

the Punjab Alienation of Land Act a right to water would also be land *vide* clause (e) of section 2 of that Act. For the foregoing reasons I am unable to agree with the contention of the learned counsel that the tube-well in question is not land and thus is not liable to pre-emption. This argument was raised for the contention that if land was not purchased by the pre-emptor from the vendees, there would be no question of waiver. I have already held that what was purchased by the plaintiff was land and, therefore, the plaintiff-appellant must be deemed to have waived his right of pre-emption because he purchased a part of the sold property from the vendees.

Niranjan Singh  
*versus*  
 Karam Singh  
 and others  
 \_\_\_\_\_  
 Mahajan, J.

For the reasons recorded above this appeal fails and is dismissed. There will, however, be no order as to costs in this Court.

B.R.T.

REVISIONAL CIVIL

*Before A. N. Grover, J.*

KASHMIR KAUR WIFE AND GOGI, DAUGHTER OF  
 MANOHAR SINGH,—*Petitioners*

*versus*

MANOHAR SINGH,—*Respondent*

Civil Revision No. 751 of 1965

*Specific Relief Act (XLVII of 1963)—Ss. 2(a) and 38—Obligation—Meaning of—Suit for perpetual injunction restraining defendant 1 from proclaiming that she was the wife of the plaintiff and defendant 2 from proclaiming that she was his daughter—Whether maintainable after decision in proceedings under S. 488, Code of Criminal Procedure, that defendant 1, was the wife and defendant 2, was the daughter of the plaintiff—Injunction against an infant—Whether can be granted.*

1965  
 \_\_\_\_\_  
 October, 26th

*Held*, that the word 'obligation' in section 2(a) of the Specific Relief Act, 1963, is of wide import and cannot be restricted merely to contracts or property which appear in section 38 of the Said Act.

*Held*, that a suit for a perpetual injunction restraining defendant 1, from proclaiming that she was the wife of the plaintiff and defendant 2, from proclaiming that she was the daughter of the plaintiff,

is maintainable even after a decision in proceedings under section 488 of the Code of Criminal Procedure that defendant 1, was the wife and defendant 2, was the daughter of the plaintiff. Such a suit does not nullify or interfere with the order of the criminal Court under section 488.

*Held*, that an injunction restraining an infant from proclaiming that she is the daughter of the plaintiff cannot be granted.

*Petition under section 115 of the Code Civil Procedure for revision of the order of Shri T. N. Gupta, Sub-Judge, III Class, Amritsar, dated the 9th August, 1965, deciding the preliminary issue in favour of the plaintiff and ordering that further issues be framed on the 4th of September, 1965.*

PARTAP SINGH, ADVOCATE, for the Petitioners.

BHAGIRATH DASS, ADVOCATE, for the Respondent.

#### JUDGMENT

Grover, J.

GROVER, J.—The petitioner, Kashmir Kaur, filed an application under section 488 of the Criminal Procedure Code against the present respondent Manohar Singh in 1962 claiming maintenance on the ground that she was married to the respondent and that he had failed to maintain her as well as her daughter who was born from his lions. Maintenance was claimed for the daughter also. The learned Magistrate made an order on 11th July, 1962, declining to grant maintenance to the wife on the ground that she had failed to prove that there had been an actual marriage between her and the respondent. He, however, granted maintenance for the daughter at the rate of Rs. 20 per mensem. The petitioner approached the Additional Sessions Judge, Amritsar, by way of revision but that was rejected. She then came up to this Court on the revisional side and that petition (Criminal Revision No. 1042 of 1963) was allowed by R. P. Khosla, J., on 13th March, 1964. The learned Judge had no hesitation in holding that the evidence examined on behalf of the petitioner in respect of her claim had been brushed aside without good reasons. After hearing counsel and examining the entire evidence, the learned Judge observed—

“I feel satisfied that marriage between Mst. Kashmir Kaur and Manohar Singh said to have taken

place on or about 24th of February, 1959, stood proved. In any event the fact that Singh and Shrimati Kashmir Kaur had been living as man and wife and Shrimati Kashmir Kaur had been treated by Manohar Singh as a wife is enough to hold that they were a married couple. In this view, the petition of Shrimati Kashmir Kaur ought not to have been held incompetent."

Kashmir Kaur  
wife and Gogi,  
daughter of  
Manohar Singh  
*versus*  
Manohar Singh  

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Grover, J.

The petition was allowed and maintenance allowance at the rate of Rs. 50 per mensem was awarded to the petitioner. In February, 1965, the respondent filed a suit impleading Kashmir Kaur and her infant daughter Gogi as defendants for a perpetual injunction restraining defendant No. 1 from falsely proclaiming that she was the wife of the plaintiff and defendant No. 2 from proclaiming that she was his daughter. In this suit a preliminary issue was framed with regard to the maintainability of the suit in the present form. This was decided against the petitioner by the trial Court on 9th August, 1965. The petitioner has, therefore, come up to this Court under section 115 of the Code of Civil Procedure.

Mr. Partap Singh, who has argued the case on behalf of the petitioner, has urged that no such suit is maintainable in the form it has been filed by the respondent. He has referred to the various provisions of the Specific Relief Act, 1963 (hereinafter called the Act) which may be noticed. According to section 2(a), "obligation" includes every duty enforceable by law. Section 38, which alone is relevant for the purposes of the present petition, provides—

"38. *Perpetual injunction when granted.*—(1)

Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

- (2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.
- (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of

Kashmir Kaur  
 wife and Gogi,  
 daughter of  
 Manohar Singh  
*versus*  
 Manohar Singh

Grover, J.

property, the Court may grant a perpetual injunction in the following cases, namely:—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

Section 39 relates to mandatory injunctions and may be reproduced.

"39. *Mandatory injunctions.*—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

Section 41 provides the contingencies in which the injunction cannot be granted. The contention of Mr. Partap Singh is that although a suit for a declaration as to status of the petitioner and her daughter would be competent but the respondent cannot ask for a perpetual injunction nor can such an injunction be granted in the circumstances of the present case. According to him, the respondent has acquiesced in the order made under section 488, Criminal Procedure Code, and, therefore, he cannot now be granted the relief of perpetual injunction since he has been paying maintenance to the petitioner. So far as the second part of this contention is concerned, it cannot be accepted. The question as to whether injunction can or cannot be granted on the facts of the present case cannot be gone into at this stage and the only proper stage for deciding that matter would be when the Court

has tried the other issue and has to make up its mind whether the relief of injunction should be granted in its discretion or not. Mr. Partap Singh has relied on certain cases in which it has been laid down that no injunction can be granted to set at naught or to interfere with the order made by a Criminal Court under section 488 of the Code of Criminal Procedure, e.g., *Subhudra v. Basdeo Dube* (1), and *Mayarkara Illath Narayanan Moosad v. Koori Kathil Itticherry Amma* (2). There can be no manner of doubt that no such injunction can be granted as will have the effect of nullifying or interfering with the order of the Criminal Court under section 488, but in the present case the respondent has not sought such an injunction. What he is saying is that the petitioner is giving out that she is his wife and that the daughter was born from his loins which is all false and incorrect and, therefore, she should be restrained from proclaiming her status and the child's status in that manner. In *Gani Pala v. Mst. Khati* (3), a question arose whether a suit for perpetual injunction was maintainable restraining the defendant from proclaiming that the plaintiff was the legally wedded wife of the defendant. Gopalakrishnan Nair, J., expressed his view thus—

Kashmir Kaur  
wife and Gogi,  
daughter of  
Manohar Singh  
*versus*  
Manohar Singh  
Grover, J.

“It cannot be gain-said that marriage creates certain rights and imposes certain obligations on the spouses. The status of being a wife is undoubtedly a status in law. A false claim that a certain lady is the wedded wife of a certain person is, therefore, a claim that the concerned lady occupies in law the status of a wife and that she is consequently subject to certain marital duties and obligations. Thus the false claim attempts or threatens to imperil her status as an unmarried woman and seeks to fasten upon her legal obligations which are alien to her true status.

This involves a serious invasion of her rights and put in jeopardy her freedom to marry a person of her choice.”

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- (1) I.L.R. 18 All. 29.  
(2) A.I.R. 1918 Mad. 431.  
(3) A.I.R. 1960 J. & K. 35.

Kashmir Kaur  
 wife and Gogi,  
 daughter of  
 Manohar Singh  
*versus*  
 Manohar Singh

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 Grover, J.

In the present case the position is almost the converse of what it obtained in the Jammu & Kashmir case. Here, according to the respondent, the petitioner is proclaiming that she is his legally wedded wife and the child was born out of the wedlock. Apart from other breach of obligations this would also involve the respondent being put under a disability to marry another woman owing to the provisions contained in the Hindu Marriage Act. In *Shankarappa v. Basamma* (4), a learned Single Judge was of the view that a suit brought by a Hindu wife for an injunction perpetually restraining her Hindu husband from contracting a second marriage fell within section 9 of the Code of Civil Procedure and was entertainable by a Civil Court. It was also observed that the expression "obligation" occurring in section 54 of the old Specific Relief Act had wide import. In *Hyderabad Stock Exchange Ltd., v. Rangnath Rathi and Co.* (5), the meaning of the expression "obligation" was examined and it has been equated to tie or bond which constrains a person to do or suffer something. It implies a right in another person to which it is co-related and it restricts the freedom of the obligee with respect to definite acts and forbearances but in order that it may be enforced by a Court, it must be a legal obligation and not merely moral, social or religious. To my mind it is perfectly clear that the word "obligation" is of wide import and cannot be restricted merely to contracts or property which appear in section 38. If A is not married to B, then A is under a legal duty not to proclaim that he or she is married to B and when there is an infringement of that duty, it is certainly open to the other party to ask for an injunction to restrain the breach of that duty. I have, therefore, no hesitation in holding that the suit for perpetual injunction in the present case is certainly maintainable against the petitioner. Any observations made in this case shall not affect the right of the petitioner to satisfy the Court on any ground whatsoever that no injunction should be granted. It has, however, been pointed out by Mr. Partap Singh that the respondent has also sought a similar injunction against the infant daughter of the petitioner. It is admitted that she is only of tender age, namely, about 5 years old and it is not possible for any Court to grant any injunction against her

(4) A.I.R. 1964 Mys. 247.

(5) A.I.R. 1958 A.P. 43.

in terms of the prayer which has been made. Mr. Kashmir Kaur Bhagirath Dass says that the respondent shall ask for amendment of the plaint in this behalf and if he does so, the Court below will make the necessary orders on payment of adequate costs. With these observations the petition is dismissed. Costs will be costs in the cause.

wife and Gogi,  
daughter of  
Manohar Singh  
*versus*  
Manohar Singh

Grover, J.

There is, however, one matter which has come to my notice while reading the plaint in the present case. Paragraph 7 of this plaint runs as follows:—

“That dissatisfied with the orders of the Additional Sessions Judge, Amritsar, the parties went in cross revisions in the Hon'ble Punjab High Court, Chandigarh, but Mr. Justice R. P. Kholsa, rejected the revision petition of the plaintiff and accepted the revision petition filed by Defendant No. 1 on the consideration that strict proof of marriage could not be insisted upon in a petition under Section 488, Criminal Procedure Code and that the faulty, contradictory, unreliable and worthless evidence of the defendant was considered enough to warrant maintenance under Section 488, Criminal Procedure Code. With due respect, this order of the Hon'ble Judge was summary, arbitrary and ineffectual against the plaintiff *qua* his civil and legal rights. Under any circumstances it was not held that there has been any valid and legal marriage between the parties and thus plea of the plaintiff in this behalf was accepted.”

*Prima facie* this constitutes contempt of this Court both by the plaintiff, namely, the respondent and by the counsel who has signed the plaint. I, therefore, direct that notices should be issued for 22nd of November, 1965, against them requiring them to show cause why they should not be committed for contempt of this Court. Meanwhile the records should not be sent to the lower Court.

B.R.T.