika Singh, kept defendant No.1 as a mistress in his house and left for somewhere else taking her along and came back after many years. She gave birth to three daughters namely Vidya, Badaniya and Rajaniya. Defendant No.1 was a Kachhia by caste and was also the cognitive of deceased Radhika, so she had no legal rights in the property. After the death of Radhika, Defendant No.1 was residing with Badri Prasad Pandey. Badri Prasad got sale deed executed in favour of defendant No.1 of disputed property with intention to usurping the land. Plaintiffs are in possession. They came to know about the transaction when defendant Nos.2 to 4 submitted an application for transfer of land in their names and then it came to light that defendant No.1 had no title over the land and the land was in possession of plaintiffs 1 to 3. On 17.12.1984 plaintiffs got the information that the defendant Nos.2 and 3 have got their names mutated in respect of certain lands, therefore

the suit was filed. In the written statement filed the defendants took the stand that the family tree indicated by the plaintiff was correct. Out of the land 12 acres owned by the family of Durghatiya, the plaintiff No.1 had sold her share of land. About 30 years back partition has taken place between Dadau and Sunder. Dadau had separated after taking his share. He got the land in certain villages. Radhika and Sunder used to live jointly and used to do cultivation over the land which they got in partition. They died while living jointly in the year 1970. Plaintiff-Durghatia and Radhika had sold their land in the capacity of owners during their lifetime. Sunder did not marry and had no issue. Defendant No.1 is the widow of Radhika. They were blessed with five daughters and one son, out of which one son and one daughter died. The eldest daughter Tulsa and the younger daughter were given in marriage by Radhika. Plaintiff No.1 used to regard defendant No.1 as her jethani. Radhika and defendant No.1 lived together for thirty years as husband and wife and, therefore, she had legitimate claim over the property as his wife. It was also disputed that defendant No.1 was living with defendant Nos.2 to 5. Defendant No.1 had sold the lands to defendant Nos.2, 3 and 4 had also given possession. Defendant No.1 had taken a debt on the marriage of her son and for that purpose she sold the land. She claimed that she had right to sell the land and therefore no question of having any illegal possession. Four issues were framed by the trial court and the important and vital issue was framed as issue No.2 which read as follows :

A B C D E F

> "Whether the defendant No.1 was the wife of Radhika Singh"?

The question was answered in the affirmative. After referring to the evidence of the witnesses examined by the plaintiffs as well as the defendants, the trial court held that there was no merit in the suit and accordingly it was dismissed. The judgment and decree were questioned in appeal before the first appellate court.

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2. As noted above, the first appellate court allowed the appeal. The trial court noted that there was a presumption of valid marriage, as for decades Radhika and defendant No.1 lived together, their daughters were given in marriage by Radhika. Loli the defendant No.1 was earlier married to Mangala Kochhi and after his death she married Radhika. It is to be noted that the stand of the plaintiffs was that Loli married Radhika during the lifetime of Mangal Katchhi. The trial court rejected this plea. The first appellate court observed that Loli started living with Radhika during the life time of Mangal Katchhi, so the presumption of valid marriage was not there. The judgment and decree of the first appellate court was challenged before the High Court. The High Court formulated the following questions for adjudication:

> "Whether in the facts and circumstances of the case, the first appellate Court erred in law in finding that Mst. Lollibai was not the legally married wife of Radhika Singh?"

3. After discussing the respective stand of the parties, the High Court came to a somewhat peculiar finding. It held that the findings recorded by the appellate court may be erroneous, but it does not appear to be perverse.

4. It is to be noted that the first appellate court without any evidence or material came to an abrupt conclusion that the defendant No.1 Loli started living with Radhika during the lifetime of her husband. There is no discussion with reference to any material as to the basis for such a conclusion.

5. Some of the conclusions of the trial court in this regard are relevant. In paragraph 16 of the judgment it was noted as follows:

> "In the content of the aforesaid judgment, now we have to examine this that whether we have sufficient basis to make a presumption of legal marriage of Lolli and Radhika Singh. In this connection, plaintiff witness Visheshar had

admitted in para 9 of his statement that there were four daughters and one son born of Lolli and Radhika Singh. The eldest daughter of Lolli is Tulsi. Rani was born to Lolli after 2-3 years of her arriving in the village. Three of the daughters of Lolli was married off by Radhika Singh and she had also contributed." A B

6. Again at para 18 it was observed as follows:

"Witness Devdhari has also admitted in his statement that after 2-3 years of the birth of first born Bhaiyalal Mangal Kachhi had died. Lolli used to work as a labourer. She also used to be labourer with Radhika Singh. Radhika Singh had retained Lolli as his wife. The daughters of Lolli were married off by Radhika Singh. Ram Milan Singh had admitted in his statement that all these four daughters were alive. They were born of Radhika and Lolli. The daughters which were born of Radhika Singh, their Kanyadan was also performed by Radhika Singh. He has also admitted this in his statement that Radhika Singh had married off his daughters as Vaishyas and Thakurs married off their daughters. He had attended the marriage." C D E

7. In para 24 it was observed as follows:

"This has also been argued by learned counsel of the plaintiff that even if this is accepted that Lolli and Radhika Singh stayed as husband and wife for many days and they were blessed with children even then it cannot be presumed that Lolli is legitimate wife of Radhika Singh. Because Lolli moved in with Radhika Singh then her husband had been alive. His former husband Mangal Kachhi had been alive, till she got divorce by Mangal Kachhi till then Lolli could not have entered in second marriage with Radhika Singh. I am no in agreement with this argument of the learned counsel of the plaintiff because the evidence, which has been adduced from the side of the plaintiff and defendants, from that it becomes clear, F G H

A that after Bhaiyalal was born to Lolli from mangal, mangal had thrown Lolli out of the house. Then Lolli worked as a casual labourer for some time and meanwhile Mangal had died. Thereafter Radhika Singh adopted her as his wife. This fact has been admitted by Devdhari in para 4
B of his statement that Lolli used to frequent village Bointa from Bandhi to work as a labourer, thereafter she was adopted."

8. In contrast, the first appellate court held that Bhaiyalal (DW2) who was born to Lolli and Mangal, had stated that he
C was very young when his father died and when he was young his mother had left. From that it was inferred that during the lifetime of Mangal Katchhi, Lolli left the Mangal and was living with Radhika. This conclusion is clearly contrary to the evidence on record. A bare reading of the evidence of DW 2 shows that
D he had clearly stated that Mangal was not alive when Lolli came and stayed with Radhika.

9. At this juncture reference may be made to the Section 114 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The provision refers to common course of natural events,
E human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and
F the conduct of parties as they are borne out by the facts of a particular case.

10. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions,
G considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e. *A. Dinohamy* v. *W.L. Blahamy* [AIR 1927 P.C. 185] their Lordships of the Privy Council laid down the general proposition that:

H "Where a man and woman are proved to have lived

together as man and wife, the law will presume, unless, the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage." A

11. In *Mohabhat Ali* v. *Md. Ibrahim Khan* [AIR 1929 PC 135] their Lordships of the Privy Council once again laid down that: B

"The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years." C

12. It was held that such a presumption could be drawn under Section 114 of the Evidence Act.

13. Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. (See: *Badri Prasad* v. *Dy. Director of Consolidation and Ors.* [AIR 1978 SC 1557]. D E

14. This court in *Gokal Chand* v. *Parvin Kumari* [AIR 1952 SC 231] observed that continuous co-habitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which maybe drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. F

15. As noted above, the continuous living together of Lolli and Radhika has been established. In fact the evidence of the witnesses examined by the plaintiff also established this fact. The conclusion of the first appellate court that they were living together when Mangal was alive has not been established. The G H

A evidence on record clearly shows that Lolli and Radhika were living together after the death of Mangal.

16. Above being the position, the appeal deserves to be allowed which we direct. The judgment and decree of the first appellate court and the High Court are set aside and those of
B the trial court stand restored.

17. Appeal is allowed but with no order as to costs.

B.B.B. Appeal allowed.