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## **2008 SCeJ 001**

SUPREME COURT OF INDIA

Before: Justice Dr. Arijit Pasayat, Justice P. Sathasivam, JJ.

TULSA AND OTHERS

versus

DURGHATIYA

Civil Appeal No. 648 of 2002

15.01.2008

**Presumption of valid marriage is a rebuttable one, it is for the other party to establish the same.**

### **Evidence Act, Section 114 - [CPC S. 100](#)**

**Section 114 refers to common course of natural events, human conduct and private business. The Court may presume the existence of any fact which it thinks likely to have occurred. Court while reading the provisions of Sections 50 and 114 of the Evidence Act held that, the act of marriage can be presumed for the common course of natural events and conduct of the parties as they are borne out by the facts of a particular case and therefore, it is the husband to discharge his burden to prove that, no marriage has taken place.**

Prakash Shrivastava, Advocate, for the Appellants; Shiv Prakash Pandey and Rajkumar Tanwar, Advocates, for the Respondents.

Judgment

Dr. Arijit Pasayat, J.— Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court at Jabalpur. The appeal under Section 100 of the Code of Civil Procedure, 1908 (in short "the Code") was directed against the judgment and decree dated 29-10-1988 passed by the learned 11nd Additional District Judge, Satna in Civil Appeal No. 138-A of 1987. The appeal before the first appellate court was directed against the judgment and decree dated 26-4-1985 passed by the learned Second Civil Judge, Class I, Satna in Civil Suit No. 52-A of 1982.

2. The suit was filed by the respondents herein for nullifying and setting aside sale deed dated 10-9-1980 and also for permanent injunction of land at Sl. Nos. 4009, 4010, 4011 and

4014. The sale deed dated 10-9-1980 was in respect of lands at Sl. Nos. 3853, 3993, 4002, 4003, 4004, 4009, 4010, 4014, 4015 and 4021 of Mauza Nayagaon, Tehsil Raghurajnagar, District Satna. According to them the disputed property is the joint ancestral property of Radhika Singh, Sunder Singh and the husband of Plaintiff 1, Dadau Singh who was the father of the other two plaintiffs, Smt Rani and Smt Butan. Vansh Gopal had three sons, Radhika Singh, Sunder Singh and Dadau Singh. Sunder died without any legal heir. No partition had taken place between Radhika and Sunder and Radhika, Sunder and Dadau all used to do cultivation jointly. As Radhika and Sunder died without leaving legal heirs, the plaintiffs became the sole owners of the property.

3. Lolli, Original Defendant 1 is the wife of Mangal Kachhi and his daughter *Tulsa* Bai, the present appellant was born to Lolli and Mangal Kachhi. After the birth of her daughter *Tulsa* Bai, deceased Radhika Singh, kept Defendant 1 as a mistress in his house and left for somewhere else taking her along and came back after many years. She gave birth to three daughters, namely, Vidya, Badaniya and Rajaniya. Defendant 1 was a Kachhia by caste and was also the cognitive of deceased Radhika, so she had no legal rights in the property. After the death of Radhika, Defendant 1 was residing with Badri Prasad Pandey.

4. Badri Prasad got sale deed executed in favour of Defendant 1 of disputed property with intention to usurping the land. The plaintiffs are in possession. They came to know about the transaction when Defendants 2 to 4 submitted an application for transfer of land in their names and then it came to light that Defendant 1 had no title over the land and the land was in possession of Plaintiffs 1 to 3.

5. On 17-12-1984 the plaintiffs got the information that Defendants 2 and 3 have got their names mutated in respect of certain lands, therefore, the suit was filed. In the written statement filed the defendants took the stand that the family tree indicated by the plaintiff was correct. Out of the land 12 acres owned by the family of *Durghatiya*, Plaintiff 1 had sold her share of land. About 30 years back partition had taken place between Dadau and Sunder. Dadau had separated after taking his share. He got the land in certain villages. Radhika and Sunder used to live jointly and used to do cultivation over the land which they got in partition. They died while living jointly in the year 1970. Plaintiffs *Durghatiya* and Radhika had sold their land in the capacity of owners during their lifetime. Sunder did not marry and had no issue. Defendant 1 is the widow of Radhika. They were blessed with five daughters and one son, out of which one son and one daughter died. The eldest daughter *Tulsa* and the younger daughter were given in marriage by Radhika. Plaintiff 1 used to regard Defendant 1 as her jethani. Radhika and Defendant 1 lived together for thirty years as husband and wife and, therefore, she had legitimate claim over the property as his wife. It was also disputed that Defendant 1 was living with Defendants 2 to 5. Defendant 1 had sold the lands to Defendants 2, 3 and 4 and had also given possession. Defendant 1 had taken a debt on the marriage of her son and for that purpose she sold the land. She claimed that she had right to sell the land and therefore no question of having any illegal possession arises. Four issues were framed by the trial court and the important and vital issue was framed as Issue 2 which read as follows:

“Whether Defendant 1 was the wife of Radhika Singh?”

The question was answered in the affirmative. After referring to the evidence of the witnesses examined by the plaintiffs as well as the defendants, the trial court held that there was no merit in the suit and accordingly it was dismissed. The judgment and decree were questioned in appeal before the first appellate court.

6. As noted above, the first appellate court allowed the appeal. The trial court noted that there was a presumption of valid marriage, as for decades Radhika and Plaintiff 1 lived together; their daughters were given in marriage by Radhika. Lolli, Defendant 1 was earlier married to Mangal Kachhi and after his death she married Radhika. It is to be noted that the stand of the plaintiffs was that Lolli married Radhika during the lifetime of Mangal Kachhi. The trial court rejected this plea. The first appellate court observed that Lolli started living with Radhika during the lifetime of Mangal Kachhi, so the presumption of valid marriage was not there. The judgment and decree of the first appellate court was challenged before the High Court. The High Court formulated the following questions for adjudication:

“Whether in the facts and circumstances of the case, the first appellate court erred in law in finding that Mst. Lolibai was not the legally married wife of Radhika Singh?”

7. After discussing the respective stand of the parties, the High Court came to a somewhat peculiar finding. It held that the findings recorded by the appellate court may be erroneous, but it does not appear to be perverse.

8. It is to be noted that the first appellate court without any evidence or material came to an abrupt conclusion that Defendant 1 Lolli started living with Radhika during the lifetime of her husband. There is no discussion with reference to any material as to the basis for such a conclusion.

9. Some of the conclusions of the trial court in this regard are relevant. In para 16 of the judgment it was noted as follows:

“In the context of the aforesaid judgment, now we have to examine this that whether we have sufficient basis to make a presumption of legal marriage of Lolli and Radhika Singh. In this connection, plaintiff witness Visheshar had admitted in Para 9 of his statement that there were four daughters and one son born of Lolli and Radhika Singh. The eldest daughter of Lolli is *Tulsa*. Rani was born to Lolli after 2-3 years of her arriving in the village. Three of the daughters of Lolli were married off by Radhika Singh and she had also contributed.”

Again at para 18 it was observed as follows:

“Witness Devdhari has also admitted in his statement that after 2-3 years of the birth of first born Bhaiyalal, Mangal Kachhi had died. Lolli used to work as a labourer. She also used to be labourer with Radhika Singh. Radhika Singh had retained Lolli as his wife. The daughters of Lolli were married off by Radhika Singh. Ram Milan Singh had admitted in his statement that all these four daughters were alive. They were born of Radhika and Lolli. The daughters who were born of Radhika Singh, their kanyadan was also performed by Radhika Singh. He has also admitted this in his statement that Radhika Singh had married off his daughters as Vaishyas and Thakurs married off their daughters. He had attended the

marriage."

In para 24 it was observed as follows:

"This has also been argued by learned counsel for the plaintiff that even if this is accepted that Lolli and Radhika Singh stayed as husband and wife for many days and they were blessed with children even then it cannot be presumed that Lolli is legitimate wife of Radhika Singh. Because Lolli moved in with Radhika Singh when her husband had been alive. Her former husband Mangal Kachhi had been alive; till she got divorce by Mangal Kachhi till then Lolli could not have entered in second marriage with Radhika Singh. I am not in agreement with this argument of the learned counsel for the plaintiff because the evidence, which has been adduced from the side of the plaintiff and the defendants, from that it becomes clear, that after Bhaiyalal was born to Lolli from Mangal, Mangal had thrown Lolli out of the house. Then Lolli worked as a casual labourer for some time and meanwhile Mangal had died. Thereafter Radhika Singh adopted her as his wife. This fact has been admitted by Devdhari in Para 4 of his statement that Lolli used to frequent Village Bointa from Bandhi to work as a labourer, thereafter she was adopted."

10. In contrast, the first appellate court held that Bhaiyalal (DW 2) who was born to Lolli and Mangal, had stated that he was very young when his father died and when he was young his mother had left. From that it was inferred that during the lifetime of Mangal Kachhi, Lolli left Mangal and was living with Radhika. This conclusion is clearly contrary to the evidence on record. A bare reading of the evidence of DW 2 shows that he had clearly stated that Mangal was not alive when Lolli came and stayed with Radhika.

11. At this juncture reference may be made to Section 114 of the Evidence Act, 1872 (in short "the Evidence Act"). The provision refers to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.<sup>8</sup>

12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e **Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy** AIR 1927 PC 185 Their Lordships of the Privy Council laid down the general proposition that: **(AIR p. 187)**

"... 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."

13. In **Mohabbat Ali Khan v. Mohd. Ibrahim Khan** AIR 1929 PC 135 Their Lordships of the Privy Council once again laid down that: **(AIR p. 138)**

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

14. It was held that such a presumption could be drawn under Section 114 of the Evidence Act.

15. Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy. (See **Badri Prasad v. Dy. Director of Consolidation** AIR 1978 SC 1557.)

16. This Court in **Gokal Chand v. Parvin Kumari** AIR 1952 SC 231 observed that continuous cohabitation of (sic man and) woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them.

17. As noted above, the continuous living together of Lolli and Radhika has been established. In fact the evidence of the witnesses examined by the plaintiff also established this fact. The conclusion of the first appellate court that they were living together when Mangal was alive has not been established. The evidence on record clearly shows that Lolli and Radhika were living together after the death of Mangal.

18. Above being the position, the appeal deserves to be allowed which we direct. The judgment and decree of the first appellate court and the High Court are set aside and those of the trial court stand restored.

19. Appeal is allowed but with no order as to costs.