

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS (SB),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 231 of 2014

Smt. Ashabari, aged about 28 years,
D/o- Laxmidhar Patro,
W/o-Amar Prasad Barik,
At Plot No. 65, Budheswari Colony,
P.S.-Laxmisagar, BBSR, Dist-Khurda.

... Petitioner

... Versus...

Sri Shanti Swarup Shendha, aged about 38 years,
S/o-Gopal Shendha,
Resident of Vill. Amaravati Patna,
P.O.-Chhatia, P.S.-Badachana,
Dist-Cuttack.

... Respondent

Date of Argument: 04.03.2015

Date of Judgment : 20.03.2015

J U D G M E N T

The petitioner has filed this Civil Proceeding U/s-12 (1) (c) of the Hindu Marriage Act, 1954 (in short, the Act, 1954) praying to pass a decree of nullity as the marriage was solemnized without her consent and also practising fraud.

2. The case of the petitioner Ashabari, inter alia is that their marriage was solemnized as per Hindu customs and rites in Keshari Hotel, Unit-3, P.S.-Kharavel Nagar, Bhubaneswar in the district of Khurda on 06.05.2011. It is the further case of the petitioner that the marriage was solemnized without her consent under the threat that the respondent and his family members will take unpleasant steps against her. She was also not aware about the status of the respondent. The marriage was also not consummated. There were frequent disturbances in the family life due to indelible temperament of the

respondent. Hence she sought to declare her marriage with the respondent as nullity by presenting the petition before this Court on 21.06.2014.

3. The respondent did not enter contest the petition and therefore, is set ex-parte.

4. The following points are formulated for determination of case:-

(i) Whether the consent of the petitioner to the alleged marriage is required U/s. 5 of the Hindu Marriage Act when she was more than 21 years at the time of marriage i.e. on 06.05.2011?

(ii) Whether concealment of the status of the respondent amounts to any fraud?

(iii) Whether the marriage was consummated due to impotency of the respondent?

5. The petitioner in order to prove her case she, herself has been examined as P.W. 1 and did not chose file any document on her behalf.

6. Section 5 of the Hindu Marriage Act spells the conditions for a Hindu Marriage. It reads as follows: _

(i) Neither party has a spouse living at the time of marriage,

(ii) At the time of marriage, neither party:-

(a) is incapable of giving a valid consent to it in consequence of un-soundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks insanity 2[***];

(iii) the bridegroom has completed the age of 3[twenty-one years] and the bride the age of 4[eighteen years] at the time of marriage.

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two 1[(vi)***]

Point No.1

7. Whether the consent of the petitioner to the alleged marriage is required U/s. 5 of the Hindu Marriage Act when she was more than 21 years at the time of marriage i.e. on 06.05.2011?

Sub-Section (ii) (a) and (b) and (c) are relevant for our purpose. A bare reading of the aforesaid section of law it is luculent that nullity of the marriage can be declared when it is proved that neither to the marriage is incapable of giving a valid consent to the marriage in consequence of unsoundness of mind or though capable of a valid consent has been suffering from a mental disorder such a time for to such an extent as to unfit for the marriage on the procreation for a child or has been subject to recurrent attacks insanity. Sub-Section (iii) spells the marriageable age i.e. in case of bridegroom he has completed 21 years and in case of bridegroom she has completed 18 years. Herein the instant case, the bridegroom has completed 18 years at the time of marriage i.e. on 06.05.2011 as her age has been mentioned in the cause title of the petitioner as 28 years on the date of presentation of the petitioner i.e. 21.06.2014. So the bridegroom herself to give her consent unless it is proved to the satisfaction of the Court that she comes under any one of the three categories or Sub-Section (ii) of the Act. The petitioner has singularly failed to establish the aforesaid conditions of Sub-Section (ii) of the Act. Therefore, the aforesaid ground for declaring the marriage as a nullity being sophistry stands rejected.

Point No.2

8. Whether concealment of the status of the respondent amounts to any fraud?

The petitioner while being examined as P.W. 1 has not whispered a single word that the respondent has represented his status differently at the time of marriage which she found subsequently after her marriage as a nary. Additionally, the marriage was solemnized on 06.05.2011. Therefore, the discovery of the status represented to her found different was soon after the marriage i.e. in the same year of the marriage at least. Sub-Section 2 of Section 12 speaks that no petition for annulling a marriage on the ground specifies in clause of Sub-Section 1 shall be entertained on expire of one year

of the discovery of fraud. Here in this case, the petition was presented in the year 2014. The petition lacks stating the date of cause of action. If the aforesaid factors are taken into consideration then the present proceeding is clearly barred by law of limitation. According this point is answered in negative against the petitioner.

Point No. 3

9. Whether the marriage was consummated due to impotency of the respondent?

The petitioner while being examined as P.W. 1 has stated that marriage was not consummated ever since its solemnization till the date of her desertion i.e. on 15.06.2011. The wife is the best person who is competent to speak about the reason for non consummation of the marriage and vice versa. Non consummation of marriage is certainly a ground for divorce but not for declaring a marriage nullity unless until it is proved by satisfactory evidence that it was due to impotency of the husband or the wife as case may be. The wife has baffled in stating that the non consummation of the marriage was due to impotency of the husband or any sexual weakness or infirmity of the husband. Therefore, the petitioner has patently failed to establish the grounds for seeking her reliefs hence, I have no other choice than to dismiss the petition of the petitioner and in fact I did the same. Hence, it is ordered;

ORDER

The petition filed by the petitioner is dismissed.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 20th day of March, 2015.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined for the petitioner:

P.W.1 Smt. Ashabari

Witnesses examined for the respondent:

None

List of documents by petitioner:

Nil

List of documents by respondent:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.