

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 24/03/2022

Judgment Pronounced on 25/4/2022FAM No.140 of 2016

1. Smt. Jaanki Yadav

2. Kumari Priya,

Koriya (Baikunthpur), Chhattisgarh

.....Plaintiffs , District :

----Appellants/Plaintiffs

Versus

1. Shri Gorakhnath Yadav

.....Defendant , Chhattisgarh

---- Respondent/Defendant

---

For Appellants	:	Shri Shakti Raj Sinha, Advocate
For Respondent	:	Shri Ashok Shukla, Advocate

---

**D.B.: Hon'ble Shri Justice Goutam Bhaduri &****Hon'ble Shri Justice Sanjay S. Agrawal****CAV Judgment**

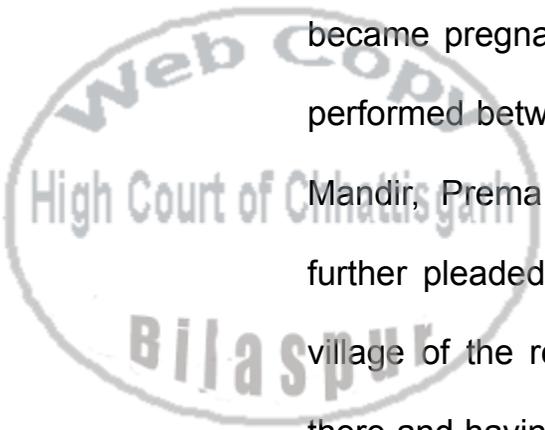
The following judgment of this Court is delivered by **Goutam Bhaduri, J.**

1. Challenge in this appeal is to the judgment and decree dated 05-04-2016 passed by the learned Family Court, Manendragarh, District Korea (CG) in Civil Suit No.17-A/2011, whereby the declaratory suit filed by the appellants/plaintiffs by stating that the appellant No.1-Smt. Janki Yadav



be declared as legally wedded first wife and the appellant No.2-Ku. Priya be declared as legitimate child of Respondent-Defendant-Gorakhnath Yadav, was dismissed.

2. The declaratory suit was filed by the appellants/plaintiffs i.e. Smt. Janki Yadav and Ku. Priya against the Respondent-Gorakhnath Yadav. It was stated that while the defendant was posted in the Police Station to the post of Nagar Sanik, he used to visit the house of plaintiff-Janki and expressed his desire to marry. During such period, the Respondent-Gorakhnath Yadav had developed physical relations with the plaintiff-Janki Yadav and thereafter, she became pregnant. Consequently, as she became pregnant, in the presence of few of the villagers, marriage was performed between the plaintiff and the defendant on 11-04-2005 at Shiv Mandir, Prema Bagh, Baikunthpur, according to Hindu rituals. It was further pleaded that after the marriage, when plaintiff No.1 went to the village of the respondent-defendant at Tenduwa, she saw four children there and having enquired, it was disclosed that four children belonged to first wife of the respondent and it was told that first wife died five years back. Thereafter, having believed such statement, the plaintiff No.1-wife continued to stay there with the respondent-defendant.
3. It was pleaded that when the plaintiff No.1-wife was to deliver baby, she was admitted in the hospital at Baikunthpur. At that time, the respondent stated that he had filled up the application form for job at police, for which, he would be required to go to Ambikapur and thereafter, he got discharged the plaintiff No.1-wife from the hospital at Baikunthpur and left her to parental home at Akhradand, wherein she was admitted to the hospital at Khadgawan and on 07-08-2005, the plaintiff No.2 was born. Subsequent to such birth of the child, rituals were performed after 12





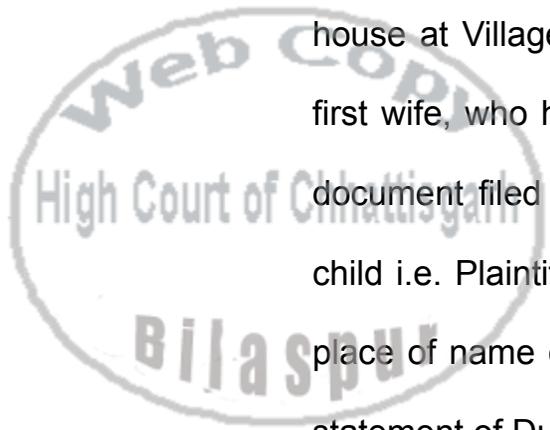
days and the child joined the company of the respondent-defendant at Village-Tenduwa. Ceremony of “Anna Prasan” was also performed and subsequent thereof, the plaintiff No.1 was left again at her parental home at Akhradand with the promise that the respondent-defendant will come back and would take her to his matrimonial home, but, it never happened. She has stated that the circumstances resulted into starvation and as such, application for maintenance was filed before the Court of Judicial Magistrate First Class, Manendragarh. The Judicial Magistrate First Class, on 15-11-2010 dismissed the application, against which, criminal revision was preferred before the High Court and the High Court has also dismissed the revision petition reserving liberty to file a declaratory suit, as such, the suit was filed claiming declaratory relief.

4. The respondent-defendant denied the averments stated in the plaint and stated that the plaintiff No.1-Janki Yadav was married to one Lachhandhari and the plaintiff No.2 is the daughter of the said person. The other averments were also denied that he developed physical relations with the plaintiff No.1-Janki or ever married to her. It was stated that the respondent is already a married person and having four children, as such, the question of marriage do not arise at all. The reference to dismissal of application under Section 125 of the Cr.P.C. was also made. The plaintiff No.1-Smt. Janki Yadav examined herself as PW-1. Smt. Basanti is the mother of plaintiff No.1-Smt. Janki Yadav and examined as PW-2 as also Durga Prasad Sahu, PW-3 has been examined as PW-3. The respondent-defendant-Gorakhnath Yadav examined himself as DW-1, Devnandan Prasad as DW-2 and Gulab Singh as DW-3.
5. The learned Family Court, after evaluating the facts and circumstances of the case and appreciation of evidence, dismissed the declaratory suit filed



by the appellants-plaintiffs and hence, this appeal.

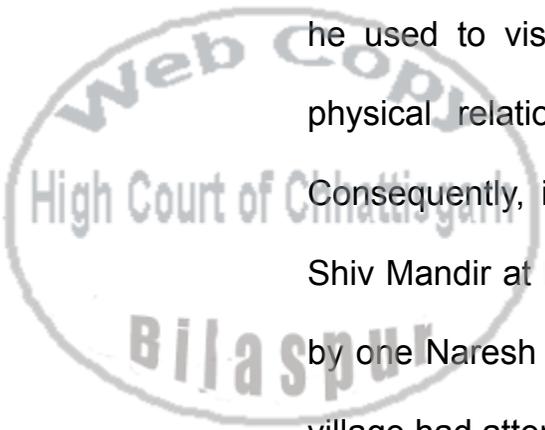
6. Learned counsel for the appellants would submit that the learned Court below has failed to appreciate the circumstances, in which, marriage took place, because, according to appellant No.1-plaintiff, the respondent-husband was visiting the house of plaintiff No.1-Janki and as such, he had developed physical relations with her and resultantly, she became pregnant. Therefore, in a hurry, the marriage was performed. He would further submit that the statement of the plaintiff No.1-wife would show that after marriage, she was taken to her matrimonial house and was introduced four children of the respondent-husband at her matrimonial house at Village-Tenduwa, it was informed that they were born from the first wife, who had died five years ago. He would further submit that the document filed as Ex.P-2 and Ex.P-3 would show that the name of the child i.e. Plaintiff No.2 is shown that she was born in the hospital and in place of name of father, name of respondent was recorded. Referring to statement of Durga Prasad Sahu, PW-3, learned counsel for the appellant would submit that this witness attended the marriage, which was performed, as such, presumption of marriage is required to be drawn. Apart from the evidence, which has been adduced and the judgment and decree passed by the learned Family Court is liable to be set aside.
7. Per contra, learned counsel for the respondent would submit that there is no evidence on record to draw presumption that the appellant No.1 is the wife and they have lived together for considerable time. He would further submit that the Pandit, who performed the alleged marriage, was not examined and even the mother of the appellant-wife is not been able to establish as to how the marriage took place. He would submit that it is not a case that the appellant-wife was in long company of the respondent-





husband. Therefore, the presumption of marriage cannot be drawn and consequently, the birth of a child (appellant No.2), born out of the alleged physical relations, cannot be termed to be a legitimate child. Hence, the finding recorded by the learned Family Court is well merited and does not call for any interference.

8. We have heard learned counsel for the parties and perused the documents.
9. The plaintiff No.1-Janki Yadav examined herself being wife and stated that she was married to the respondent on 11-04-2005. In her deposition, she has averred that while the respondent was posted at Police Station, he used to visit her house and during such period, the intimacy and physical relations were developed, whereby she became pregnant. Consequently, in a hurry, marriage was performed in the Prema Bagh, Shiv Mandir at Baikunthpur, according to the Hindu rituals on 11-04-2005 by one Naresh Pandit. She further deposed that 10 to 12 persons of her village had attended the marriage and thereafter, the respondent-husband had taken her to Village Tenduwa. She has further deposed that she herself and respondent both were living at Village Tenduwa for three months and subsequently, the appellant No.1 was admitted to the hospital at Baikunthpur for delivery and on the pretext that he has to go for police job, she was discharged from hospital at Baikunthpur and was left at her parental home Akhradand, whereafter mother of the plaintiff No.1 admitted her to the hospital at Khadgawa and she gave birth to a child-plaintiff No.2 in the year 2005. She further stated that after marriage, the plaintiff No.1 remained in the company of the respondent-husband for about six months. The respondent gave suggestion that the plaintiff No.1 was married to one Lachhandhari, but, such suggestion was completely



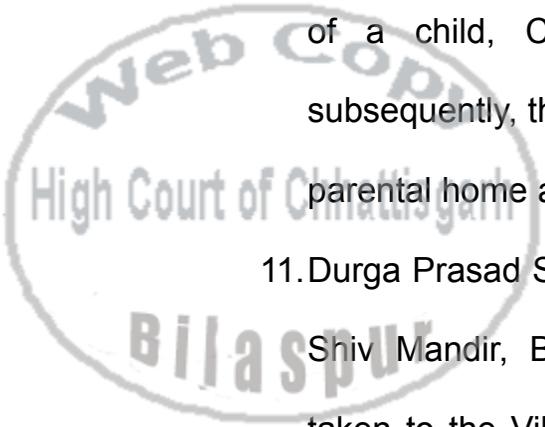


denied by the plaintiff No.1. She also denied that the plaintiff No.2-Ku.

Priya was the daughter of Lachhandhari.

10. Smt. Basanti, PW-2, mother of the plaintiff No.1 and Durga Prasad Sahu, PW-3 is the villager, have deposed that the plaintiff No.1-Smt. Janki was married to the respondent and at that time, the respondent disclosed that he is unmarried. Smt. Basanti, PW-2, mother of the plaintiff No.1 has stated that the marriage was solemnized between the respondent and the plaintiff No.1 at Shiv Mandir, Baikunthpur and thereafter, the plaintiff No.1-Janki went to her matrimonial house at Village Tenduwa. Smt. Basanti, PW-2, mother of the plaintiff No.1 has further deposed that after the birth of a child, Chhatti ceremony was performed at Akhradand and subsequently, the respondent-defendant has taken the plaintiff No.1 to his parental home at Village Tenduwa.

11. Durga Prasad Sahu, PW-3 has deposed that he attended the marriage at Shiv Mandir, Baikunthpur and thereafter, the plaintiff No.1-Janki was taken to the Village -Tenduwa by the respondent. He has further stated that at Village Tenduwa only, the rituals of "Anna Prasan" was performed. A suggestion was given to this witness that the plaintiff No.1 was married to one Lachhandhari, was denied. In the cross-examination, Smt. Basanti, PW-2, mother of the plaintiff No.1 has deposed that she is unable to say about all the rituals, which were performed during the marriage ceremony, whereas the respondent-defendant had completely disowned the relations with the plaintiff No.1 and stated that a complaint was made to the Superintendent of Police by the plaintiff, wherein enquiry was held and wherein it came to his knowledge that the plaintiff No.1 was married to one Lachhandhari. He stated that Lachhandhari Yadav was still alive. However, the said Lachhandhari Yadav was not examined before the



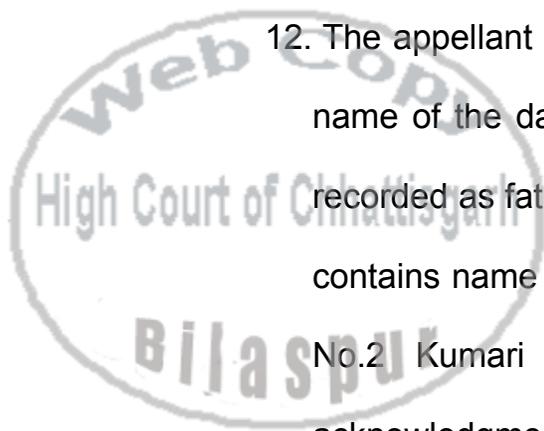


Court below or was summoned. The respondent contended that he was married to one Urmila Yadav and out of their wedlock, two sons and two daughters were born and he never married to plaintiff No.1-Janki and there was no physical relations with her. With respect to performance of rituals, the respondent-defendant has completely disowned the same. In his cross-examination, different suggestions were given, which were denied. Gulab Singh, DW-3, in his statement, has deposed that his niece-Urmila was married with the respondent-defendant in the year 1991 and out of their wedlock, four children were born. Thereby tried to suggest that wife of respondent was Urmila.

12. The appellant has placed reliance on document to show that against the name of the daughter, at the time of her birth, name of respondent was recorded as father which is marked as Ex.P/1 and the birth certificate also contains name of respondent Gorakhnath Yadav being father of appellant No.2 Kumari Priya. The appellant No.2 though is in hold of acknowledgment of his paternity which normally in turn attaches legitimacy of marriage but in order to establish the legitimacy of child, the marriage was required to be proved.

13. Perusal of the evidence would show to prove the marriage, at least the evidence of Naresh Pandit, who performed the marriage was necessary but he was not examined. The law presumes in favour of marriage and against concubinage, when a man and a woman was cohabitate continuously for a number of years but the evidence would show that the appellant No.1 Smt. Jaanki Yadav only remained for few months, therefore, the said presumption of marriage also cannot be drawn.

14. It is not a case that parties live together for several years in the same house and children were born out of their wedlock. There is no evidence





on record that the respondent/ husband, recognize, his wife and children by affectionate provisions. The presumption of marriage is to be established by way of conduct; mode of life; and predilections of other persons. Therefore, when marriage itself has not been proved, the legitimacy and presumption cannot be drawn.

15. The learned Court below though has not accepted the marriage but has held that appellant No.2 was born out of the relation of appellant No.1 Smt. Janki Yadav and the respondent Gorakhnath Yadav. There is no cross appeal by the respondent, therefore, the finding that out of relation in between appellant No.1 Janki Yadav and respondent Gorakhnath Yadav, appellant No.2 Kumari Priya was born, shall stand concluded.

16. In the result, the appeal is dismissed. As it is observed by learned trial Court, the appellant no.2 is daughter of respondent and no challenge is made to it, therefore, she would be entitled for legitimate part of her share to the limited extent of right in the property of respondent Gorakhnath Yadav.

17. There shall be no order as to cost(s).

A decree be drawn accordingly.

SD/-

**(Goutam Bhaduri)**  
Judge

SD/-

**(Sanjay S. Agrawal)**  
Judge