

REVISIONAL CRIMINAL

Before J. S. Bedi, J.

BANSI LAL,—Petitioner.

versus

MST. PRITAM KAUR,—Respondents.

Criminal Revision No. 358 of 1963.

1963
Dec., 20th.

Code of Criminal Procedure (V of 1898)—S. 488—Application under—Marriage disputed—Magistrate—Whether can go into the factum as well as the legality of the marriage.

Held, that the proceedings under section 488 of the Code of Criminal Procedure are of a summary nature and before any relief can be given to a party, the first and foremost point to be considered is whether the parties have been married which obviously means a legal marriage. The magistrate can, therefore, in an application under section 488 of the Code, go into the matter whether a marriage has taken place between the parties and whether their marriage, if at all, is legal.

Case reported under Section 438 Criminal Procedure Code by Shri Brijindra Singh Sodhi, Additional Sessions Judge, Amritsar with his memo. No. 76/663-Cr. Ahlamd, dated 6th March, 1963, for revision of the order of Shri Amar Singh Grover, Magistrate, 1st Class, Amritsar, dated 30th July, 1962, granting maintenance at the rate of Rs. 25 and Rs. 10 to wife and daughter, respectively.

S. C. SIBBAL, ADVOCATE, for the Petitioner.

K. K. CUCCARIA AND H. L. SARIN, ADVOCATES, for the Respondent.

ORDER OF THE HIGH COURT

Bedi, J.

BEDI, J.—Pritam Kaur applied under section 488, Criminal Procedure Code, against Bansi

Lal for maintenance alleging that about 4 years back Bansī Lal was a Head Constable in the Punjab Armed Police and was posted in a P.A.P. picket in village Wan, when she was married to him. They both lived together thereafter as husband and wife and from that wedlock a daughter was born. Bansī Lal had taken a room in Amritsar from one Amrik Singh where she used to live and where Bansī Lal used to come during holidays and also on other occasions. It was also alleged that Bansī Lal then indulged in taking liquor and had cultivated illicit connections with other women, which Pritam Kaur resented. Bansī Lal, therefore, started beating and maltreating her. Amrik Singh, owner of that house, used to come to her rescue a number of times. The applicant thereafter went to her parents and started living there at village Wan. The respondent Bansī Lal was thereafter transferred to Jullundur and then to Gurdaspur where her brother Gurcharan Singh along with Sucha Singh, Achhar Singh and others went to him for reconciliation, but to no effect. Bansī Lal having refused to maintain her and even to take her back to his house, Pritam Kaur filed this application claiming Rs. 70 per mensem for herself and Rs. 30 per mensem for her minor daughter as maintenance. It was alleged that the salary of Bansī Lal was Rs. 130 per mensem and his income from the landed property was about 10,000 per annum.

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The application was resisted by Bansī Lal who denied his marriage with Pritam Kaur and asserted that he was already married to one Roshni Devi from whom he has a daughter aged about 8 years. The parties led evidence in support of

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their respective pleas. Shri Amar Singh, Magistrate 1st Class, Amritsar, after recording the evidence and hearing the parties came to the conclusion that the applicant was legally wedded to the respondent and that the latter had neglected and refused to maintain her and her daughter, allowed Rs. 25 for Pritam Kaur and Rs. 10 for her daughter Harjinder Kaur by way of maintenance,—*vide* his order, dated the 30th July, 1962. Against this order Bansi Lal went up in revision to the Court of Session, which came up before Shri Brijindra Singh, Additional Sessions Judge, Amritsar, who held that Bansi Lal was already married to Roshni Devi and his marriage with Pritam Kaur being void, she (Pritam Kaur) was not entitled to any maintenance. Regarding Harjinder Kaur, daughter of Pritam Kaur, he found that there was no proof that the child was born to Pritam Kaur from the loins of Bansi Lal. As a result of the above findings, he made a recommendation to this Court that the order of the learned Magistrate, dated the 30th July, 1963 be set aside.

The recommendation was opposed by Pritam Kaur, and her counsel while arguing the case submitted that in proceedings under section 488, Criminal Procedure Code, the Court has no jurisdiction to go into the question whether the marriage of the parties was legal or otherwise. He maintained that to determine such questions a separate Tribunal has been set up by virtue of the Hindu Marriage Act, 1955. In support of his contention he cited *Janak Dulari v. Narain Dass* (1), *Balwant Kunwar v. Addl. Munsiff* (2) and *Bikram Singh v. Sudarsan Singh* (3). It is true that applications under the Hindu Marriage Act are to be decided by

(1) I.L.R. 1959 Punj. 152 : A.I.R. 1959 Punj. 50

(2) A.I.R. 1959 All. 7

(3) A.I.R. 1961 All. 150

a particular Tribunal. But the provisions under section 488, Criminal Procedure Code, are of a summary nature and before any relief can be given to a party, the first and the foremost point to be considered is whether the parties have been married, which obviously means legal marriage. In the present case the learned Additional Sessions Judge has come to the conclusion that Bansi Lal was married to Roshni Devi a number of years before the alleged marriage of Pritam Kaur with him. According to the provisions of the Hindu Marriage Act it is obvious that the parties can enter into a marriage only if they are not already married. If any of the parties is already married, then the second marriage would be void. It would therefore be wrong to say that while dealing with applications under section 488, Criminal Procedure Code, the Magistrate can only go to the extent of finding whether a marriage has taken place between the parties or not, and that it is not within his domain to decide whether their marriage, if at all, is legal. I am supported in this view by a case reported as *Lakshmi Ambalam v. Andiammal* (4). This was a case under section 488, Criminal Procedure Code, in which Newsam J. held that only legally married women are entitled to maintenance.

There is, however, enough material on the record to show that Harjinder Kaur was born to Pritam Kaur through Bansi Lal and that she is a minor. Although she is not living with her father yet she is entitled to maintenance by virtue of the provisions of section 488, Criminal Procedure Code : See also in this connection *Abnash Chander v. Smt. Soshila Devi* (5). In my opinion, therefore, a maintenance allowance of Rs. 30 per

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(4) A.I.R. 1938 Mad. 66
(5) 1962 P.L.R. 161

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mensem for Harjinder Kaur would be sufficient. I order accordingly. The recommendation of the learned Additional Sessions Judge is, therefore, partly accepted.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAM SARAN AND OTHERS,—Appellants.

versus

HARBHAJAN SINGH AND OTHERS,—Respondents.

R.S.A. 56-D of 1963.

1963
—
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Delhi Rent Control Act (LIX of 1958)—S. 2(i)—Premises—Whether include vacant land on which tenant has put up temporary structures for his business.

Held, that in order to determine as to whether the property included in the tenancy is 'premises' or not, it is to be seen what was actually let by the landlord in a particular case. Was it a building or a part of a building or some vacant land? Where the landlord leases out only a vacant plot of land and the tenant raises some temporary constructions thereon for his own use, the vacant plot does not become 'premises' within the meaning of section 2(i) of the Delhi Rent Control Act and is not covered by the provisions of that Act. A suit by the landlord for ejection of the tenant under the ordinary law is competent in a civil Court.

Regular Second Appeal from the decree of the Court of Shri D. R. Dhameja, Additional District Judge, Delhi, dated the 1st day of December, 1962 affirming that of Shri T. R. Handa, Sub-Judge, 1st Class, Delhi, dated the 31st May, 1962, dismissing the Plaintiff's suit and leaving the parties to bear their own costs.

R. S. NARULA, ADVOCATE, for the Petitioners.

YOGESHWAR DAYAL, ADVOCATE, for the Respondents.