

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

DISTRICT: SONITPUR

IN THE COURT THE OF MUNSIFF NO.2, SONITPUR,
TEZPUR

Present: **Smti Priyanka Saikia, AJS,**
Munsiff No.2.

This the 6th day of December, 2022

Title Suit No. 129/2021

Sri Ananta Kalita

S/o- Dadhiram Kalita

R/o-Village- Bakola Pathar

P.O.- Chengelimara

P.S.- Chariduar

Dist- Sonitpur, Assam

---Plaintiff

1. Smt. Nirmala Koch, (Minor)

D/o- Sri Bipul Koch

2. Sri Bipul Koch

Father of the defendant no. 1

Both are R/o- Bhalukmari

Mouza- Charduar

Dist- Sonitpur, Assam

---Defendants

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This is a suit came up for final hearing on 16.11.2022 in presence of following Advocates:

Counsel for Plaintiff : Sri A.K. Paul

Counsel for Defendants : None

And having stood for consideration to this day, the Court delivered the following Judgment:-

EX-PARTE JUDGMENT

Plaintiff's case in brief:

- 1.** This is a suit for specific performance of contract and for permanent injunction.
- 2.** That the plaintiff and defendants is permanent resident of above mentioned localities. The plaintiff is serving in India Army and presently posted at Jammu and Kashmir in consequences of his service. He is only child of his parents who is in government service.
- 3.** That in the month of April, 2021 the plaintiff came to home on leave from his service for 45 days. His parents were in search of a suitable bride to him to settle his matrimonial life.
- 4.** That as the plaintiff was in search of a suitable girl to perform marriage a friend of him then gave information of the defendant no. 1 and also gave her contact number. The plaintiff made contact with her over mobile phone and wanted to know if she was ready to solemnize marriage. The defendant no. 1 then invited the plaintiff to meet her

to know each other. There was some meeting between the plaintiff and defendant no. 1 outside of her residence. After those meetings some love and affection had been grown up between them and agreed to solemnize marriage as per Hindu social rites and customs as because both of them are Hindus by religion.

5. That after arriving into concensus between plaintiff and defendant no. 1 for the marriage, the plaintiff visited the residence of the defendants to seek consent of defendant no. 2 to perform marriage with the defendant no.1 and also to invite the defendant no. 2 along with their relatives at this residence to discuss with his parents to finalize the marriage between plaintiff and defendant no. 1 fixing a date convenient of both the families before he leaves to join in service. The defendant no. 2 then told the plaintiff that since his daughter is ready to solemnize marriage with the plaintiff and in the meantime some love and affection has been grown up between them he cannot have different opinion. He further told that owing to lockdown following pandemic situation and further the plaintiff is to leave the station to join his service just after 10 days it will not be possible to arrange social marriage within such short period. Under such circumstances the defendant no. 2 gave consent to plaintiff to take away his daughter namely the defendant no.1 at plaintiff's residence and to perform marriage with her on some convenient time

whenever he will be able to come again on leave from his service.

6. That with the consent of the defendant no. 2 the plaintiff then brought the defendant no. 1 at his residence without giving any prior information to his parents and other family members as well as to the people of his society. The plaintiff after arriving at home with the defendant no. 1 as such he told his parents that he wants to solemnize marriage with the defendant no.1. Parents of plaintiff too agreed to the marriage proposal.

7. That as the plaintiff brought the defendant no. 1 in the manner above stated without performing marriage as per law and also without knowledge of the plaintiff's parents, relatives and society where he lives, it was necessary to give information to the local people where the plaintiff is living saying that he brought the defendant no. 1 at his residence to solemnize marriage with her and wanted to keep her at their house as per social ritual available to them.

8. That as a part of social ritual plaintiff's parents invited the women people of their village at their residence on 01/05/2021 and following the social custom plaintiff's parents appeared before the village women to seek their permission to accept the defendant no. 1 as their daughter-in-law by giving marriage with the plaintiff. As a part of that social ritual the village women gave vermilion

on the forehead of the defendant no. 1. The plaintiff's parents thereafter also went the house of defendant no. 2 to inform formally that they are ready to accept the defendant no. 1 as their daughter-in-law and also to invite the defendant no. 2 to come at their residence to finalize the date of social marriage of plaintiff and defendant no. 1 as per Hindu rites and customs following "Home Jagya" and "saptapadi" along with other social rituals.

9. That after the above social rituals, the defendant no. 1 was asked to furnish her age proof and address proof documents for the purpose of registration of the marriage as per Special Marriage Act, 1954. Surprisingly then the defendant no. 1 informed that she is yet to complete her age of majority which is necessary for registration of marriage under the Special Marriage Act, 1954. Neither the defendant no. 1 nor defendant no. 2 earlier informed as to the minority of the defendant no. 1 when the plaintiff proposed for the marriage to the defendant no. 1 with consent of defendant no. 2. Finding no way the process of marriage registration under aforesaid law remained unattended. The solemnization of marriage as per Hindu rites and customs has also not been completed.

10. That after bringing the defendant no. 1 at the residence of plaintiff, he stayed home for 10 days only. Thereafter he left home to join in his service. During that time the defendant no. 1 used to stay with plaintiff's sister and mother. There was an understanding between the

plaintiff and defendant no. 1 that they will solemnize marriage immediately after the defendant no. 1 attains her age of majority and till then she will stay with the family members of plaintiff due to performance of aforesaid social rituals.

11. That the plaintiff after joining in his service on completion of leave used to talk with the defendant no. 1 as well as with his parents regularly after returning from his duty. The defendant no. 1 was told not to make frequent calls to him as because whenever the plaintiff goes to duty in remote areas he cannot carry his mobile phone. In spite of that the defendant no. 1 used to call without following time schedule and due to non attending of calls she used to charge the plaintiff. Otherwise their love and emotions towards each other was quite normal and had conversation over phone till middle part of September, 2021.

12. That on 09/09/2021 suddenly without any prior intimation to plaintiff's parents brother of defendant no. 1 came to their home and under some conspiracy take away the defendant no. 1 with him giving baseless allegation that plaintiff's parents subjected her of mental cruelty demanding dowry. The plaintiff however knowing that the defendant no.1 left his house, he continued conversation with her over phone. He tried to convince her to return at his home and to stay as before since they have agreed for solemnization of marriage as per law following Hindu social

rites and custom. During such conversation the plaintiff was surprised by the defendant no. 1 with some conspiracy with her father by sending a notice through her advocate Sri Ranjit Borah vide notice dated 16/09/2021 is submitted herein that said notice has been sent by the defendant no.1 at plaintiff's residence by post although the plaintiff is in his service at Jammu and Kashmir.

13. That by the aforesaid notice the defendant no. 1 has not only falsely claimed herself to be legally married wife of the plaintiff stating to be solemnized marriage on 01/05/2021 but also gave baseless allegation that parents of the plaintiff as well as of his unmarried sister namely Smt. Basanti Kalita were mentally harassing her demanding dowry. She also alleged that since after leaving the plaintiff's house the defendant no.1 tried to contact the plaintiff over mobile phone but the plaintiff did not received her phone. As a matter of fact the plaintiff had conversation with the defendant no. 1 even on 16/09/2021 and till that date she did not disclose that she is going to take such steps.

14. That by the aforesaid notice dated 16/09/2021 the defendant no. 1 beside giving some false and baseless allegations against the plaintiff and his family members also threatened him of causing harm in his service unless comes to home to meet her within three months from the date of said notice by taking leave from his service to negotiate with her. By the receipt of said notice, the

plaintiff also came to know that the defendant no. 1 without knowledge of him or his family members took away the Group Photograph of him taken during his Army training and illegally circulating the same which may causes violation of his departmental rules beside causing serious apprehension of danger to the life of plaintiff and his companions appeared in said group photograph. She has also been sent a copy of that group photograph along with the aforesaid notice to the plaintiff. The plaintiff although has been sent his reply through his advocate Sri Ajoy Kumar Paul vide reply dated 06/10/2021 against the notice dated 16/09/2021 sent by the defendant no. 1 through her advocate, she didn't stopped claiming herself to be wife of plaintiff nor changed her attitude to cause harm to plaintiff and his family members.

15. That the plaintiff submits herein that no marriage between him and the defendant no. 1 has been simonized as per Hindu rites and custom on 01/05/2021 or on other date at his residence as is claiming by the defendant no. 1. Giving vermillion by the village women on the forehead of the defendant no. 1 as stated herein above does not mean that the marriage has been completed as per Hindu rites and customs available to them. Performance of "Home Jagya" and following "Saptapadi" "Kanyadan" etc, by pronouncing baidic mantra through priest are essential parts to complete the marriage which are not been performed.

16. That the plaintiffs submitted herein that the defendant No.1 was residing at his residence under a deemed contract for marriage as stated herein above. Beside that there is no relationship between them like legally married wife. The plaintiff tried his level best to perform marriage with the defendant as per said deemed contract but the defendants have violated the terms of contract without having any just reason. The plaintiff's father accompanied by the village Gaonburah of defendants on 14/10/2021 went to the house of defendants with a positive mind that he will bring the defendant No.1 with him to stay with them as earlier and will arrange social marriage soon as per Hindu rites and custom. Unfortunately, the defendant No. 2 and his son clearly said that they will not sent the defendant No.1 to plaintiff's residence to be his wife and they further without and rhymes and reason not only rebuked the plaintiff's father but also attempted to assault him. Luckily he could safely return there from due to intervention by the village gaonburah concern.

17. That under the above facts and circumstances neither the plaintiff is bound in law to perform marriage with the defendant No.1 as per Hindu rites and customs nor she or her father is showing any positivity for that. According to them the marriage has already been performed on 01/05/2021 which is absolutely false and baseless. As a proof of so called marriage the defendants

are relying few joint photographs of the plaintiff and defendant No.1 captured when they appeared before the village women to take their blessing saying that they are going to solemnize marriage as per Hindu rites and custom.

18. That for the situation created by the defendants as stated herein above it is become necessary for the plaintiff to seek a decree of declaration to the effect that the defendant No.1 is not legally married wife of the plaintiff and no marriage has been solemnized on 01/05/2021 as per Hindu rites and customs at the residence of plaintiff. It is further become necessary to seek a decree of permanent prohibitory injunction against the defendants, their, men agent and representatives restraining and prohibiting them all from spreading any rumor that the defendant No. 1 is legally married wife of plaintiff and also from circulating any joint photograph of the plaintiff and defendant No.1. The plaintiff further needs a mandatory injunction mandating and directing the defendants to return the original Group Photograph of the plaintiff captured during his Army Training which the defendant No.1 has been stolen away while she left plaintiff's residence.

19. That the cause of action for the instant suit arose on and from 09/09/2021, when the defendant No.1 has left the house of plaintiff, 16/09/2021 when she send notice through her advocate stating falsely that she is legally married wife of the plaintiff and giving many false

allegations against him as well as his family members, 06/10/2021 when the plaintiff send reply of notice dated on 14/10/2021 when plaintiff's father went to defendants' house to bring the defendant No.1 to stay with them as earlier but she refused and on every dates thereafter within the jurisdiction of this Honorable court.

20. That under the facts and circumstances stated herein above the plaintiff pray before the Honorable court as under:-

(i) To decree the suit declaring that the defendant No.1 is not legally married wife of the plaintiff;

21. The defendant has appeared in the proceeding and vide order dated 23.06.2022, the suit proceeded ex-parte against them.

22. To bring home his case, the plaintiff adduced the evidence of three witnesses including him and the witnesses were not cross-examined by the defendant as they remained absent without steps subsequently. Heard the argument of the counsel for the plaintiff.

23. The following points for determination are considered in order to arrive at a proper decision:

- a. Whether the suit is maintainable in this form?
- b. Whether the plaintiff has entitled to get the decree as prayed for?

24. Learned advocate appearing for the plaintiff vehemently submitted before this court that plaintiff's suit is liable to be decreed with cost as the plaintiff established and proved the contentions of the plaintiff by adducing trustworthy evidence before this court. Plaintiff's side adduced both oral as well as documentary forms of evidence. However, the defendant did not appear for their cross-examination.

25. I have gone through the documentary evidence and oral evidence adduced by the plaintiff's side.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

26. Both the points are decided together as they are connected points. In the present case, the plaintiff in the plaint inter-alia sought for a declaration that the defendant is not his legally married wife. The plaintiff thus sought for a declaration of the matrimonial status of the defendant. Even though, the plaintiff sought for other reliefs in the suit. But, on facts of the case, in my opinion, the relief of declaration sought for by the plaintiff as to the matrimonial status of the defendant is the substantial relief in the suit inasmuch as other reliefs are dependent on it.

27. Now the question arises, whether the instant suit filed by the plaintiff under Sec. 34 of Specific Relief Act is maintainable or not. The plaintiff has denied having solemnized any marriage at all with the defendant at any

time and as such the provision of Sec. 34 of the Specific Relief Act is attracted and Civil Court only has jurisdiction to try the suit for such declaration as claimed by the plaintiff that the defendant is not the legally married wife of plaintiff.

28. Let us now discuss whether the suit filed by plaintiff is maintainable under Sec. 34 of the Specific Relief Act.

29. According to Sec. 34 of the Specific Relief Act, no suit is maintainable under this Section, unless the plaintiff is a person entitled to some legal character or to some right as to property, and the declaration sought is that he is entitled to such legal character or to such right. A suit which is not for a declaration of plaintiff's right to property or to his legal character, but is suit to challenge the defendant's pretension to a legal character or right to property is outside the scope of this provision. In case of family relationship under the provision of Specific Relief Act, a suit for declaration that the marriage between the parties to the suit is dissolved is maintainable when the defendant is interested to deny the legal character claimed by the plaintiff.

30. But, in the instant case, provision of Sec. 34 of the Specific Relief Act is not attracted, on the ground that the plaintiff and the defendant both being Hindu by religion, the provision of Hindu Marriage Act, 1955 only will apply in any matter relating to the validity of the marriage.

31. Now the Sec. 19 of Hindu Marriage Act stated that Court to which petition shall be presented. ¶Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- [(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or]
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

32. In the above context, I may gainfully refer the case of **Balram Yadav v. Fulmaniya Yadav, reported in (2016) 13 SCC 308**, where the Hon'ble Supreme Court held as follows:

“7. Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the

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civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.”

33. Therefore, the suit is not maintainable under Sec.34 of the Specific Relief Act, hence this court has no jurisdiction to try the suit. Since this suit is for the purpose of deciding the validity of a marriage governed by the Hindu Marriage Act, 1955, both the parties to the marriage being Hindu by religion, this suit is to be filed in the court of District Judge only.

34. Having thus considered the factual and legal aspect of the matter, I am of the firm opinion that this Court has no jurisdiction to try the instant suit where the primary dispute relates to the matrimonial status of the defendant and in the backdrop of above discussion it is held that the Plaintiff is not entitled to any relief as prayed for in this suit.

35. In the result, both the points are decided in negative.

ORDER

36. In the result the suit of the Plaintiff is dismissed with cost.

37. Prepare a decree accordingly within 15 days from today.

Given under my hand and seal of this court on this 6th December, 2022.

(Smt. Priyanka Saikia)

Munsiff No. 2

Sonitpur, Tezpur

APPENDIX

Plaintiff's Witnesses:

PW1- Sri Ananta Kalita

PW2- Sri Dadhiram Kalita

PW3- Sri Pradip Pathak

Plaintiff's Exhibits:

Ext. 1- Defendant's advocate notice to the plaintiff.

Ext. 2- Plaintiff's advocate reply to the defendant's advocate.

Defendants Witnesses:

None

Defendants Exhibit:

Nil

(Smt. Priyanka Saikia)

Munsiff No. 2

Sonitpur, Tezpur