

HIGH COURT OF CHHATTISGARH, BILASPURFA (MAT) No.20 of 2021

(Arising out of judgment and decree dated 31-1-2020 passed by the Judge, Family Court, Baikunthpur, District Korea, in civil suit No.13-A/19)

1. Sub Area Manager SECL, Baikunthpur Area, Churcha Colliery No.3, Thana Churcha, District Korea Chhattisgarh
2. Chief General Manager Baikunthpur Area, SECL, Area Head Qrs. Thana Baikunthpur, District Korea Chhattisgarh

---- Appellants

Versus

1. Smt. Lalita W/o Late Ramesh Kumar Aged About 32 Years Caste Panika, R/o Duman Hill, Chirimiri, Thana Chirimiri, Tahsil Chirimiri, District Korea Chhattisgarh

---- Respondent

For Appellant

Shri Rahul Mishra, Advocate

For Respondent

Shri Anil Gulati, Advocate

Hon'ble Mr. Justice Goutam Bhaduri &

Hon'ble Mr. Justice Sanjay Kumar Jaiswal

Judgment on Board

Per Goutam Bhaduri, J.

22-06-2023

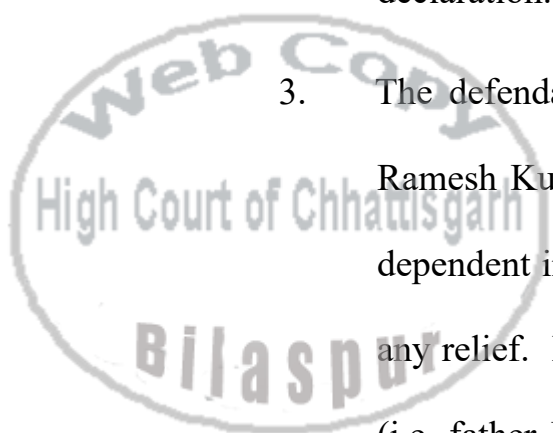
1. Challenge in this appeal is to the judgment & decree dated 31-1-2020 passed by the Judge, Family Court, Baikunthpur, District Korea, in civil suit No.13-A/19, whereby the legal status has been conferred on the plaintiff that she is the legally wedded wife of late Ramesh Kumar.



2. Facts of the case, in brief, are that late Ramesh Kumar was working as a General Mazdoor at Churcha Colliery. He died in harness on 23-10-2018. The plaintiff Smt. Lalita alleged that she was married to Ramesh Kumar on 14-6-2014, however, he could not get the name of wife to be recorded in the service records. After death of Ramesh Kumar, for terminal benefits e.g. CMPF, Gratuity, etc. and for compassionate appointment, which is being granted to the dependent, an application was filed by the plaintiff on 13-12-2018, which was dismissed by the defendants. The plaintiff further alleges that she was directed to obtain necessary declaration.

3. The defendants denied the plaint averments and stated that late Ramesh Kumar has not recorded the name of the plaintiff as his dependent in the service record and, as such, she is not entitled to any relief. It was stated that in the service book names of parents (i.e. father Pran Sai & mother Awadhi) of Ramesh Kumar were recorded, therefore, the plaintiff would not be entitled to get any relief to get the terminal benefits of the deceased employee.

4. Learned Family Court framed the issues and on behalf of the plaintiff four witnesses were examined and on behalf of the defendant one witness was examined. The Court after evaluating the facts and evidence on record, passed the impugned decree in favour of the plaintiff that she is legally wedded wife of late Ramesh Kumar. Being aggrieved by such decree, the present appeal preferred by the defendants/SECL.

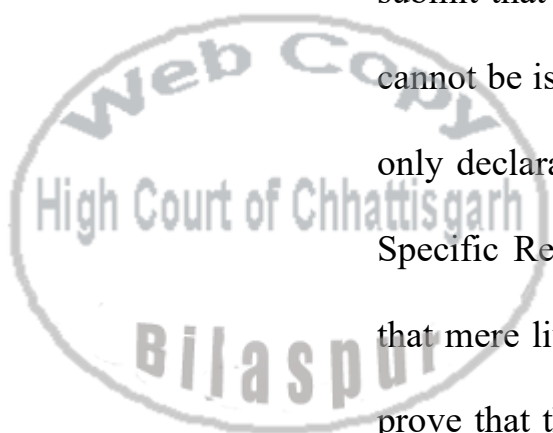




5. Shri Rahul Mishra, learned counsel appearing for the appellants/defendants would submit the fact that the plaintiff was legally wedded wife was not proved by adducing the evidence that the ceremonies of marriage were performed. He would further submit that in order to prove that marriage is valid, Hindu marriage ceremonies of *Saptapadi* were required to be proved to have been performed. To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Bhaurao Shankar Lokhande and Another v The State of Maharashtra and Another*¹. Learned counsel would also submit that the direction to the effect to pay the terminal benefits cannot be issued by the Family Court and even relief of such kind only declaratory relief cannot be sought as per Section 34 of the Specific Relief Act, 1963. Learned counsel would next submit that mere living of late Ramesh Kumar with the plaintiff will not prove that they were husband & wife, therefore, the order passed by the Family Court requires to be interfered with. Learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Surjit Kaur v Garja Singh and Others*².
6. Shri Anil Gulati, learned counsel appearing for the respondent/plaintiff, *per contra*, would submit that when the husband of plaintiff died she applied for terminal benefits, but it was denied and she was asked to get the declaration from the Court and

1 AIR 1965 SC 1564

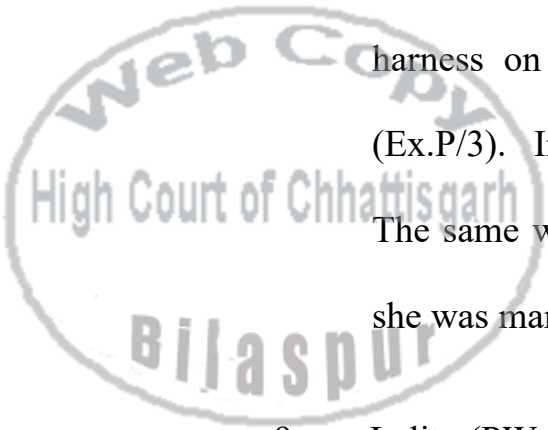
2 (1994) 1 SCC 407





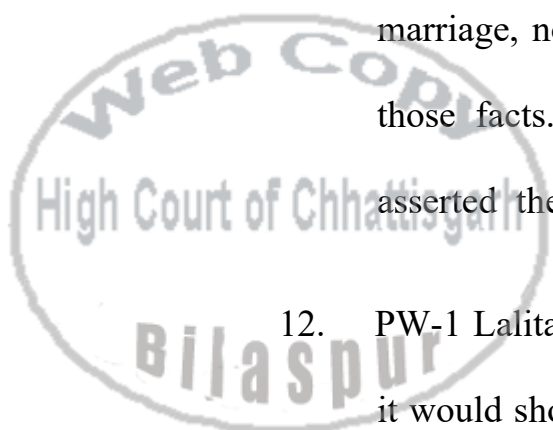
accordingly an application was filed to get the legal status. In order to prove the marriage, evidence of PW-4 Prabhakar Tripathi, who performed the marriage, was adduced. The same is unrebutted. He would further submit that no dispute exists in between the plaintiff and her father-in-law, therefore, the SECL had no ground to challenge the status of the parties.

7. We have heard learned counsel appearing for the parties at length and perused the record.
8. Undisputed facts are that one Ramesh Kumar was working as General Mazdoor in Churha Colliery of SECL, who died in harness on 23-10-2018, which is proved by death certificate (Ex.P/3). In the death certificate, name of wife Lalita is shown. The same was issued on 13-11-2018. According to the plaintiff, she was married to late Ramesh Kumar on 14-6-2014.
9. Lalita (PW-1), plaintiff, deposed that she was married to Ramesh Kumar, son of Pran Sai in the year 2014 according to Hindu rituals and thereafter, she was living at her in-laws' place. She further deposed that presently the father-in-law is only alive and mother-in-law is dead. To prove the marriage, marriage invitation card has been marked as Ex.P/1. Perusal of such marriage invitation card shows that name of the plaintiff and Ramesh Kumar, son of Pran Sai has been shown. Names of other people also appear in the invitation card. According to that, date of marriage was 14-6-2014 at Haldibadi, District Korea.





10. Prabhakar Tripathi (PW-4), who performed the marriage, deposed that on 14-6-2014 the plaintiff married at Haldibadi with Ramesh Kumar according to the Hindu rituals and he performed the marriage. After the marriage, the plaintiff joined her matrimonial home. On a suggestion given to this witness that no such marriage was performed, he denied the same.
11. In cross-examination, no question was put to PW-1 Lalita to deny the marriage. Instead the cross-examination confined to the fact that her name does not exist in the service book. Likewise the statement of PW-4 Prabhakar Tripathi, who performed the marriage, nothing has been elicited in cross-examination to deny those facts. Instead when certain suggestions were made, he asserted the fact that he performed the marriage of the plaintiff.
12. PW-1 Lalita has exhibited the Aadhar Card as Ex.P/2. Perusal of it would show that the plaintiff is the wife of Ramesh Kumar and she is the resident of Colliery, Korea. Death Certificate (Ex.P/3), which was issued on 13-11-2018, reflects death of Ramesh Kumar. The same shows the name of wife of deceased as Lalita. This document also has not been challenged. Likewise, LIC Policy (Ex.P/4), which appears to be issued in the year 2015, shows the name of nominee/assignee as Lalita (plaintiff herein). There is no cross-examination on this point. If on certain relevant issues, the cross-examination is not being carried out it will be deemed to be accepted.





Since cross-examination on this issue remained silent, applying the well settled principles, the aforesaid facts deemed to be admitted.

13. The Supreme Court in the matter of *Vinod Kumar v State of Haryana*³ held that when there is no cross-examination on a factual matrix and that remained unchallenged that ought to be believed by the court. It further lays down that section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by opposite party and the scope of that provision is enlarged by section 146 of the Evidence Act by allowing a witness to be questioned;

(1) to test his veracity.

(2) to discover who he is and what is his position in life or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. Perusal of the written statement would show that no objection was raised by the appellant on mis-joinder that father-in-law namely; Pran Sai was not made a party. The objection as to non-joinder of parties is required to be taken at the first instance as per Order 1 Rule 13 of the Code of Civil Procedure, 1908 (CPC). On a

³ (2015) 3 SCC 138





subsequent stage, the same would be deemed to be waived. The said proposition has been laid down by the Supreme Court in the matter of *Sri Ram Pasricha v Jagannath and Others*⁴.

15. In absence of any other contesting defendant, the statement made by the plaintiff, who claimed to be the wife of deceased Ramesh Kumar, would be relevant. The plaintiff, being the wife, would be deemed to have a special knowledge on the subject as per Section 50 of the Evidence Act. The statement being unrebutted that plaintiff is the wife of Ramesh Kumar that would be admissible evidence coupled with the ancillary corroborative facts of non-joinder and no cross-examination on this point.

16. Perusal of the written statement would further show that no specific denial was made by the defendants. Order 8 Rule 4 & 5 of the CPC requires that in order to deny the averments specific denial is required. The relation has been stated at para 1 of the plaint that the plaintiff is the wife of Ramesh Kumar. In reply to it, the defendant stated that in absence of any knowledge they deny the same. To say that defendant has no knowledge of a fact pleaded by the plaintiff would not tantamount to a denial of existence of fact not even an implied denial.

17. The Supreme Court observed in the matter of *Jahuri Sah and others v Dwarika Prasad Jhunjunwala and others*⁵ that Order 8 Rule 5 of the CPC provides that every allegation of fact in the

4 AIR 1976 SC 2335

5 AIR 1967 SC 109

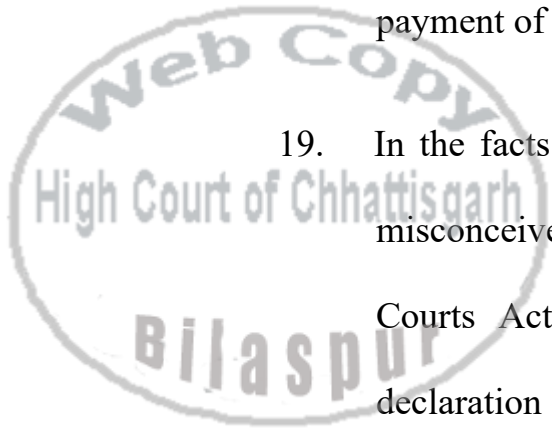


plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted and even to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial. Consequently, the legal status would be deemed to be proved by the pleading and evidence of the plaintiff.

18. Learned counsel appearing for the appellants/defendants lastly contended that the petition under Section 34 of the Specific Relief Act would not lie and the relief could not have been claimed for payment of terminal benefits held by the defendants.

19. In the facts of this case, the argument appears to be completely misconceived for the reason that Section 7 (e) of the Family Courts Act, 1984 envisages that a suit or proceeding for a declaration as to the legitimacy of any person shall be within domain and jurisdiction of the family Court and perusal of the decree would show that the family Court has simplicitor granted declaratory legal status to the plaintiff without there being any order for payment of amount.

20. For the foregoing reasons, we are of the view that the impugned judgment and decree passed by the Court below is just and proper and warrants no interference of this Court.





21. In the result, the appeal, *sans substratum*, is liable to be and is hereby dismissed. The appellants/defendants shall bear the cost of the respondent/plaintiff.
22. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sanjay Kumar Jaiswal)
Judge

Gowri

