Before D. V. Sehgal and S. P. Goyal, JJ.

SURJIT SINGH,—*Appellant*

versus

MOHINDER PAL SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1932 *of* 1976

October 10, 1986.

Hindu Marriage Act (XXV of 1955) *as amended by Marriage Laws (Amendment) Act,* 1976—*Sections* 5(i) *and* 11—*Marriage solemnised in contravention of clause* (i) *of section* 5—*Validity of such void marriage—Whether can be questioned by an aggrieved third party in a civil suit.*

Held, that there can be no scope for doubt that a third party whose civil rights are affected by a marriage which is null and void under section 11 of the Hindu Marriage Act, 1955, can bring it into question in a Civil Court which undoubtedly has the jurisdiction to adjudicate upon the same can give its verdict. Hence it has to be held that the validity of a marriage solemnised after the enforcement of the Act and in contravention of clause (i) of section 5 thereof can be questioned by an aggrieved third party in a civil suit.

(Paras 3 and 4)

Baboo Ram and another *vs.* Mst. Karmi, 1983 Marriage Law Journal 314.

(Over-ruled).

Regular Second Appeals from the decree of the Court of the District Judge, Faridkot, dated the 13th day of September, 1976, *modifying that of the Sub Judge, 1st Class, Gidderbaha, dated the 30th day of April,* 1975 (*passing a decree in favour of the plaintiffs and against the defendant on payment of Rs.* 5,500, *for possession of land measuring* 119 *Kanals* 5 *Marlas covered by jamabandi* 1966-67, *copy Ex. P.* 8, *bearing khewat No.* 891, *khatoni No.* 1102, *Rectangle No.* 11, *Khasra No.* 2/(1-4), 3(8-0), 236/17/1 (2-2), 18/2 (2-18), 19/2 (2-18), 22(2-3), 23(7-3), 24(7-11), 25(2-15), 277/7/3(4-3) 8/2(6-18), 13(8-0), 14/1(4-16), 18(8-0), 23(8-0), 278/1(2-5), 20/1(7-12), 1550(0-4), *and leaving the parties to bear their own costs) to the extent that the suit of Jasmel Kaur is dismissed and the share of Mohinder Pal Singh in the land is held to be one-tenth and the share of Hardial*

Singh, Gurpal Singh, Jaspal Kaur and Harpal Kaur shall be one-half and ordering that the costs of the appeal shall be easy.

> *"Case referred by Hon'ble Mr. Justice Pritpal Singh to a Larger Bench for the decision of an important question of law involved in this case on May 20, 1985. The Division Bench consisting of the Hon'ble Mr. Justice S. P. GOYAL and Hon'ble Mr. Justice D. V. SEHGAL, after deciding the relevant question of law, again referred the case to the learned Single Judge on October 10, 1986. The learned Single Bench consisting the Hon'ble Mr. Justice D. V. SEHGAL, finally decided the case on January 23rd, 1987."*

Y. P. Gandhi, Advocate, *for the Appellant.*

N. S. Gujral, Advocate, *for the Respondent.*

JUDGMENT

D. V. Sehgal, J.

(1) In these two R.S.As. Nos. 1932 of 1976 and 41 of 1977 the learned Single Judge has referred the following question of law for our consideration:—

> "Whether validity of a marriage in contravention of clause (i) of section 5 of the Hindu Marriage Act, 1955 (hereinafter called 'the Act') performed after the enforcement of the Act can be questioned by an aggrieved third party in a civil suit?"

The facts which have led to the above reference have been set out in detail in the order of the learned Single Judge. All that be noted is that the learned First Appellate Court held that the marriage of Jasmail Kaur with Hari Singh, which allegedly took place after the coming into force of the Act, was void as his previous wife was alive. The learned counsel for Jasmail Kaur had contended before the learned Single Judge in the second appeal that the mere fact that the previous wife of Hari Singh was alive would not make her marriage with Hari Singh invalid because the decree of annulment of this marriage had not been passed under section 11 of the Act.

It was maintained that this marriage could be got annulled only on a petition presented either by Jasmail Kaur or Hari Singh and no third person was competent to challenge the validity of the marriage. In support of this contention, the learned counsel placed reliance on a Single Bench judgment of this Court in *Baboo Ram and another* v. *Mst. Karmi* (1). After setting out his reasons and placing reliance on a Division Bench judgment of the Allahabad High Court in *Smt. Ram Pyari* v. *Dharam Das and others* (2), the learned Single Judge observed that the law laid down in *Baboo Ram's case* (supra) that a third party is prohibited to question the validity of a void marriage even in a civil suit is open to doubt and needs a second look by a larger Bench. This is how the aforesaid question of law has come up for consideration before us.

(2) Clause (i) of section 5 of the Act lays down that a marriage may be solemnised between any two Hindus, if neither party has a spouse living at the time of the marriage. Section 11 lays down, *inter alia*, that any marriage solemnised after the commencement of the Act shall be null and void if it contravenes the conditions specified in clause (i) of section 5. The Act deals with void marriages and voidable marriages. Section 11 deals with cases where the marriages are null and void. Section 12, on the other hand, provides for a marriage which is voidable at the option of the either party thereto. The object of the latter provision is to lay down that until avoided a voidable marriage should be regarded as good for all purposes. The position of marriage which is void under section 11 is, however, different. It is void *ab initio* and can be questioned at any time. Any person who has got any interest in the matter can challenge a marriage by filing a regular civil suit for the declaration that the marriage is a nullity. Such a marriage is not a marriage at all in the eyes of law. Section 11 of the Act, after its amendment by the Marriage Laws (Amendment) Act, 1976, is to following effect:—

> "11. *Void marriages*—Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

(1) 1983 M.L.J. 314.
(2) A.I.R. 1984 All. 147.

Before this amendment, the words *"against the other party"* were not present in this section, and there was a controversy as to whether the petition seeking a decree of nullity of a marriage can only be filed during the lifetime of the spouse or even after his/her death. A learned Single Bench of this Court observed in *Smt. Krishni Devi* v. *Smt. Tulsan Devi* (3), that since declaration of a nullity of a marriage appears to be a declaration of a status of a person, there is no reason why the death of one of the spouses should put an end to the right of the other surviving spouse to seek for such a declaration. While proposing the above amendment in section 11 of the Act, the Law Commission summarised the position of law, including the jurisdiction of the civil Court to grant a decree of declaration that a marriage is a nullity as under:—

> "The Hindu Marriage Act is a piece of matrimonial law and decrees of nullity, contemplated by it, are decrees passed by matrimonial courts. It is fundamental that matrimonial courts have concern only with the marital rights of the parties to marriage (and incidentally with the rights of the children) but with nothing else. A petition for a decree of nullity in respect of a void or a voidable marriage can be made only by either the husband or the wife. It would not be appropriate to provide that a petition for the purpose can be made by a stranger to the marriage. A third party (for example, a person interested in the estate of either the husband or the wife) can certainly question the validity of their marriage in a civil suit and obtain a finding, or he may even bring a suit for a declaration that the marriage was void. But such a decree made by a civil court, will not be a decree of nullity, as contemplated by matrimonial law. There is also a serious practical risk in allowing the grant of decree of nullity after the death of either of the parties to the marriage, because the effect of it is to bastard and disinherit the issues who cannot so well defend the marriage as the parties both living themselves might have done. A void marriage can, no doubt be invalidated at the instance of other parties, but it is better not to incorporate the remedies of third parties into the Hindu

(3) A.I.R. 1972 Punjab and Haryana 305.

Marriage Act, and confuse matrimonial relief with declaratory relief."

(3) There can be no scope for doubt that a third party, whose civil rights are affected by a marriage which is null and void under section 11 of the Act, can bring it into question in a civil Court which undoubtedly has the jurisdiction to adjudicate upon the same and give its verdict. The case law having bearing on the point has been elaborately discussed in the case of *Smt. Ram Pyari* (supra) and we need not set out the same again. We are in full agreement with the view taken therein. We, therefore, hold that the Single Bench judgment of this Court in *Baboo Ram's case* (supra) does not lay down good law.

(4) We, therefore, answer the above question in the affirmative and hold that the validity of a marriage in contravention of clause (i) of section 5 of the Act performed after its enforcement can be questioned by aggrieved third party in a civil suit.

These appeals shall now go back to the learned Single Judge with the answer noted above for their disposal on merits.

R.N.R.

Before S. P. Goyal, J.

MURTI SHREE RAM CHANDER JI MAHARAJ, INSTALLED IN THAKARDWARA KALAN, TALAB NAURANG RAI,—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER,—*Respondent.*

Civil Revision No. 2806 of 1986

February 17, 1987.

Land Acquisition Act (I of 1894)—Sections 9, 18 and 30—Code of Civil Procedure (V of 1908)—Order 1, Rule 10—Right to receive compensation—Person not party to reference seeking leave to be