

PETITIONER:
JOLLY DAS

Vs.

RESPONDENT:
TAPAN RANJAN DAS

DATE OF JUDGMENT 04/05/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PUNCHHI, M.M.

CITATION:
1994 SCC (4) 363 JT 1994 (3) 529
1994 SCALE (2)832

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by
B.P. JEEVAN REDDY, J.- Leave granted.

2.The appellant instituted Matrimonial Suit (No. 51 of 1987 on the file of the Tenth Court of the Additional District Judge, Alipore) for declaring her marriage with the respondent a nullity on the ground that her consent in the marriage was obtained by fraud within the meaning of Section 25(iii) of the Special Marriage Act, 1954. Her case was accepted by the learned District Judge who declared the marriage void. On appeal, a Division Bench of the Calcutta High Court took the view that the appellant has failed to establish the fraud alleged by her. The respondent's appeal was accordingly allowed and the appellant's suit dismissed.

3.At the time of marriage, the appellant was 19 years' old. She was a student of B.A. Respondent is far older in age. According to the appellant, he was more than 40 years of age at the time of marriage though the respondent himself contends that he was only 32 years' old at that time. He was teaching music to the appellant's elder sister until she was married. He

From the Judgment and Order dated 15-3-1990 of the Calcutta High Court in O.D. No. 171 of 1989

364

was known to the appellant's family for over a decade. The appellant was taking music lessons at which the respondent was the Tabla-player. The school where the appellant took music lessons was being run at the residence of the respondent. The appellant's case is that the respondent fraudulently represented to her that if she accompanies him to Calcutta he will arrange for an audition by the Officials of All India Radio to enable her to participate in a music competition, which will ultimately pave way for her to become an artiste with All India Radio. Accordingly, she accompanied him to Calcutta. There he took her to a 'ghar' and took her signatures on certain blank forms. Since she

had implicit faith in the respondent, she signed the forms without noticing the contents thereof. Several months later, i.e., on 2-3-1987, the respondent told her for the first time that she must come and live with him since they were married at Calcutta. The appellant says, this revelation came as a shock to her and she immediately informed her parents. On inquiry and on verification, they found out the particulars of marriage from the office of the Marriage Officer at Calcutta, and then instituted present suit.

4. The respondent denied any fraud or fraudulent misrepresentation in obtaining the consent of the appellant for the marriage. According to him he knew the appellant and her family for the last several years; he was visiting their house quite often. He admitted that he gave music lessons to appellant's elder sister and also that he was acting as Tabla-player at the music lessons taken by the appellant in guitar. His case is that the appellant fell in love with him and it was at her instance that the marriage was registered at Calcutta. It is not, however, suggested by him that the parents of the appellant were opposed to the marriage nor could he give any particular reason why the marriage had to be registered at Calcutta and why none on the appellant's side participated or witnessed the said marriage. No reason is also assigned why the marriage was not consummated for a period of about 8 months after the marriage. He could not also produce a single photograph of both the parties together, let alone photographs of the marriage. He produced certain witnesses in proof of marriage. Since the registration of marriage is admitted we need not refer to their evidence at any length, the only question being whether her signatures on the relevant forms were obtained by the respondent by making fraudulent misrepresentation. On this aspect, their evidence does not inspire much confidence. They are all persons connected in one way or the other with the music school run in the house of the respondent. None of them could suggest one reason why none from the side of the appellant was present. The appellant comes from a respectable family. Her father is a practising doctor of good repute. According to the appellant, the respondent was unemployed. He of course says that he was working in a Metal and Steel Factory earning a salary of Rs 2000 per month. According to him, he is a Commerce graduate from the University of Calcutta and also holds a diploma in Music. He could not say why the marriage was not consummated for 8 months, and why did they not live together as husband

365

and wife for 8 months. If his story of love marriage is true, the above facts are un-understandable.

5. In the light of all the above facts, circumstances and probabilities, the learned District Judge was satisfied that a fraud was played by the respondent on the appellant in getting the said marriage registered and that, therefore, it is a fit case for declaring the marriage void under Section 25(iii) of the Special Marriage Act. The High Court on appeal was influenced more by the oral evidence led by the respondent and did not attach due importance to the glaring improbabilities in the respondent's case. We have already referred to these facts hereinabove. They are the non-consummation of marriage by the parties, the absence of any ceremony or function connected with the marriage, the fact that they never lived together as husband and wife for a period of 8 months and that no one on the side of the appellant had anything to do with the said marriage even

though there is no allegation that the parents or relatives of the appellant's were opposed to the marriage. The respondent was a grown-up person while the appellant was a young and inexperienced college student of 19 years. More importantly, he was in the position of a teacher to the appellant. It appears to us that the respondent may have taken advantage of the innocence, inexperience and tender age of the appellant and obtained her signatures on the Marriage Certificate and other forms by making fraudulent misrepresentation to her. In the circumstances, we are inclined to believe the appellant's case that her signatures were obtained on certain forms without fully apprising her of their contents. In short, it was a sham marriage. All the witnesses examined by the respondent are connected with the music school run in the respondent's house, in one or the other way. Their oral evidence does not inspire confidence in us. The circumstances mentioned above show that it was a marriage only in name. Except the marriage certificate issued by the Marriage Officer, there is no trace of the marriage. All this probabalises the version of the appellant and not that of the respondent.

6. For the above reasons the appeal is allowed, the judgment of the High Court is set aside and the order of the learned District Judge (trial court) is restored. The respondent shall pay the costs of this appeal to the appellant which are quantified at Rs 5000.

366