

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 415 OF 2015
(arising out of SLP(C) No.21799 of 2014)

SUNIL

... APPELLANT

VERSUS

SAKSHI @ SHWETA & ANR.

... RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the appellant-husband against the judgment dated 9th July, 2014 passed by the Division Bench of the High Court of Karnataka, Dharwad Bench in M.F.A. No.22031/2013(FC). By the impugned judgment the High Court while allowing the appeal preferred by the 1st respondent-wife, set aside the decree passed by the Family Court, Belgaum by imposing costs of Rs.25,000/-on the appellant-husband and directed the Family Court to lodge a complaint through Sheristedar of the Court with the jurisdictional Police against the appellant-husband for the offences punishable under Sections 193, 417,419, 426, 464,465 and 468 of IPC.

3. The factual matrix of the case leading to the filing of the present appeal is as follows:

The 1st respondent-wife got married to the appellant-husband on 10th July, 2005. Out of their wedlock, the wife had given birth to a male child. On 26th March, 2012, the appellant-husband filed a petition under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955, for dissolution of marriage. On 26th March, 2012, notice was ordered to be issued to the wife. As per report of the process server dated 20th April, 2012, notice sent to the wife through Court was returned unserved on the ground that she had gone to Bangalore. On 21st April, 2012, notice was re-issued to the wife by RPAD. It was returned unserved with an endorsement 'refused'. The case was listed on 12th June, 2012. Since notice issued to 1st respondent-wife was returned as refused, the Family Court held service of notice on the wife as sufficient. Counsel for the appellant-husband prayed time for settlement. The case was adjourned to 5th July, 2012, but the appellant-husband and his counsel were absent and the case was adjourned to 30th July, 2012 for settlement; on which date the appellant-husband was present and reported no settlement. The 1st respondent-wife was placed *ex parte* and the case was adjourned to 22nd August, 2012 for appellant-husband's

evidence. On 22nd August, 2012, the case was adjourned to 17th September, 2012. As per the order sheet dated 17th September, 2012, the appellant-husband and the 1st respondent-wife were present. Sri B.M. Chougale filed vakalatnama for the 1st respondent-wife and an application under Order IX Rule 7 of C.P.C. was filed praying to set aside the *ex parte* order dated 30th July, 2012. The said application was allowed, the *ex parte* order was set aside and the case was adjourned to 27th September, 2012 for conciliation. The parties were absent on 27th September, 2012 and 5th November, 2012. The case was adjourned to 27th November, 2012, on which date the appellant-husband was present. The 1st respondent-wife was absent. The Family Court adjourned the case to 3rd January, 2013 for appellant-husband's evidence observing that 1st respondent-wife did not file objections. On 7th January, 2013, the appellant-husband was present. He filed affidavit evidence. Appellant-husband got himself examined as P.W-1 and got marked Exs.P1 to P4. Cross-examination of P.W-1 was taken as nil. Evidence on the side of respondent-wife was closed and adjourned the case to 21st January, 2013 for arguments. On 28th January, 2013, after hearing arguments of the counsel for the appellant-husband, the case was posted for judgment on 6th February, 2013. Accordingly, on 6th February,

2013, the Family Court allowed the petition and dissolved the marriage of the parties.

4. The 1st respondent-wife challenged the judgment of the dissolution of marriage before the High Court on the following grounds:

- (i) *that she had no knowledge about the case filed by her husband;*
- (ii) *that she never appeared before the Family Court;*
- (iii) *that she did not engage any Counsel in the case and file application for setting aside the ex parte order;*
- (iv) *that the blank Vakalatnama taken at the time of settlement from her for mutual divorce has been made use of;*
- (v) *that she came to know about the decree of dissolution of marriage only when the husband refused to fulfil the terms of an amicable settlement and on 6.4.2013, she engaged Sri. Vithoba Neelakant Savanth, Advocate, and obtained certified copy of the petition, entire order sheet, deposition of P.W-1 and copy of the impugned judgment dated 6.2.2013; and*
- (vi) *that the husband played fraud on the Family Court and obtained the decree of dissolution of marriage.*

Additional ground was taken that when the police proceeded for arrest of father-in-law of the 1st respondent-wife and others in connection with criminal case, they came forward for settlement and offered to give a flat measuring 800 to 850 sq.ft. at Belgaum, etc. and that on 18th August,

2012 in the presence of elders, the parties returned the ornaments etc., the appellant-husband agreed to give Rs.45 lakhs and flat, the wife consented for mutual divorce and gave a Vakalatnama to the husband through one Sri Shripad Raikar, but the wife was kept in dark as to the filing of divorce petition by the husband. The said Vakalatnama alleged to have been misused by the husband in the Matrimonial Case No.86/2012 by giving it to his counsel's senior-Sri B.M. Chougale, without 1st respondent's knowledge. She took further plea that she never appeared before the Family Court much less on 17th September, 2012 to 20th September, 2012 as she was in Mangalore during the said period. Thus, it was alleged that the husband obtained the decree of divorce by playing fraud on the Family Court.

5. The aforesaid submission was opposed by the counsel for the appellant and record of the Matrimonial Case No.86/2012 was called for.

6. The High Court by the impugned judgment framed the following question for determination:

"Whether the impugned judgment and decree call for our interference?"

7. After perusing the records in MC No.86/2012 referring to certain pages of the Matrimonial Case No.86 of 2012, the High Court found the following papers were available:

- (a) affidavit evidence of P.W-1;
- (b) application filed under Section 13 of the Family Court Act by the husband seeking permission to engage the Counsel;
- (c) vakalath filed by Ms. Beena Gururaj Achar for the husband;
- (d) vakalath filed by Sri B.M. Chougale and Sri Sunil Kakatkar, Advocates, for the wife;
- (e) process memo;
- (f) application dated 17.9.2012 filed under Order IX Rule 7 of CPC by the wife;
- (g) affidavit of the wife annexed to the application;
- (h) application filed by the wife under Section 13 of the Family Court Act seeking permission to engage Counsel to defend her(wife) in the Matrimonial Case;
- (i) list of documents filed by the Advocate for the husband (but signed by the Advocate for the wife);
- (j) index dated 26.3.2011 filed along with the divorce petition by the Advocate for the husband.

8. Taking into consideration the memorandum of divorce petition filed by the appellant-husband and the cause title, the High Court doubted the filing of the Vakalatnama signed by the wife with her affidavit and made the following observation:

"If these papers were to be seen in juxtaposition with page No.21 (the memorandum of divorce petition) particularly the cause title, it reveals that the space, punctuation marks (like comma and colon) and underlining used while typing the name of the Court in the cause title are identical. For the purpose of immediate reference, the same is excerpted hereunder:

IN THE COURT OF THE JUDGE, FAMILY COURT, BELGAUM, AT : BELGAUM

There is no explanation as to how and where the papers were prepared. The above circumstances support the case of the appellant/wife. The grounds urged by the wife cannot be rejected. Hence, we hold that all the above-said case papers are the print out from one and the same computer software and the husband has made use of the blank vakalath signed by the wife for engaging senior Counsel of his Advocate and obtained a decree of dissolution of his marriage with the appellant and to deprive her rights. Thus, it indicates that the respondent/husband herein has played fraud etc., upon the Family Court so as to get a decree of divorce in his favour and against the wife and it is a fit case to initiate criminal proceedings against the respondent/husband."

9. In view of such doubt regarding filing of Vakalatnama, the High Court set aside the judgment and decree dated 6th February, 2013 passed in MC No.86/2012 by the Family Court at Belgaum.

10. Learned counsel appearing on behalf of the appellant denied the allegation of fraud played by the appellant-husband.

11. Learned counsel appearing on behalf of the respondent opposed the prayer and submitted that the appellant-husband all the time tortured and harassed the wife-1st respondent for which she has also lodged a complaint before the Market Police Station Belgaum on 13th December, 2013 under Section 498(A), 494, 495 r/w 34 IPC for concealment of the first marriage and marrying during the pendency of appeal leading to bigamy.

12. After giving our careful consideration to the facts and the circumstances of the case and the submission made by the learned counsel for the parties, we find that the High Court exceeded its jurisdiction and recorded its finding on presumption, surmises and conjectures.

13. The only question framed by the High Court as apparent from paragraph 5 of the impugned judgment is "Whether the impugned judgment and decree call for our interference?" No question as to whether the appellant-husband played fraud on the Family Court and obtained the decree of dissolution of marriage or whether the appellant-husband committed any offence punishable under the provisions of Indian Penal Code was framed by the High Court.

14. In the present case the main allegation made by the 1st respondent-wife is that the husband played fraud on the Family Court and obtained the decree of dissolution of marriage. In support of such submission she submitted that she had not engaged any counsel in the case and that blank Vakalatnama was taken at the time of settlement for their mutual divorce and that she never appeared before the Family Court. The High Court failed to notice that this is a case in which there is a disputed question of fact which cannot be decided without framing a proper issue and in absence of evidence on record.

15. There is a disputed question of fact as apparent from the Family Court order dated 17th September, 2012 wherein the Court recorded the presence of the appellant-husband and the 1st respondent-wife and after hearing their arguments, set aside the *ex parte* order and put forth the matter for conciliation. The relevant portion of the order dated 17th September, 2012 reads as follows:

"Ptr present

Resp present

Sri. BMC filed vakalath for resp with permission and I.A. u/O 9 R 7 CPC

Heard. IA is allowed Exparte order of resp is set aside.

For conciliation by 27-09-12."

16. The High Court giving reference to the plaint and the written statement presumed that 1st respondent-wife never appeared before the Family Court and failed to notice the aforesaid order dated 17th September, 2012 which make it clear that 1st respondent-wife, who was the respondent in the said case, was present in the court and one Shri B.M. Chougale, Advocate filed Vakalatnama for the 1st respondent-wife with permission. It is clear from the record that only after hearing both the parties the *ex parte* order against 1st respondent-wife was set aside. The matter was then sent for conciliation to 27th September, 2012. On 27th September, 2012 and 5th November, 2013, the parties were absent. The case was adjourned to 27th November, 2012 on which date the appellant-husband was present and the 1st respondent-wife was absent. The Family Court adjourned the case to 3rd January, 2013 for appellant-husband's evidence observing that 1st respondent-wife had not filed objections. On 7th January, 2013, the appellant-husband was present. He filed affidavit evidence, got himself examined as P.W.-1 and got marked Exs.P1 to P4. This fact was noticed by the High Court at paragraph 2 where brief facts of the case leading to the filing of the appeal was dealt with, which in fact has been reflected in our preceding paragraphs wherein factual matrix of the case has been noticed.

17. It cannot be presumed that the Family Court in its order dated 17th September, 2012 wrongly noted the presence of the appellant-husband and the 1st respondent-wife. In fact, this part of the order sheet has not been referred by the High Court while coming to a conclusion that the appellant-husband has played fraud upon the Family Court as to get a decree of divorce in his favour. Merely, because of the fact that print out of the case papers of both the parties have been taken from one and the same computer software it cannot be presumed that blank Vakalatnama signed by the 1st respondent-wife was misused by the appellant-husband or he played fraud and used the same to engage some other senior counsel. Such finding of the High Court is not based on evidence but on mere presumption and conjecture.

JUDGMENT

18. For the reason aforesaid, we have no other option but to set aside the impugned judgment dated 9th July, 2014 passed by the Division Bench of the High Court of Karnataka, Dharwad Bench in M.F.A. No.22031/2013(FC). It is accordingly set aside. The appeal is allowed. There shall be no order as to costs.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(N.V. RAMANA)

NEW DELHI;
JANUARY 14, 2015.

JUDGMENT