MANU/TR/0203/2014

Equivalent/Neutral Citation: 2014(5)GLT597, (2014)2TLR632

IN THE HIGH COURT OF TRIPURA AT AGARTALA

RSA No. 73 of 2005

Decided On: 03.06.2014

Bankim Chandra Dey **Vs.** Khuku Rani Dey and Ors.

Hon'ble Judges/Coram:
S.C. Das, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Mr. A. Lodh, Advocate

For Respondents/Defendant: Mr. S. Saha, Advocate

Case Note:
Family - Suit of declaration - Validity of - Present appeal filed against order whereby Appellant's suit for declaring that Defendants-Respondents was not his married wife and son, was decreed by Trial court but same was set aside by Appellate court - Whether Appellate court rightly set aside suit of declaration which was decreed in favour of Appellant - Held, Trial Court had arrived at wrong and perverse finding that Defendants failed to prove that there was marriage between Plaintiff and Defendant and, therefore, suit was decreed in favour of Plaintiff - Trial Court was not justified in holding that Plaintiff failed to prove actual form of marriage between him and Respondent to validate marriage as per Hindu Law - Appellate Court rightly held that Trial Court had failed to appreciate oral and documentary evidence adduced by Defendants and arrived at perverse finding - Trial Court failed to appreciate evidence on record and arrived at wrong and perverse finding in favour of Plaintiff - Appellate court rightly set aside suit which was decreed in favour of Appellant - Appeal dismissed. [para 12]

JUDGMENT

S.C. Das, J.

1. This second appeal under Section 100 of CPC is directed against the judgment and decree, dated 30.09.2005 passed by learned Additional District Judge, Court No. 4, West Tripura, Agartala, in Title Appeal No. 24 of 2001, whereunder the judgment and decree dated 02.05.2001 passed by learned Civil Judge, Junior Division, Court No. 1, West Tripura, Agartala in Title Suit No. 4 of 1999 was reversed.

2. By order passed on 14.12.2005, the second appeal has been admitted on the following substantial questions of law:

> 1) Whether the findings of the learned appellate court on the maintainability of the suit under Section 34 of the Specific Relief Act is correct when the findings of the trial court that it was maintainable had been confirmed by this Court in a revision petition?

2) Whether the findings of the appellate court reversing the findings of the trial court are perverse?

3. Heard learned counsel, Mr. A. Lodh for the appellant and learned counsel, Mr. S. Saha for respondents.

4. The appellant as plaintiff (hereinafter mentioned as plaintiff) instituted Title Suit No. 4 of 1999 in the Court of Civil Judge, Junior Division, Sadar, Agartala praying for a decree declaring that the defendant-respondent No. 1 is not his married wife and that the defendant-respondent No. 2 is not his son through defendant-respondent No. 1.

4.1. The plaintiff inter alia contended that he married Smt. Renu Bala Roy (Dey) in the month of May, 1972 (29.05.1972) as per Hindu rites and since marriage he has been living with Renu Bala as his only legally married wife. His wife Renu Bala had been working as a nurse under the Directorate of Health Services, Government of Tripura and since she used to reside in the quarters near the hospital the plaintiff also used to reside with her in the Government quarter.

To his utter surprise, in the year 1992 he received a notice in connection with Misc. Case No. 64 of 1992 from the Court of Chief Judicial Magistrate, West Tripura, Agartala and found that the defendant-respondents (hereinafter mentioned as defendants) instituted a case against him under Section 125 of Cr.P.C. seeking maintenance claiming that the defendant No. 1 is the wife and defendant No. 2 is the son and that the marriage between the plaintiff and defendant No. 1 solemnized on 24.01.1982, corresponding to 11th Magh of the Bengali Calendar year in the house of Atal Behari Modak, the father of defendant No. 1 as per Hindu rites and further alleging that the plaintiff lived and cohabited with defendant No. 1 till 02.03.1987 at ONGC main gate area and during that time of living together defendant No. 2 was born.

The plaintiff contested the maintenance case by filing written objection inter alia stating that he never married defendant No. 1 and there had been no relation at all between him and defendant No. 1 and that he never lived and cohabited with defendant No. 1 and so there was no question of birth of defendant No. 2 because of his cohabitation with defendant No. 1.

Evidence was adduced by both side in the maintenance case and learned Judicial Magistrate (1st Class) by judgment dated 21.12.1993 granted maintenance to the defendant No. 1 @' 400/-(rupees four hundred) and to defendant No. 2 @' 200/-(rupees two hundred) per month and thereby allowed the petition of maintenance filed by the defendants.

Having felt aggrieved he filed criminal revision case No. 9(1) of 1995 in the Court of Sessions Judge and the learned Sessions Judge by judgment dated 20.05.1995 dismissed the revisional application and upheld the judgment and order passed by the learned Magistrate. Aggrieved, he filed second criminal revision No. 28 of 1995 in the High Court and the High Court by judgment dated 11.11.1998 dismissed the second revision.

Thereafter, the plaintiff filed the suit seeking declaration that the defendant No. 1 is not his married wife and that no marriage was solemnized between him and the defendant No. 1 on the date and time as alleged by the defendants and that defendant No. 2 is not his son through defendant No. 1.

4.2. The defendants by filing written statement contested the suit inter alia stating that

the suit is not maintainable and is barred by limitation in view of the provision of Article 58 of the Schedule to the Limitation Act, 1963 and that the suit is also barred by the principles of estoppels, waiver and acquiescence. It is also stated by the defendants that the plaintiff never married Renu Bala Dey in the year 1992 and that the said statement made by the plaintiff is false and the plaintiff made that statement with a view to escape from payment of maintenance to the defendants. It is also contended by the defendants that the plaintiff married defendant No. 1 on 24.01.1982 observing Hindu rites and customs in the parental home of defendant No. 1 and thereafter the plaintiff and defendant No. 1 lived and cohabited as husband and wife at Badharghat in the house of the plaintiff near ONGC main gate and because of the cohabitation between the plaintiff and defendant No. 1, defendant No. 2 was born. The plaintiff and the defendants lived together till 02.03.1987 and thereafter the plaintiff left the defendants and started living at Anandanagar with Renu Bala Dey and thereafter severed the relationship with the defendants. It is admitted by the defendants that they instituted the maintenance case and the court allowed them maintenance upholding their status as wife and child of the plaintiff and they are getting the maintenance. The defendants, therefore, prayed for dismissal of the suit.

5. Considering the pleadings of the parties, the trial Court at first initiated two issues, namely-

1. Whether the suit is barred by limitation?

2. Whether the prayer of the plaintiff is covered under the Specific Relief Act.

By order dated 29.07.1999, the trial Court decided both the issues in favour of the plaintiff. Thereafter, the trial Court framed three additional issues, namely--

1. Whether the defendant N-1 is the legally married wife of the plaintiff?

2. Whether the defendant No. 2 is the legitimate or illegitimate son of the plaintiff?

3. Whether the plaintiff is entitled to get any other relief as sought for?

5.1. In course of trial, the plaintiff examined himself as PW1 and also examined two more witnesses, namely--PW2, Smt. Renu Bala Dey (wife of the plaintiff) and PW3, Nripendra Ch. Deb and PW4, Mati Lal Deb, both relatives of the plaintiff through PW2 and the plaintiff also proved the following documents in support of his case-

Exbt. 1-the Pass Book of Post Office.

Exbt. 2.-is the electoral card issued in the year 1983.

Exbt. 3.-Electoral card issued in the year, 1989.

Exbt. 4-is the medical record book of the plaintiff.

Exbt. 5-is the prayer of Renu Bala Dey addressed to the director of health service.

Defendant No. 1 examined herself as DW1 and also examined four more witnesses, namely--DW2, Shyamal Chakraborty (son of the priest, who performed the marriage between the plaintiff and defendant No. 1), DW3, Shanti Rani Modok (mother of defendant No. 1), DW4, Kalpana Shil and DW5, Kiran Debnath, both residents of the

locality who attended the marriage. In support of their case, the defendants also relied on the following documents-

Exbt. A. is the copy of judgment delivered on 21/12/93 by the Ld. Judicial Magistrate, First Class, West Tripura, Agartala in c/w case No. Misc. 64 of 92.

Exbt. B.-is the certified copy of the sale deed No. 1-1543.

Exbt. C.-is the voter list of 1993.

Exbt. D-is the electoral card, issued in the year 1993.

Exbt. E-is the school certificate, issued by the Head Master, South Badharghat S.B. School.

Exbt.-F. is the ration card No. 777 issued on 30/4/99.

5.2. The trial Court, considering the evidence and materials on record, decided the additional issues in favour of the plaintiff and, accordingly decreed the suit.

5.3. Aggrieved, the defendants preferred Title Appeal No. 24 of 2001 in the Court of District Judge and the learned Additional District Judge by judgment dated 30.09.2005 allowed the appeal, set aside the judgment and decree passed by the trial Court and consequently dismissed the suit. Hence, this second appeal.

6. In course of his argument on substantial question of law No. 1 learned counsel, Mr. Lodh has submitted that the trial Court decided preliminary issue Nos. 1 and 2 on 29.07.1999 in favour of the plaintiff and the defendants challenged that order by filing CRP No. 55 of 1999 in the Agartala Bench of the then Gauhati High Court and by order dated 03.03.2000 that revisional application was dismissed and thereby the decision on the preliminary issues was affirmed and consequently it was made absolute. The appellate Court committed a serious wrong in deciding the issue of maintainability again in the appeal and thereby reopened the issue already decided which operates as res judicata. In support of his contention he has relied on the decision of the Apex Court in the case of Satyadhyan Ghosal v. Deorajin Debi reported in MANU/SC/0295/1960 : AIR 1960 SC 941 (para 8) and also relied on the decision of the Apex Court in the case of Prahlad Singh v. Col. Sukhdev Singh reported in MANU/SC/0797/1987 : AIR 1987 SC 1145.

7. Learned counsel Mr. Saha, countering the submission of learned counsel, Mr. Lodh has submitted that CRP No. 55 of 1999 was not decided on merit by the High Court. It was simply dismissed for default in one line by order dated 3.3.2000. Even if it was decided on merit, the defendants cannot be barred in challenging that decision in the appellate forum when the suit was finally decided in favour of the plaintiff. While the judgment and decree was challenged before the appellate forum it may be challenged on every issues decided by the inferior court and there is no bar in doing so.

8. It is a fact that preliminary issue Nos. 1 and 2 were decided by the trial court by order dated 29.07.1999 in favour of the plaintiff. It is also an admitted position that the defendants preferred CRP No. 55 of 1999 against order dated 29.07.1999 and that revision petition was dismissed for default by order dated 03.03.2000. The said order passed by the High Court reads as follows:

3-3-2000

None appears for the petitioner. Mr. A.M. Lodh appears for Respdt.

The revision petition is struck off for default.

8.1. It is, therefore evident that the revision petition was not decided on merit by the High Court and it cannot be said that order dated 29.07.1999, challenged in the High Court by the defendants was decided on merit and the defendants, therefore cannot raise their voice against those two issues.

8.2. The suit was not finally decided on the basis of the decision of the trial Court by order dated 29.07.1999. But the decision taken by the trial Court in respect of those two preliminary issues by order dated 29.07.1999, merged with the judgment and decree dated 02.05.2001 passed by the trial Court. So while the judgment and decree finally passed by the trial Court was challenged in the appellate forum, as per law, the defendants were entitled to take all material points including the point of maintainability and there is no legal impediment in doing so.

8.3. The decision of the Apex Court in the case of Satyadhyan Ghosal (supra) is altogether on a different context. In that reported case the Apex Court rather held that the appellate court can take into consideration the matter to investigate in an appeal from the final decision of the grievances of the party in respect of an interlocutory order. Learned counsel, Mr. Lodh referred para 8 of the decision which reads as follows:

> **8.** The principle of res judicata applies also as between two stages in the same litigation to this extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?"
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> "9. Dealing with this question almost a century ago the Privy Council in Maharaja Moheshur Singh v. Bengal Government, 7 Moo Ind App 283, held that it is open to the appellate court which had not earlier considered the matter to investigate in an appeal from the final decision grievances of a party in respect of an interlocutory order. That case referred to the question of assessment of revenue on lands. On December 6, 1841, judgment was pronounced by the Special Commissioner to the effect that 3,513 beghas of land alone were assessable, and that the collections made by the Government on the other lands should be restored to the possessors. This judgment was affirmed by another Special Commissioner on March 8, 1842. On September 21, 1847, a petition for review on behalf of the Government of Bengal was presented to another Special Commissioner. That petition for review was granted. After due hearing the judgment of March 8, 1842, was reversed. The question arose before the Privy Council whether the review had been granted in conformity with the Regulations existing at that time with respect to the granting a review. It was urged however on behalf of the Government of Bengal that it was then too late to impugn the regularity of the proceeding to grant the review and that if the appellant deemed himself aggrieved by it, he ought to have appealed at the time, and that it was too late to do so after a decision had been pronounced against him.

We may also gainfully refer here paras 9 and 10 of the judgment which reads thus-

9 . Dealing with this question almost a century ago the Privy Council in Maharaja Moheshur Singh v. Bengal Government, 7 Moo Ind App 283, held that it is open to the appellate court which had not earlier considered the matter to investigate in an appeal from the final decision grievances of a party in respect of an interlocutory order. That case referred to the question of assessment of revenue on lands. On December 6, 1841, judgment was pronounced by the Special Commissioner to the effect that 3,513 beghas of land alone were assessable, and that the collections made by the Government on the other lands should be restored to the possessors. This judgment was affirmed by another Special Commissioner on March 8, 1842. On September 21, 1847, a petition for review on behalf of the Government of Bengal was presented to another Special Commissioner. That petition for review was granted. After due hearing the judgment of March 8, 1842, was reversed. The question arose before the Privy Council whether the review had been granted in conformity with the Regulations existing at that time with respect to the granting a review. It was urged however on behalf of the Government of Bengal that it was then too late to impugn the regularity of the proceeding to grant the review and that if the appellant deemed himself aggrieved by it, he ought to have appealed at the time, and that it was too late to do so after a decision had been pronounced against him.

10. Dealing with this objection the Privy Council observed:

> We are of opinion that this objection cannot be sustained. We are not aware of any law or regulation prevailing in India which renders it imperative upon the suitor to appeal from every interlocutory order by which be may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting forever the benefit of the consideration of the appellate court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive that anything would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar calamities, We believe there have been very many cases before this Tribunal in which their Lordships have deemed it to be their duty to correct erroneous interlocutory orders, though not brought under their consideration until the whole cause had been decided, and brought hither by appeal for adjudication.

8.4. In the case of Prahlad Singh (supra) the Supreme Court simply reiterated its earlier decision in the case of Satyadhyan Ghosal (supra).

8.5. It is abundantly clear from the law laid down by the Apex Court that a decision given by a court at an earlier stage of a case is binding at a later stage though interlocutory judgments are open for adjudication by an appellate authority in an appeal against the final judgment.

8.6. In the case at hand, the defendants challenged maintainability of the suit and so two preliminary issues were framed and those preliminary issues were decided in favour of the plaintiff. By the decisions of those two preliminary issues the suit was not finally decided and the final decision was arrived after recording evidence of both sides by the impugned judgment and decree. So the aggrieved defendants had the liberty to

challenge the judgment and decree on all issues decided by the trial Court irrespective of a decision on preliminary issues. I find no merit in the submission made by learned counsel, Mr. Lodh on this point. It is held that it was open to the defendants to challenge the decision of the trial Court on all issues in the regular appeal filed before the first appellate Court against the judgment and decree passed by the trial Court.

9. While challenging the judgment and decree passed by the appellate Court learned counsel, Mr. Lodh for the plaintiff-appellant has first contended that the plaintiff instituted the suit for declaration of a status that the defendant No. 1 is not his legally married wife and defendant No. 2 is not his son. It is the case of the plaintiff that he married Renu Bala Dey in the year 1972 and he has proved the fact that Renu Bala Dey is his legally married wife and they lived and cohabited as husband and wife. It is also the case of the plaintiff that he knew nothing about the defendant No. 1 and surprisingly he came to know the fact on receipt of the notice from the Court of Chief Judicial Magistrate in connection with the maintenance case that defendant No. 1 claimed to be the wife of the plaintiff and defendant No. 2 claimed to be the son of the plaintiff through defendant No. 1. Since the plaintiff has proved his case that Renu Bala is his legally married wife, burden lies on the defendants to prove that the plaintiff married defendant No. 1 on 24.01.1982. The trial Court, therefore, rightly held that the defendants failed to prove the fact claimed by the defendants that plaintiff married defendant No. 1 on 24.01.1982. It is also submitted by Mr. Lodh that the appellate Court while re-appreciating the evidence on record arrived at a wrong and perverse finding since the appellate Court failed to draw proper presumption.

10. Countering the submission of learned counsel, Mr. Lodh learned counsel, Mr. Saha argued that the defendants denied the marriage between the plaintiff and Renu Bala and the plaintiff failed to prove solemnization of a Hindu marriage between him and Renu Bala. The trial Court also arrived at a conclusion that the plaintiff failed to adduce evidence regarding form of marriage performed in the marriage between him and Renu Bala to draw a presumption on the basis of the evidence of the plaintiff that there was a Hindu marriage between the plaintiff and Renu Bala. It is also submitted by Mr. Saha, learned counsel that the trial Court was seriously in error in shifting the burden on the defendants to prove the marriage between the plaintiff and defendant No. 1 and the trial Court failed to appreciate both oral and documentary evidence of the defendants and arrived at a wrong finding, whereas, the evidence has been properly appreciated by the appellate Court. It is also submitted by Mr. Saha, learned counsel that the defendants from the year 1982 till today continuously residing in the house of the plaintiff at Badharghat near ONGC main gate and that is an admitted fact which the defendants proved by adducing Exbt. B, the purchased deed of homestead land and it is admitted by the plaintiff that the defendants are residing in that house which draws a presumption that the plaintiff married defendant No. 1 observing all Hindu rites and lived and cohabited till 02.03.1987.

11. The plaintiff instituted the suit seeking declaration under Section 34 of the Specific Relief Act. The plaintiff sought the Court to pass a decree that defendant No. 1 is not his wife and defendant No. 2 is not his son. Burden of proof is on the plaintiff to prove his case and that burden cannot be shifted on the shoulder of the defendants. Section 101 and 102 of the Evidence Act prescribes:-

> **101.** Burden of proof.--Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.--The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

12. The trial Court, as I find, has arrived at a wrong and perverse finding that the defendants failed to prove that there was a marriage between the plaintiff and defendant No. 1 on 24.01.1982 and, therefore, the suit was decreed in favour of the plaintiff. Trial Court, though arrived at a finding that the plaintiff failed to prove the actual form of marriage between him and Renu Bala to validate the marriage as per Hindu Law, but has held that there was a marriage and therefore drawn a presumption under Section 114 of the Evidence Act. This presumption drawn by the trial Court is absolutely wrong and contrary to law. If such a presumption can be drawn in favour of the plaintiff, similar presumption may be drawn in favour of defendant also. The appellate Court while appreciating the evidence on record has held that the trial Court has failed to appreciate oral and documentary evidence adduced by the defendants and arrived at a perverse finding. I find justification in the observation made by the appellate Court on the issue.

13. Plaintiff (PW1) and his wife (PW2) stated that their marriage was solemnized on 29.05.1972 and thereafter they lived and cohabited as husband and wife. PWs 3 and 4 who are relatives of the plaintiff through PW2 Renu Bala stated that they attended the marriage of plaintiff and Renu Bala.

14. Defendant No. 1 as DW1 stated that her marriage was solemnized with the plaintiff on 24.01.1982 in her parental home at Jirania and that the marriage was performed by one Kalipada Chakraborty, priest, according to Hindu rites and customs. The said Kalipada Chakraborty died in the meantime and she examined the son of Kalipada Chakraborty (Shyamal Chakraborty, PW2) who has stated that he heard from his father that his father performed marriage between the plaintiff and defendant No. 1. She also examined her mother (DW3) and two other witnesses of the village, who attended the marriage.

15. Since the burden lies on the plaintiff to prove his case to have a decree as claimed, he was supposed to prove by adducing evidence that there was no marriage between the plaintiff and defendant No. 1 and that he never lived and cohabited with defendant No. 1. In his cross-examination, the plaintiff admitted that he has a house at Badharghat near ONGC complex and that the defendants are residing in that house. In the cross-examination of defendant No. 1 it was suggested on behalf of the plaintiff that one Phani Bhusan Saha inducted the defendant No. 1 in the house of the plaintiff at Badharghat. Exhibit-B is the purchased deed of the house of the plaintiff at Badharghat where the defendants have been residing. The plaintiff is not residing in that house. No evidence adduced by the plaintiff to show as to how the defendants entered in that house if there was no relation between him and defendant No. 1. The plaintiff in support of his contention proved a recurring deposit pass book and an electoral card which shows defendant No. 1 as the wife of the plaintiff. Similarly, the defendant also produced electoral card, ration card and school certificate in the name of defendant No. 2 which shows that the plaintiff is the husband of defendant No. 1 and as the father of defendant No. 2. So, the documentary evidence adduced by the defendants rather strengthened the case of the defendants that the plaintiff married defendant No. 1 and lived with her in his house at Badharghat near ONGC gate and due to his cohabitation

with the defendant No. 1, the defendant No. 2 was born. The trial Court as it appears totally failed to appreciate the evidence on record and arrived at a wrong and perverse finding in favour of the plaintiff.

Initial burden which is on the plaintiff to prove his case can never be shifted on the shoulder of the defendants. Even if the suit was decided ex parte, the plaintiff was bound to prove his case to get a decree of declaration as sought. The plaintiff was supposed to prove his marriage with Renu Bala as claimed by him and also was supposed to prove that there was no marriage between him and defendant No. 1 and at least he would have examined the people from the neighbourhood of his house at Badharghat that he never lived with defendant No. 1 as husband and wife.

16. Learned counsel, Mr. Lodh has further argued that since the plaintiff married Renu Bala Dey in the year 1972 he cannot have a second marriage and the claim of defendant No. 1 is therefore null and void.

It is true that a Hindu marriage cannot solemnize between the two Hindus while a spouse either of them is living at the time of solemnization of marriage. The plaintiff claimed that he married Renu Bala in the year 1972 and she is the only legally married wife. The defendants specifically denied the fact alleged by the plaintiff. It was, therefore, the bounded duty of the plaintiff to prove that there was a Hindu marriage solemnized between him and Renu Bala on 29.05.1972. Neither the plaintiff nor Renu Bala stated as to what was the form of marriage performed between them, who was the priest of marriage and whether any marriage ceremony as per Hindu rites was solemnized. Under such circumstances, the trial Court wrongly arrived at a conclusion that the plaintiff proved his case. The appellate Court correctly considered the evidence on record and arrived at an appropriate and proper finding that the plaintiff has failed to prove his case and, therefore, was not entitled to get a decree.

17. Learned counsel, Mr. Saha appearing for the defendant-respondents referring to order dated 28.03.2005 passed by learned Additional District Judge in connection with Title Appeal No. 24 of 2001 has submitted that defendant No. 1 before the appellate Court made a humble prayer to have a DNA test to ascertain the paternity of defendant No. 2 as to whether the plaintiff is the biological father of the defendant No. 2 or not. It is submitted that the plaintiff refused to undergo the DNA test and he took a plea that the DNA test prayer has been made to delay the decision of the appeal. It is an admitted position that the plaintiff refused to have a DNA test. Presumption obviously goes against the plaintiff that had there was a DNA test the report would go against him.

18. The defendants instituted criminal Misc. case No. 64 of 1992 under Section 125 of Cr.P.C. in the Court of Chief Judicial Magistrate claiming maintenance against the plaintiff. It was decided in favour of the defendants allowing maintenance, admittedly, by judgment dated 21.12.1993 passed by learned Magistrate, First Class. That order was challenged in the Court of Sessions and the order was upheld. It was again challenged before the High Court but it was upheld. The decision of the criminal Court is not binding on the civil Court since the civil Court decides an issue of a civil nature. But the presumption goes to favour the defendants for the reason that maintenance would not have been granted has there been no proof of the status of wife and legitimate or illegitimate son.

19. Learned counsel, Mr. Saha strenuously argued that the defendants specifically raised the plea of limitation under Article 58 of the Schedule to the Limitation Act. It is argued that the plaintiff would file the civil suit claiming the relief immediately after he

received the notice of the maintenance case in the year 1992. He has filed the suit in the year 1999 when he lost in the maintenance case up to the High Court. Article 58 of the Limitation Act prescribes that for a declaration limitation is three years when the right to sue first accrues. The right to sue for the plaintiff was first accrued when he received the notice of the maintenance case in the year 1992 and thereafter he did not institute the case within three years and so the suit is barred by limitation. In support of his contention he has referred the decision of the apex Court in the case of Khatri Hotels Private Limited v. Union of India reported in MANU/SC/1054/2011 : AIR 2011 SC 3590 (para 27) and also referred the decision of the apex Court in the case of Board of Trustees of Port of Kandla v. Hargovind Jasraj & Anr., in Civil Appeal No. 153 of 2013 arising out of SLP(C) No. 9196 of 2008, decided on 09.01.2013.

Learned counsel, Mr. Lodh for the plaintiff has submitted that the cause of action was continuous from the date of receipt of notice till the maintenance matter was decided by the High Court and so the suit cannot be held to be barred by limitation.

20. It is an admitted position that the defendants instituted the maintenance case under Section 125 of Cr.P.C. in the year 1992 and the plaintiff received the notice from the Court of Chief Judicial Magistrate and contested the case. The plaintiff did not immediately approach the civil Court seeking declaration. The maintenance case was decided on 21.12.1993. The revision filed against the maintenance case was decided on 20.05.1997. Second revision filed in the High Court was decided on 11.11.1998. The plaintiff, however, did not go further against the maintenance case and thereafter decided to approach the civil Court. So the cause of action first arose in the year 1992 when the plaintiff first received the notice of the maintenance case wherein the defendants claimed their status as wife and son of the plaintiff. Article 58 clearly prescribes that the limitation shall run from the date when the right to sue first accrues. Therefore, the right to sue for the plaintiff started definitely from the year 1992.

21. In the case of Khatri Hotels Private Limited (supra) the Supreme Court in para 27 of the judgment has held--

> 27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

22. In the case of Board of Trustees of Port of Kandla (supra) the Supreme Court relying on Khatri Hotels Private Limited (supra), further held in paras 17 to 19 of the judgment as follows-

> **17.** The next question then is whether the suit for declaration to the effect that the termination of the lease was invalid and that the lease continued to subsist could be filed more than 17 years after the termination had taken place. A suit for declaration not covered by Article 57 of the Schedule to the Limitation Act, 1963 must be filed within 3 years from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

"Description of suit	Period of limitation	Time from which period beings to run
58. To obtain any other declaration	Three years	When the right to sue first accrues."

18. The expression right to sue has not been defined. But the same has on numerous occasions fallen for interpretation before the Courts. In State of Punjab & Ors. v. Gurdev Sing MANU/SC/0612/1991 : (1991) 4 SCC 1, the expression was explained as under:

> ... The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

19. Similarly in Daya Singh & Anr. v. Gurdev Singh (dead) by LRs. & Ors. MANU/SC/0012/2010 : (2010) 2 SCC 194 the position was re-stated as follows:

> **13.** Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.
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> **14.** In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal treat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council reported in MANU/PR/0054/1930 : AIR 1930 PC 270 Bolo v. Koklan. In this decision their Lordships of the Privy Council observed as follows:
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> > ... There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.
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> **15.** A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa MANU/SC/0359/1961 : AIR 1961 SC 808 in which this Court observed: (AIR p. 810, para 7)

> ..The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.
>
> In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to a cause of action.
>
> **...** Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants. ....

23. In view of the facts of the present case, the law laid down by the Apex Court in the above referred cases may fairly be applied and I have no hesitation to arrive at a conclusion that the suit filed by the plaintiff was barred by limitation.

24. For the discussions made above, I find no merit in the appeal and accordingly the appeal stands dismissed with costs.

25. Send back the LCRs along with a copy of the judgment.