Gujarat High Court
Ambaben vs Heirs on 4 July, 2011
Author: Harsha Devani,

SA/91/1990 23/ 23 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND
APPEAL No. 91 of 1990

For
Approval and Signature:

HONOURABLE
MS. JUSTICE H.N.DEVANI

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1

Whether
Reporters of Local Papers may be allowed to see the judgment ?

2

To
be referred to the Reporter or not ?

3

Whether their Lordships wish to see the fair copy of the judgment ?

4

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether it is to be circulated to the civil judge ?

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AMBABEN
WD/O. RANCHHODDAS GOPALDAS PATEL - Appellant(s)

Versus

HEIRS
OF DECD. RAIBEN WD/O. RANCHHODDAS GOPALDAS PATEL - Defendant(s)

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Appearance :
MR
AN PATEL for
Appellant(s) : 1,
MR NITIN M AMIN for Defendant(s) :
1,
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CORAM
:

HONOURABLE
MS. JUSTICE H.N.DEVANI

Date
: 15/10/2010

ORAL
JUDGMENT

1. While admitting this second appeal, the Court had formulated the following substantial question of law for determination and consideration:

"Whether the defendant had a right of maintenance on the land in dispute?"

2. The facts giving rise to the appeal are that the appellant - original plaintiff (hereinafter for the sake of convenience referred to as the plaintiff), who claimed to be the wife of deceased Ranchhodbhai Gopalbhai Patel instituted a suit being Regular Civil Suit No.257 of 1983 in the Court of the learned Civil Judge (S.D.), Gandhinagar seeking permanent injunction against the respondent-original defendant (hereinafter referred to as the defendant) from in any manner transferring the lands bearing Survey No.741/1 of Mouje Randheja admeasuring 0 acre 26 gunthas as well as land bearing Survey No.1373 of Mouje Pethapur admeasuring acre 1 gunthas 26 as well as the property No.6/131 described as the building situated in Ramji Mandir, Madhwala Vas. It was the case of the plaintiff before the Trial Court that she was the legally wedded wife of deceased Ranchhoddas Gopaldas Patel (hereinafter referred to as Ranchhoddas). Ranchhoddas had initially married the defendant Raiben but as they had no issue, Ranchhoddas had divorced Raiben and had married the plaintiff. Upon the demise of Ranchhoddas, she was his sole legal heir and as such, all his properties devolved on her under the Hindu Succession Act, 1956. According to the plaintiff, the defendant had been given a limited right of maintenance from the properties in question and had no right to transfer the same.

3. Before the Trial Court, on behalf of the plaintiff, four witnesses had been examined and on behalf of the defendant, two witnesses had been examined. By way of documentary evidence, two documents, one being the document evidencing contract of marriage between the plaintiff and Ranchhoddas and the other being a deed evidencing a compromise between the plaintiff and the defendant whereby the possession of the properties in dispute was given to the defendant by way of maintenance throughout her life time.

4. The suit came to be decreed in favour of the plaintiff. The Trial Court held that there was a divorce between the defendant and Ranchhoddas and that the appellant was the lawfully wedded wife of Ranchhoddas and as such, the right of the defendant in the property was limited to maintenance and as such, she had no right to transfer the properties in question.

5. Being aggrieved, the defendant preferred appeal before the learned Joint District Judge, Ahmedabad (Rural) at Ahmedabad who, vide judgment and order dated 22nd December, 1988, allowed the appeal, set aside the judgment and decree passed by the learned Civil Judge (J.D.),

Gandhinagar and dismissed the suit with costs throughout. Being aggrieved, the plaintiff has preferred the present second appeal raising various questions of law as detailed in the memo of appeal. The Court, at the time of admission, has framed the question as noted hereinabove.

6. Mr.

A.N. Patel, learned advocate for the appellant/plaintiff has taken the Court through the entire evidence and has referred to the evidence of each of the witnesses in detail. The learned advocate has also referred to the documents mark 3/1 which is the document evidencing the contract marriage between the plaintiff and Ranchhoddas and 3/2 which is the compromise deed referred to hereinabove. Referring to the evidence of the plaintiff's witnesses, it was pointed out that the witnesses of the plaintiff as well as the defendant had led evidence to the effect that the appellant was residing with deceased Ranchhoddas for over a period of 25 years. Witness Somabhai Magandas had stated that the marriage between the plaintiff and Ranchhoddas had taken place by way of contract and that he was present at the relevant time. The said witness had also stated that prior to the marriage with the plaintiff, the first wife of Ranchhoddas was alive but, she had been divorced. The deposition of plaintiff's witness No.3 - Keshavlal Shivram was referred to for the purpose of pointing out that the said witness had proved the document mark 3/2 and had deposed that under the said document, Raiben had been given the property in question for maintenance during her life time. The evidence of plaintiff's witness No.4-Parsottamdas Ramdas Patel was also referred to in support of the contention that at the time when the compromise had taken place, the properties in question had been given to Raiben only by way of maintenance during her life time. Referring to the evidence of the defendant Raiben, it was emphatically argued that she had admitted that the marriage of the plaintiff with Ranchhoddas had taken place after her divorce. It was submitted that when the defendant had herself admitted that there was a divorce between the defendant and Ranchhoddas, there was no necessity for the plaintiff to prove the fact of divorce. It was, accordingly, submitted that the appellate court had erred in holding that no divorce had taken place between the defendant and Ranchhoddas and that the plaintiff was not the legally wedded wife of deceased Ranchhoddas.

7. It was submitted that in the community to which the plaintiff and the defendant belong, customary divorce is prevalent. Also under the customs of the said community apart from the marriage ceremony which includes the saptapadi as contemplated under sub-section (2) of section 7 of Hindu Marriage Act, 1955, customary marriages commonly known as "Natra" were also prevalent and were recognised as legal marriages, though the said marriage ceremony did not include the saptapadi. It was argued that whereby it was not necessary that for a Hindu marriage to be valid the rites and ceremonies should include the saptapadi as provided under sub-section (2) of section 7 of the said Act inasmuch as sub-section (1) of section 7 provides that a Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.

8. Next, it was submitted that assuming that there is no evidence with regard to any marriage ceremony having taken place in respect of the marriage between the plaintiff and Ranchhoddas, the factum of long cohabitation for a period of 25 years was sufficient proof to establish the factum of marriage and as such, the appellate court was not justified in holding that the plaintiff was not the

legally wedded wife of Ranchhoddas. In support of his submissions, the learned advocate placed reliance upon the following decisions:

8.1 The decision of the Supreme Court in the case of Badri Prasad vs. Dy. Director of Consolidation and others, AIR 1978 SC 1557, was relied upon for the proposition that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. The Court had held that if a man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were married, few will succeed.

8.2 The decision of the Supreme Court in the case of S.P.S. Balasubramanyam vs. Suruttayan alias Andali Padayachi and others, AIR 1992 SC 756, was cited for the proposition that when man and woman lived under the same roof and cohabited for a number of years, there was a presumption that they lived as husband and wife and that children born to them were not illegitimate.

8.3 The decision of the Supreme Court in the case of Sumitra Devi vs. Bhikan Choudhary, (1985) 1 SC 637, was cited for the proposition that although invoking the fire and performing the saptapadi around the sacred fire have been considered to be basic requirements for a traditional Hindu marriage, there can be marriage acceptable in law according to customs which do not insist on performance of such rites and marriages of this type give rise to legal relationships which law accepts. The learned advocate, accordingly, urged that in the facts of the present case, according to the customs of the community to which the parties belong, marriage is acceptable in law without insistence on performance of the rites like the saptapadi and marriages of the type entered into between the plaintiff and late Ranchhoddas gives rise to a legal relationship which the law accepts.

8.4 Reliance was also placed on the decision of the Supreme Court in the case of Vishnu Prakash and Another vs. Smt. Sheela Devi and Others, 2001 (3) Scale 193.

9. Based upon the aforesaid decisions, the learned advocate submitted that under the provisions of sections 50 and 114 of the Indian Evidence Act, 1872, in case of long cohabitation, there was a presumption in favour of the plaintiff that she was the legally wedded wife of Ranchhoddas and as such, she was entitled to the right of inheritance to the properties of deceased Ranchhodbhai. It was further contended that the factum of customary divorce has been sufficiently brought out from the evidence of the witnesses. At the time when Ranchhoddas had married the plaintiff, the defendant had not raised any objection to the marriage nor has she filed any complaint against deceased Ranchhoddas; initiated criminal proceedings; or issued any notice in respect thereof. In the circumstances, the defendant has herself accepted the factum of marriage between the plaintiff and Ranchhoddas. It was, accordingly, submitted that the decision arrived at by the Trial Court is just, legal and proper and that the appellate court was not justified in setting aside the judgment and decree passed by the Trial Court.

10. The appeal has been strongly opposed by Mr. Nitin Amin appearing on behalf of the respondent-original defendant. It was submitted that to raise a presumption, there must be

necessary and believable evidence on record, and that only thereafter would the question of presumption arise which also is only a rebuttable presumption. It was urged that the mere fact of long residence together does not automatically prove that the plaintiff was the legally wedded wife of deceased Ranchhoddas. Referring to the above referred decisions of the Supreme Court, it was submitted that reliance placed thereon by the plaintiff is misconceived, inasmuch as in the facts of the said cases, there was no previous existing marriage. It was submitted that in none of the said cases, has the Supreme Court said that if a man and woman are living together since decades, there is a presumption that they are husband and wife even if the first marriage is in existence and there is no evidence of divorce.

11. It was next submitted that the mere fact that the defendant had not issued any notice and had not lodged any complaint alleging bigamy on the part of Ranchhoddas, would not confer on the plaintiff the status of a legally wedded wife. Referring to the document mark 3/1, it was pointed out that in the first place the said document had been executed between Ranchhoddas and the grandfather of the plaintiff, and that all that was mentioned in the said document was that it has been decided to establish a relation between Ranchhoddas and the plaintiff and that since henceforth their relation was legally to be that of husband and wife as per the contract between them he was to give gold as well as the amount stated therein by way of streedhan to the plaintiff as well as future provision for maintenance of the plaintiff. It was pointed out that in the entire document there was not a whisper as regards Ranchhoddas having divorced the defendant. It was argued that had a divorce actually taken place, it would be the natural conduct of the party to mention in the deed that there was an earlier marriage and divorce and that the re-marriage had taken place as per the customs. Referring to the evidence of the witnesses, it was pointed out that even after the plaintiff came to reside with deceased Ranchhoddas, the defendant was still residing with them and it was only after disputes arose between them that the defendant started residing separately. In case there was a divorce between deceased Ranchhoddas and the defendant, there would have been no question of their living together after the divorce. It was submitted that since it was the plaintiff who was asserting that a divorce had taken place between the defendant and Ranchhoddas, it was for the plaintiff to lead evidence to that effect and establish her case. It was contended that the plaintiff had miserably failed to lead any evidence to indicate that there was divorce and then there was a marriage and as such the very substratum of the plaintiff's case would fall to the ground.

12. Inviting attention to the deposition of the witnesses, it was pointed out that as per the say of the plaintiff, the divorce deed was in the possession of the defendant whereas as per the say of witness Keshavlal Shivram, the deed of divorce was in the possession of Gandabhai who was the brother of the defendant. It was submitted that despite the fact that it was the specific case of the plaintiff that there was a divorce deed in existence, no efforts were made by the plaintiff for production of the documents before the Trial Court. It was further submitted that after the execution of the document mark 3/2, the defendant had got the properties in question mutated in her name at which point of time the plaintiff had neither raised any objection against the same nor had she filed any proceedings before the revenue authorities. It was submitted that upon the demise of Ranchhoddas, the defendant being the legally wedded wife was the sole heir and legal representative of the deceased and as such, had absolute right in the properties of the deceased. Merely because on

execution of the document mark 3/2 whereby both the appellant and defendant had been given the right to maintenance from the properties which had come to their shares during their life time, the same would not restrict the rights of the defendant which has been derived under the provisions of the Hindu Succession Act as being the surviving wife of the deceased. It was also submitted that the plaintiff has no right to raise any objection against the defendant transferring the property in question as she was the legally wedded wife of deceased Ranchhoddas and that the plaintiff had failed to prove that she had absolute right to the properties in question.

13. Referring to the provisions of section 7 of the Hindu Marriage Act, 1955 it was submitted that for a Hindu marriage to be valid, the same has to be solemnised in accordance with the customary rites and ceremonies and that in the facts of the present case, it was not even the case of the plaintiff that any ceremony has taken place even as per their customs, evidencing the marriage of the plaintiff with deceased Ranchhodbhai. Inviting attention to the provisions of section 5 of the Hindu Marriage Act, it was submitted that one of the conditions for a marriage to be solemnized between any two Hindus is that either of the party has a spouse living at the time of the marriage. In the present case at the time of the so-called marriage between the plaintiff and Ranchhoddas, there was a subsisting marriage between Ranchhoddas and the defendant and as such, even assuming that there was a customary marriage between the plaintiff and Ranchhoddas, the same was not a valid marriage inasmuch as the said marriage was not permissible under the Hindu Marriage Act. It was, accordingly, submitted that the defendant being the legally wedded wife of deceased Ranchhoddas, she had an absolute right in the properties in question, and as such the appellant/plaintiff was not entitled to the relief claimed in the suit. The appellate court was, therefore, justified in setting aside the order made by the Trial Court and as such the same does not warrant any interference by this Court.

14. From the facts noted hereinabove, it is apparent that the dispute involved in the present case is as to whether or not the defendant has absolute rights over the property in question, including the right to transfer the same. Insofar as the right of the defendant of maintenance from the lands in question is concerned, there is no dispute as regards the same. In fact it is the case of the plaintiff that the defendant has only a right to maintenance from the lands in question and has no right to transfer the same. In the circumstances, the present case does not involve the question of law as formulated by the Court at the time of admitting the appeal.

15. The present case being a second appeal, the same can be entertained only on a substantial question of law. Since the case does not involve the substantial question of law as formulated by the Court at the time of admitting the appeal, the next question that would arise is whether any other substantial question of law does arise in the present case. In the memo of appeal, the appellant has proposed the following eight questions for determination by this Court:

Whether the Appellate Court has erred in appreciating the factum of valid marriage which was proved under the customary law of 'natra'- prevailing in the Patel caste which was established by the evidence of defendant - herself vide Exh.50 which was admitted fact that the plaintiff was brought by way of 'natra' of re-marriage which was accepted by the relatives of the defendant and decd.- Ranchhodbhai, which is the presumption of valid marriage under section 50 of the Evidence Act.

Whether the Appellate Court has erred in appreciating the customary usage of divorce of the defendant, which is permitted after the re-marriage of 'natra' in the Patel caste as it is the acceptable position in the caste, and whether there was any necessity of performance of marriage by way of 'Saptapadi' or Hindu rites as per the provisions of Hindu Marriage Act, and whether the customary law will prevail over the ordinary law of marriage.

Whether the Appellate Court has erred in appreciating the factum of valid marriage vide Mark:3/1, which was duly proved by the signatory, and which is permissible in Patel caste by way of 'natra' of customary usage, which is established by the defendant herself, vide Exh.50 which will recognise the presumption of valid marriage U/Sec. 50 of the Evidence Act.

Whether the Appellate Court has erred in appreciating the evidence on record vide MARK:3/2 which either establishes the temporary right of maintenance during the life time of the defendant, and whether it is absolute right U/Sec. 3 of Hindu Women's right to Property Act, 1977, and Sec. 2 of Hindu Married Women's right to separate residence and Maintenance Act, 1946, which was proved by the witnesses which can be discarded merely for want of exhibition, even though admissible in evidence.

Whether the Appellate Court has erred in appreciating the provisions of Sec. 14 of Hindu Succession Act, 1956 which entitles the plaintiff as an absolute owner of property of decd. Ranchhodbhai as the only heir and legal representative being the widow of decd.-Ranchhodbhai.

Whether the Appellate Court has erred in appreciating the provisions of Sec.135 (J) of Bombay Land Revenue Code, whether the land revenue entries establishes any right, title, interest in the suit property, which is merely the persuasive and presumptive value.

Whether the Appellate Court has erred in appreciating the provisions of Sec. 50 and 104 of the Evidence Act, whether the long cohabitation of marriage-life of about 25 years will be presumed the valid marriage, which was established on finding of fact of evidence of witnesses

-Exh.41, 34, 45 of the evidence on record, and whether the onus of proof of valid marriage and divorce was shifted on the defendant U/Sec. 101 of the Evidence Act, as the defendant has raised the plea of dislodging the validity of marriage, was on the defendant to disprove the validity of marriage.

Whether the learned Appellate Judge has erred in appreciating the validity of divorce of the defendant, which was proved by the customary usage of 'natra' prevailing in the Patel caste, and the natural conduct of living separately and not protesting the 'natra' marriage, will disentitle the defendant of raising the dispute of validity of divorce which was the consequential effect of 'natra', which was admitted by the defendant - herself in her evidence vide - Exh.50, and hence there is no any question of proof of divorce, and proof of valid marriage, which was established on evidence on record, of finding of fact recorded by the Trial Court which has the opportunity of seeing the conduct of the witnesses, which cannot be discarded, merely on presumption of ceremony of marriage under the Hindu Marriage Act.

On a perusal of the aforesaid questions, it is apparent that questions No.1, 2, 3 and 8 do not arise out of the impugned order of the appellate court inasmuch as no evidence had been led by the appellant to indicate that there was any customary law of Natra prevailing in the Patel Caste as stated in proposed questions No.1, 2 and 3 raised in the appeal. Question No.4 relates to the interpretation of a document which has not been exhibited by the Court. As regards proposed Questions No.5 and 6, there is no discussion on this aspect in the impugned order and as such, the said questions do not arise. The only question, if at all, the same can be said to be a substantial question of law is question No.7. Considering the fact that the appeal had been admitted by the Court way back in the year 1990, and a period of 20 years has elapsed thereafter, it would not be just and proper at this stage to dismiss the appeal on this ground and non-suit the appellant, without going into the merits of the case. In the circumstances, the Court has considered the validity of the impugned order passed by the appellate court on merits.

16. From the evidence led by the plaintiff before the Trial Court, all that has been proved is that the plaintiff was residing with deceased Ranchhodbhai for a period of about 25 years; that there was a contract marriage between the plaintiff and Ranchhoddas, which was accepted by the relatives of Ranchhoddas after which she was residing with him as his wife and that they were known in the society as husband and wife and used to attend social functions etc. together, as husband and wife; that when Ranchhoddas fell ill, it was the plaintiff who used to take care of him. If the facts of the present case did not involve a pre-existing marriage, the decisions of the Supreme Court on which reliance has been placed on behalf of the plaintiff would have been directly applicable. However, the facts of the present case stand on different footing, inasmuch as the defendant has denied the claim of the plaintiff that she is the legally wedded wife of deceased Ranchhoddas, by contending that she (the defendant) was the first wife of the deceased and that the marriage was subsisting at the time of the death of Ranchhoddas. The defendant has clearly denied the say of the plaintiff that there was a divorce between her and Ranchhoddas. In the circumstances, the decisions of the Supreme Court on which reliance has been placed on behalf of the plaintiff would not come to her aid. The plaintiff was therefore, required to lead cogent and satisfactory evidence to establish her case that there was a divorce between the defendant and Rancchoddas. The question that arises for consideration is as to whether the plaintiff has successfully established the aforesaid fact.

17. On a perusal of the evidence on record, it is found that insofar as the say of the plaintiff that there was a divorce between the defendant and Ranchhodbhai is concerned, the only evidence is in the nature of the oral evidence of the plaintiff and witness Keshavlal Shivram Patel. The plaintiff in her deposition has stated that a divorce had taken place between the defendant and Ranchhoddas and that the divorce deed was in the possession of the defendant. Witness Keshavlal Shivram Patel has stated that he had witnessed the execution of the divorce deed which was in the possession of the brother of the defendant. Except for the aforesaid oral evidence, no other evidence has been led on behalf of the plaintiff in support of her say that a divorce had indeed taken place. It may also be noted that despite the fact that it is the specific case of the plaintiff that a divorce deed had been executed and that the same has been lying in the possession of the defendant (or her brother as stated by Keshavlal Shivram Patel), no application for production of the said document had been made before the Trial Court to corroborate the said fact. Strong reliance had been placed by the Trial Court as well as the learned advocate for the plaintiff on the cross-examination of the defendant

wherein she has at one stage stated that Ranchhoddas had married her after divorcing her. Apart from the aforesaid evidence, there is no evidence worth the name to indicate that a divorce had actually taken place between the deceased Ranchhoddas and the defendant overlooking the fact that the defendant in the examination in chief has categorically stated that at the time when her husband brought the plaintiff by way of natra he has not divorced her and has denied the fact that prior to his marriage with the plaintiff, Ranchhoddas had divorced her. She has also denied the existence of any deed of divorce or that the same was in her possession. Moreover, what was stated by the defendant "In answer to the question as to whether I was living separately as Ranchhoddas had divorced me, I say that "I am not aware of it but I was living separately as I could not get along with Ambaben (the plaintiff)"". Much has been made out from the aforesaid statement, treating the same as an admission of the defendant that a divorce had actually taken place. It is settled legal position that evidence has to be read as a whole. Considering the deposition of the defendant as a whole it is apparent that there is no admission on her part that there was a divorce between her and Ranchhoddas and that she has specifically denied the said fact. Moreover, the above referred statement which is claimed to be an admission by the defendant also does not indicate any admission on her part. In the circumstances, the say of the plaintiff that the defendant had admitted that the marriage had taken place after a divorce between her and Ranchhoddas does not merit acceptance. The plaintiff was therefore required to lead other evidence to corroborate her say that there was a divorce between the defendant and Ranchhoddas. In this regard it may be pertinent to note that though it is the case of the plaintiff that a divorce deed had been executed which was in the possession of the defendant, no effort has been made by the plaintiff to bring the said document on record by filing an application for production before the trial Court. Thus, though it is contended that such a deed is in existence, the same has not been brought on record. Moreover, when the plaintiff is pleading that there is a practice of customary divorce prevalent in the community, it was for the plaintiff to establish such custom by leading evidence to that effect. Examining the evidence of all the witnesses, no evidence has been led in this regard as none of the witnesses have stated anything as regards such practice being prevalent in the said community. Thus, no evidence has been led by the plaintiff to establish such a custom. Thus, apart from the fact that customary divorce being prevalent in the community has not been established, assuming that such a practice is in fact prevalent, the plaintiff has not been able to prove, by leading cogent and satisfactory evidence that a divorce had taken place between the defendant and Ranchhoddas. Thus, unless there was a divorce between the defendant and Ranchhoddas, in view of the provisions of section 5 of the Hindu Marriage Act, a marriage could not have been solemnized between the plaintiff and Ranchhoddas, as Ranchhoddas had a spouse living at the time of the marriage. Hence, the marriage of the plaintiff with Ranchhoddas would not be a valid marriage under the Hindu Marriage Act. The defendant, therefore, being a legally wedded wife of deceased Ranchhoddas, who had died intestate, his properties would therefore, devolve upon her under the provisions of section 8 of the Hindu Succession Act, 1956.

18. Moreover, a perusal of the evidence on record shows that not only has the plaintiff not led any evidence to establish that in the community to which the plaintiff and the deceased belong, there is a practice of customary divorce, no evidence has been led to show that a marriage under the customs of the said community does not include the saptapadi or any other rites or rituals. A perusal of the document Mark 3/1 does not indicate any marriage ceremony having taken place between the

plaintiff and Ranchhoddas nor is it the case of any of the witnesses that the marriage between the plaintiff and Ranchhoddas had been solemnized in accordance with the customs of the community. In the circumstances, the plaintiff has failed to establish that any marriage was solemnized between her and Ranchhoddas in accordance with the rites and ceremonies of the community. Besides, as already noted hereinabove no evidence has been led by the plaintiff to indicate as to when a divorce had taken place between the defendant and Ranchhoddas. The facts on record indicate that the defendant was residing with Ranchhoddas even after the plaintiff came to reside with Ranchhoddas which gives leads to an inference that no divorce had taken place, inasmuch as, if the defendant and Ranchhoddas were divorced, there would be no question of the defendant residing with Ranchhoddas even after his so called marriage to the plaintiff. Besides on a perusal of the document mark 3/1, it is amply clear that the same is in the nature of a contract marriage. Moreover, even though the said document has been executed at the time of the so-called marriage between the appellant and the deceased Ranchhoddas, there is not a whisper as regards an earlier marriage with the defendant Raiben or regards any divorce between Ranchhodbhai and the defendant. Looking from the perspective of a reasonable man, if at all a divorce had already taken place, it would have been the first thing that would find a mention in the document in question. Considering the fact that the document is totally silent as regards an earlier marriage or any divorce having taken place, as well as looking to the tenor of the said document, it appears that it was only because there was a subsisting marriage between the defendant and the deceased Ranchhoddas that such a document was required to be executed. Had Ranchhoddas divorced the defendant and married the plaintiff, there would not have been any question of executing the document in question.

19. Insofar as the decisions on which reliance has been placed upon on behalf of the plaintiff, all that the said decisions indicate is that long cohabitation would raise a presumption that persons residing together were husband and wife. However, long cohabitation would only raise a presumption which is a rebuttable presumption. In none of the cases was the dispute between two women claiming to be the wife of the deceased. In the present case, it is an undisputed position that the defendant was the legally wedded wife of deceased Ranchhoddas. In the circumstances, in the absence of any proof as regards a divorce having taken place between deceased Ranchhoddas and the defendant, despite a long cohabitation between the plaintiff and Ranchhoddas, there can be no presumption as regards a legal and valid marriage as envisaged under the Hindu Marriage Act between the plaintiff and the deceased.

20. Coming back to the property dispute, after the death of Ranchhoddas, it appears that the plaintiff and defendant have executed a document Mark 3/2 whereby they have agreed that they jointly have a share in the properties of deceased Ranchhoddas described therein and that they have entered into an agreement to divide the same as stated therein, pursuant to which the properties in question fall to the share of the defendant. However, under the said document it has been clarified that the properties have been given to them for the purpose of maintenance and that the said properties shall not be transferred without the consent of the other party. The case of the plaintiff is that she is the sole heir of deceased Ranchhoddas and as such she has an absolute right to the said properties and that the defendant has only a right to maintenance out of the properties coming to her share. This assertion on the part of the plaintiff is dehors the evidence coming on record. Even if the parties may have entered into the agreement Mark 3/2 (the document has not been Exhibited)

the said document cannot in any manner curtail the rights of the defendant who had a right to the properties of Ranchhoddas. From the facts emerging on record, the defendant is not disputing the right of the plaintiff over the properties which have come to her share under the said agreement; it is only the plaintiff who is asserting absolute rights over the properties in question. On the facts of the case, the defendant being the legally wedded wife of deceased Ranchhoddas, who had died intestate, would be his successor in title in view of the provisions of section 8 of the Hindu Succession Act. However, since the plaintiff had lived with the deceased as his wife for a long period and was recognised as his wife in society, it was only equitable that she should be entitled to a share in his properties. Though the plaintiff and the defendant have entered into an agreement for dividing the properties of the deceased between them for the purpose of maintenance only, the defendant has pursuant to the said agreement got her name entered in the revenue record in respect of the properties in question, which has not been challenged by the plaintiff. Moreover, the defendant having an absolute right over the properties of deceased Ranchhoddas, the execution of the document in question would not curtail her rights over the said property, more so, when it is the case of the plaintiff that insofar as her rights over the properties which have come to her share are concerned, the same are absolute. Thus, the document Mark 3/2 has to be read as an agreement between the parties to divide the properties of deceased Ranchhoddas between them and each of the parties would be the absolute owner to the extent of her share in the properties. The property in relation to which the plaintiff has claimed injunction, have admittedly come to the share of the defendant under the document Mark 3/2 in the circumstances, the defendant has absolute rights over the said properties and the plaintiff has no right to curtail her enjoyment over the same, even the right to alienate the said properties.

21. The appellate court in the impugned judgment has upon appreciation of the evidence on record found that there is no documentary evidence to prove that the defendant was divorced by deceased Ranchhoddas and had noted that no application was given on behalf of the plaintiff for production of the divorce deed despite the fact that it was the case of the plaintiff that the divorce deed was with the defendant. The court was of the view that deceased Ranchhoddas would generally have kept a copy of the divorce deed in his possession as it would have been required at the time of the second marriage and that the plaintiff also should have taken care to obtain a copy of the deed for future safety. However, no such deed was forthcoming on the record. A categorical finding was recorded to the effect that except for the bare words of the plaintiff, there was no documentary evidence to show that defendant was divorced by deceased Ranchhoddas and had married the plaintiff and was thereafter residing with her. The appellate court was accordingly of the view that the plaintiff had failed to establish that the defendant was legally divorced by deceased Ranchhodbhai.

22. Thus, the appellate court upon appreciation of the evidence on record has recorded a finding of fact to the effect that there was no evidence on record to indicate that there was a divorce between the defendant and deceased Ranchhodbhai. On the question as to whether the plaintiff was the legally wedded wife of deceased Ranchhodbhai, the appellate court recorded that for the purpose of proving the marriage, the plaintiff has placed reliance upon the document mark 3/1. Upon perusal of the document, the appellate court has recorded that the agreement was by deceased Ranchhodbhai with a third party being the grandfather of the plaintiff and not between the plaintiff and Ranchhodbhai. The appellate court was of the view that apart from the fact that the document

was not executed between the plaintiff and Ranchhodbhai, the marriage could not be said to be valid by executing such a document but was required to be solemnised as per Hindu rites and customs. Admittedly the parties were Patels by caste and in their community, marriages are to be performed as per Hindu rites and customs and that a second marriage is not permissible under the Hindu Marriage Act unless the first wife is legally divorced. The appellate court was accordingly of the view that there was no legal marriage in existence between the plaintiff and Ranchhoddas and as such, it could not be said that the plaintiff was the legally wedded wife of Ranchhoddas. On the question as to whether the plaintiff was entitled to get a permanent injunction restraining the defendant from disposing of the property which was already mutated in her name, the appellate court has upon appreciation of the evidence on record found that the contents of the document mark 3/2 indicated that both the plaintiff and defendant had got certain shares in the properties of deceased Ranchhoddas and that in the said document, it was also mentioned that the said properties were given for their maintenance and that neither of them could sell the same. According to the Trial Court, the document had been executed in the year 1974 and that it was an admitted position that after the document mark 3/2 came to be executed, the properties which came to the share of the defendant were already mutated in her name and that the entries by virtue of which the name of the defendant was entered in the revenue records had never been challenged by the plaintiff. That in any case, after the death of her husband Ranchhoddas, the property in question had devolved upon the defendant as his only legal surviving heir and as such, merely because the document evidencing a compromise between the plaintiff and defendant had been executed, would not deprive the defendant from her absolute right to the said property and as such, the plaintiff was not entitled to obtain a permanent injunction restraining the defendant from transferring the property in question. Thus, the appellate court has after appreciation of the evidence on record, recorded findings of fact based upon which it has come to the conclusion that deceased Ranchhodbhai had not divorced the defendant and that the appellant was not the legally wedded wife of the deceased Ranchhodbhai.

23. Thus, the reasoning adopted by the appellate court is in line with the aforesaid findings recorded by this Court. In the circumstances, on the basis of the evidence which has come on record it is not possible to state that the appellant-plaintiff has made out any case for grant of the relief claimed in the suit. This Court is in agreement with the findings recorded by the appellate Court, the reasoning adopted by it as well as the final conclusion arrived at by it and does not find any reason to take a different view.

24. In the light of the aforesaid, there being no infirmity in the impugned order passed by the learned Joint District Judge, Ahmedabad (Rural) there is no warrant for any interference by this Court. The appeal is, accordingly, dismissed.

(Harsha Devani, J.) hki Top