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SA-1018-1999

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 1018 of 1999*FULLA**Versus**MUNNA & ORS.*

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Appearance:

Shri Nitin Kumar Agrawal - Advocate for the appellant.

Shri Sanjeev Tuli - Advocate for the respondent nos. 1 and 2.

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Reserved on : 06.08.2026

Pronounced on : 03.09.2026

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JUDGEMENT

This appeal under Section 100 of the Code of Civil Procedure has been preferred by defendant no.2/appellant being aggrieved by the judgment and decree dated 06.07.1999 passed in Civil Appeal No.34-A/1998 by the Second Additional District Judge, Sagar, Camp Khurai, arising out of the judgment and decree dated 12.02.1997 passed in Civil Suit No.110-A/1991 by the Second Civil Judge Class II, Khurai.

2. As per the plaintiffs, they are sons of Dhunna through his wife Rajiyabai, defendant no.3. Dhunna was earlier married to Nimiya, who has expired and from their cohabitation, defendant no.2 was born. Upon death of first wife of Dhunna, he had married defendant no.3, Rajiyabai as per *Kari* system of marriage, from whom plaintiffs were born. Thus, plaintiffs and defendants have equal share in the lands of Dhunna. A partition was effected between defendant no.1 and his other brothers in which 3.79 acre of land was



allotted to defendant no.1, over which a house has been constructed. Defendant no.2 had instituted an action against defendant no.1 for half share in the suit property in which a compromise was arrived at between them and 1.50 acre land and 1/3rd share in the house was given to defendant no.1. In July 1991, plaintiffs acquired knowledge of the compromise and asked defendant no.1 for their share, which was denied by him. The compromise decree is not binding upon the plaintiffs since they were not impleaded as parties therein. On such contentions, the plaintiffs instituted an action for declaration of their 2/3rd share in the suit property and for symbolic possession of the same.

3. The defendants 1 and 3 admitted the plaintiffs' claim. Defendant no.2, however, contested the plaintiffs' claim by filing his written statement in which it was submitted that defendant no.3 is not legally wedded wife of defendant no.1 as per *Kari* system of marriage. She is instead illegitimate wife of defendant no.1 and plaintiffs are his illegitimate children. The land, which has been shown to be allotted to defendant no.1, had in fact been allotted to defendant no.1 and his wife Nimiya. In the 1/3rd share of Nimiya, defendant no.2 has acquired a share. In civil suit between him and defendant no.1, a compromise has already been entered into, in view of which, defendant no.2 has been allotted 1.50 acre of land and 1/3rd share in the suit house. The plaintiffs cannot challenge the same, hence they are not entitled for any relief as claimed by them.

4. The trial court only partly decreed the plaintiffs' claim holding that they are entitled to their share in the suit property after deduction of the



share of defendant no.2 as per the judgment and decree passed in the earlier suit. However in appeal having been preferred by the plaintiffs, the judgment and decree passed by the trial court has been set aside and it has been held that the plaintiffs have 2/5th share in the lands of defendant no.1 and as well as in the suit house and are entitled for symbolic possession of the same.

5. Being aggrieved by the judgment and decree as aforesaid, this appeal has been preferred by defendant no.2, which was admitted for final hearing by order dated 04.07.2000 on the following substantial questions of law:-

- "1. Whether the lower appellate court having held that it was not proved that Smt. Rajiya was married to Dhunna in accordance with Kari form of marriage, could it draw a presumption u/s 114 of the Evidence Act?*
- 2. Whether the court below could have held that in case the plaintiff failed to establish the marriage in accordance with Kari form of marriage, then presumption of marriage by long cohabitation would weaken his case?*
- 3. Whether the compromise entered into by respondent no.3 Dhunna in the capacity of karta of the family was binding on the coparceners, including the plaintiff, unless it is established that a fraud was played upon him by other coparceners?"*

6. Learned counsel for the appellant has submitted that from the evidence brought by them on record, the defendants have utterly failed to prove that defendant no.3 was married to defendant no.1 under *Kari* system of marriage, in view of which the presumption of a valid marriage could not



have been drawn under Section 114 of the Indian Evidence Act. Since plaintiffs had come up with a case of marriage of defendant no.1 with defendant no.3, which they have not been able to prove the presumption of marriage by long cohabitation only weakens their case and does not strengthen it in any manner. In any case, there is no evidence of long cohabitation between defendant no.1 and defendant no.3 for such a period, which would give rise to a presumption of marriage between them. Since the property was joint family property in the hands of defendant no.1, he had the right to enter into a compromise with defendant no.2, which would bind the plaintiffs as well as defendant no.3. It is not the case of plaintiffs that the decree was obtained by fraud hence they cannot avoid the same. The judgment and decree passed by the lower appellate court hence deserves to be set aside.

7. Per contra, learned counsel for respondents 1 and 2 has submitted that even though the marriage of defendant no.1 with defendant no.3 under the *Kari Pratha* has not been proved by way of the evidence adduced, but it is absolutely clear that they had been residing together since a long time as husband and wife and had also been recognized as such by the society hence on the basis of their long cohabitation, presumption as regards a valid marriage between them has rightly been drawn in which no fault can be found. Though the initial case of plaintiffs was marriage of defendant no.1 with defendant no.3, but even if the said fact is not proved, then the same would stand proved by their long cohabitation wherein they have been living as husband and wife. The suit land had fallen to the share of defendant no.1



in a partition with his brother hence was his self-acquired property. In any case, there is no material to demonstrate that the suit property is joint family property of parties. Thus, defendant no.1 could not have entered into a compromise between himself and defendant no.2 in the capacity of *Karta* of the family. The decree without impleading plaintiffs as parties to the suit is hence wholly illegal and not binding upon them. The judgment and decree passed by lower appellate court hence deserves to be sustained.

8. I have heard the learned counsel for parties and have perused the record.

9. Though from the evidence adduced by the plaintiffs, they have not been able to prove that defendant no.3 was married to defendant no.1 by way of *Kari* form of marriage, but the question which is required to be considered is whether in view of long cohabitation of defendant no.1 and defendant no.3 as husband and wife, a legal presumption as regards their marriage can be drawn. In this regard, the evidence of parties would be required to be seen. Defendant no.1 has stated that defendant no.3 has been residing with him for 26 years as his wife. Though the said fact has not been mentioned in the plaint, but from the evidence same has been supplemented. Plaintiffs in their evidence have examined Alam as P.W.2 and Panchu as P.W.3, both of whom have stated that defendants 1 and 3 have resided together since a long time as husband and wife. At the time of starting of cohabitation of defendants 1 and 3, defendant no.2 was quite small. He has himself stated that defendant no.1 had kept defendant no.3 as his wife. The plaintiffs' witnesses have also stated so. It is an admitted fact that plaintiffs are born out



of cohabitation of defendant no.1 and defendant no.3. It has nowhere come on record that defendant no.3 was residing as a keep of defendant no.1 or that there was any legal impediment for them to be husband and wife. Defendants 1 and 3 have admitted the plaintiffs' claim, meaning thereby that there is no animosity between plaintiffs and defendant no.1. Thus from the evidence available on record, it is clear that defendant no.1 and defendant no.3 have been residing together since a long time after death of first wife of defendant no.1.

10. There is no one in the village except defendant no.2, who does not treat defendant nos.1 and 3 as husband and wife. The presumption would always be for legitimacy of the marriage rather than being for its illegitimacy. In the earlier suit, defendant no.2 had addressed defendant no.3 as illegal wife of defendant no.1. No evidence has been led by defendant no.2 to show that Rajiya was not wife of defendant no.1. The plaintiffs have thus satisfactorily proved that defendant no.3 was legally wedded wife of defendant no.1.

11. In the case of *Raja Gounder Vs. M.Sengodan, (2024) 12 SCC 350* relied upon by the learned counsel for appellants, the dispute was not as regards the legitimacy of marriage but was as regards the legitimacy of children born out of an invalid marriage. The said case is hence not applicable to the facts of present case. On the contrary, in *Chowdamma (dead) Vs. Venkatappa, 2025 SCC OnLine SC 1814* the Apex Court has held by reiterating the earlier decisions in this regard that a strong presumption arises in favour of wedlock where the partners have lived together for a long



spell as husband and wife. It has been held as under :-

"35. It would be beneficial to refer to Badri Prasad v. Dy. Director of Consolidation 4 wherein this Court held as follows:

".... A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. ..."

36. Similarly, in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy⁵, wherein the Privy Council observed that:

"....where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage".

37. In Mohabbat Ali Khan (Plaintiff) v. Mahomed Ibrahim Khan (Defendants)⁶, the Privy Council observed that:

"... The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. ..."

38. The foregoing authorities indicate that the legal position enunciates a presumption in favour of a marriage where a man and woman have engaged in prolonged and continuous cohabitation. Such a presumption, though rebuttable in nature, can only be displaced by unimpeachable evidence. Any circumstance that weakens this presumption ought not to be ignored by the Court. The burden lies heavily on the party seeking to question the cohabitation and to deprive the relationship of legal sanctity."

12. Thus in view of the aforesaid, finding as regards defendant no.1 and defendant no.3 living as husband and wife is impeachable and cannot be interfered with at this stage. In the earlier suit instituted between defendant no.2 and defendant no.1, the plaintiffs were not parties hence the judgment and decree passed therein will not be binding upon them. It was not a case even set up by defendant no.2 that the suit property is Joint Hindu Family



property of the parties and that defendant no.1 was the *Karta* of same and had entered into the compromise in that capacity hence the compromise would be binding upon all the members of the family. On the other hand, the said compromise would not at all be binding upon the plaintiffs and would not have any effect upon the merits and outcome of this case.

13. Thus in view of the aforesaid discussion, the substantial questions of law as framed are answered against the appellants and in favour of respondents 1 and 2. Consequently, the judgment and decree passed by the lower appellate court is affirmed, as a result of which, the appeal is dismissed. No costs.

(PRANAY VERMA)
JUDGE

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