

A

BHEEMRAYA

v.

SUNEETHA

(Civil Appeal No.8572 of 2013)

B

SEPTEMBER 23, 2013

**[SURINDER SINGH NIJJAR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

C *Family Law – Matrimonial dispute – Two suits by wife, one for restraining the husband from marrying during her lifetime and another for perpetual injunction restraining the husband and his father from alienating suit property as she herself and her daughter (born out of the marriage) were entitled to 1/3rd share – She also filed petition u/s. 9 of Hindu*

D *Marriage Act – Trial court decided the suit on merits – Order affirmed by first appellate court – Petition u/s. 9 dismissed by trial court – High Court held that suits were not maintainable because the plaintiff was a minor at the time of filing the suits – As regards the petition u/s. 9, High Court held that, in view*

E *of the fact that both the parties were minor at the time of marriage, the marriage would be void – However, the court gave liberty to the wife to initiate criminal proceedings u/s. 376 IPC against the husband – On appeal, held: The relief sought by the wife, in effect, was for restitution of conjugal rights and maintenance for her child – The dispute was*

F *essentially a matrimonial dispute – Therefore, the court erred in making the observation giving her liberty to initiate criminal proceedings, rather than encouraging and persuading the parties to reconcile – In matrimonial matters it is paramount duty of the Court to restore peace in family – Only as a last*

G *resort, the case should be decided on merits – The appropriate course, in the instant case, would have been that the case was referred for conciliation/mediation.*

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8572 of 2013. A

From the Judgment & Order dated 16.12.2010 of the High Court of Karnataka Circuit Bench at Gulbarga in Misc. First Appeal No. 31408 of 2009 (MC). B

Sudha Gupta for the Appellant.

Shirish K. Deshpande for the Respondent.

The following Order of the Court was delivered by C

ORDER

1. Delay condoned.

2. Leave granted. D

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. E

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. F

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. G
H

A 7. 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/
B 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.

C 8. 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
D 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
E 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
F 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
G 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
H 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. A

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

No costs.

K.K.T.

Appeal allowed.