

Mat. Suit No.43 of 2020

Order No. 16, dated 12.05.2023.

Today is fixed for passing order.

Record is taken up for passing order.

This is a case under section – 11 of the Hindu Marriage Act, praying for a decree annulling marriage of petitioner with respondent, which took place on 11.05.2018.

The version of the petitioner, in a thumb nail sketch, is that he got married with respondent on 11.05.2018 as per Hindu rites and customs. A boy was born on 04.01.2019 in the wedlock. Since marriage the respondent did not pay any respect to the petitioner or his mother. Ultimately, on 04.01.2019 the respondent left her matrimonial home and since then residing at her paternal home. Recently, petitioner came to know that respondent was earlier married to Kaushik Kumar Mukherjee on 31.07.2006 and the said marriage was subsequently registered on 24.08.2008. Sometime in the year 2018 said Kaushik Kumar Mukherjee filed a suit being No.74 of 2018 against the respondent for dissolution of marriage on the ground of desertion. The suit was dismissed for default on 16.08.2018. So, the marriage between the respondent and said Kaushik Kr. Mukherjee still subsists. The respondent got married to the petitioner by practicing fraud. Hence, this case.

This case was initiated on 28.09.2020. Notice was duly served upon the respondent. However as the respondent did not contest the suit it is being heard *ex parte* as against him.

The petitioner deposed in this case as P.W-1. Documents produced by the petitioner were marked Exhibits 1 to 5 collectively.

It is forthcoming from the uncontroverted testimony of the Pw1 that his marriage was solemnised and the respondent resides at a place which situates within the territorial jurisdiction of this Court and as such this court is in seisin to adjudicate this suit. It is also apparent that the there is no unnecessary or improper delay in instituting this proceeding.

Petitioner has alleged that the respondent prior to her marriage with the petitioner got married with one Kaushik Kumar Mukherjee and the respondent married the petitioner during the subsistence of her earlier marriage. To substantiate such allegation petitioner has submitted certified copies of order sheets passed in Mat. Suit no.74/2018 which has been marked Exbt.5 collectively. From such exhibit it appears that Mat. Suit being no.74/18 has been dismissed for default vide Order no.6 dated 16.08.2018 passed by this Court. Petitioner has also submitted exhibit 4 which is an information slip obtained from the Court of Ld. Additional District Judge, 1st Court, Alipore which says that a Mat. Suit being No.1447 of 2020 is pending in between one Kaushik Mukherjee and Ruhi Mukherjee. Now institution of a suit for dissolution of marriage against the respondent does not if so facto proves

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such marriage to be valid and existing. Moreso, when such suit has not been disposed of on merits. Same thing can be said regarding the suit being no.1447 of 2020.

Consequently, this Court finds that the petitioner has failed to prove his cause of action for filing the instant case, praying for nullity of marriage.

Resultantly, on the basis of materials available in the record the petitioner is not entitled to get a decree of nullity of marriage on account of existence of earlier marriage of the respondent.

In the result the suit fails.

C.F. Paid is correct.

Hence, it is,

: O R D E R E D :

that the Matrimonial Suit be and the same is dismissed *ex parte*.

There shall be no order as to costs.

Let copy of the judgement be given to the petitioner of this case free of cost.

Dic. & corr. by me:

Addl. Dist. Judge.

Additional District Judge,
Additional District Judge,
FTC-II, Sealdah.