SUPREME COURT OF INDIA

Bheemraya

Vs.

Suneetha

C.A.No.8572 of 2013

(Surinder Singh Nijjar and Fakkir Mohamed Ibrahim Kalifulla JJ.)

23.09.2013

ORDER

1. Delay condoned.

2. Leave granted.

3. We have heard the learned counsel for the parties at length.

4. Undoubtedly, both the parties were minor at the time when the respondent claims that they were married. She further alleges that she gave birth to a daughter when the parties lived together as husband and wife.

5. Respondent filed a suit with a prayer that the appellant be restrained from marrying anyone else during her life time. She also filed another suit claiming that she and her daughter are entitled to 1/3rd share of the property owned by the appellant and his father. She, therefore, prayed for a perpetual injunction restraining the appellant and his father from alienating the suit property.

6. In the two suits filed by the respondent, the trial Court in spite of recording findings of fact that parties were minor at the time of the alleged marriage, proceeded to decide the two suits on merits. The first appellate Court affirmed the findings of the trial Court in both the suits. The respondent filed two Regular Second Appeals in the High Court. The finding that the plaintiff (respondent) was minor at the time of the marriage was affirmed by the High Court. However, the High Court held that since the plaintiff/respondent was a minor, at the time when the suits were filed, they were not maintainable. Therefore, the trial Court had no

jurisdiction to decide the same on merits. The findings recorded on merits were set aside. The Regular Second Appeals were partly allowed as indicated above. The respondent had also filed a petition under Section 9 of the Hindu Marriage Act, 1955, which was dismissed. She then filed Misc. First Appeal No.31408 of 2009, in which the High Court passed the impugned order, dismissing the same. Whilst dismissing the appeal, the High Court held that in view of Section 5(iii) of the Hindu Marriage Act, 1955, clearly, the marriage would be void. In view of this finding, the High Court further observed that it would be open to the respondent to initiate criminal proceedings for prosecution of the appellant for an offence punishable under Section 376 of the Indian Penal Code. In our opinion, the High Court was not justified in making such observations. The only relief sought by the respondent was for restitution of conjugal rights and maintenance for the child. The High Court had rightly observed that even an illegitimate child would be entitled to maintenance. The High Court failed to appreciate that essentially it was seized of a matrimonial dispute between the parties. The attitude of the Court in such matters should be to encourage and persuade the parties to reconcile. It was an ideal case to be referred to conciliation/mediation. Having perused all the orders in various proceedings between the parties, we do not see any reference to any effort made by the Court to adopt such a course. Instead the observations made in Paragraph 4 of the impugned judgment would push the parties further into conflict. Paramount duty of the Court in matrimonial matters should be to restore peace in the family. The attitude should not be to further encourage the parties to litigate. Only as a last resort the Court ought to decide the suit/proceeding on merits. Therefore, we are unable to approve the observations made by the High Court in the impugned judgment.

7. In that view of the matter, the appeal is allowed; the observations made in Para 4 of the impugned judgment are deleted.

8. No costs.