

{FA(MAT)No.108/2024}



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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 108 of 2024

{Arising out of judgment dated 3-1-2024 in Civil Suit No.117 A/2023 of the Additional Principal Judge, Family Court, Janjgir, District Janjgir-Champa}

Judgment reserved on: 23-4-2026

Judgment delivered on: 1-5-2026

Judgment (Full) uploaded on: 1-5-2026

Ramshankar Patel, S/o Madanmohan Patel, aged about 33 years, Mother Smt. Amrika Bai, Caste Patel, R/o Village Sendari, Police Station Pamgarh, District Janjgir-Champa, Chhattisgarh

(Applicant)
... Appellant

versus

Smt. Pushpalata Patel, aged about 34 years, Wife of Ramshankar Patel/ Daughter of Sadhuran Patel, Mother Name Smt. Parwati Patel, R/o Jampani, Tahsil Kartala, Police Station Uрга, District Korba, Chhattisgarh, At present R/o Ward No.25, Bhathapara, Near Khokhara Miner, Behind Dabari, Janjgir, District Janjgir-Champa, Chhattisgarh

(Non-Applicant)
... Respondent

For Appellant/Plaintiff : Mr. Sushobhit Singh, Advocate.

For Respondent/Defendant : Mr. Pawan Kumar Kashyap, Advocate.

Amicus Curiae : Mr. Rahul Tamaskar, Advocate.

Division Bench: -

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay Kumar Jaiswal, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J.

For sake of exposition, this Judgment is divided in following parts:-

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The Appeal

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the appellant herein/plaintiff has preferred this appeal calling in question legality, validity and correctness of judgment & decree dated 3-1-2024 passed by the Additional Principal Judge, Family Court, Janjgir, District Janjgir-Champa in Civil Suit No.117 A/2023, by which his application for declaring the marriage as null and void under Section 11 of the Hindu Marriage Act, 1955 (for short, ‘the Act of 1955’), has been dismissed finding no merit.

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Quintessential Facts

2. Marriage of the appellant herein/plaintiff was solemnized with the respondent herein/defendant on 20-4-2018 in accordance with the Hindu rites and customs. They firstly started living at Kusmunda and they lived there up to February, 2020 and thereafter, from March, 2020 they lived at Bhathapara, Janjgir. The plaintiff's mother – Amrika Bai and the defendant's mother – Parvati Patel both are real sisters as they are born out of the marriage between Gokul Prasad and Urmila. It is the case of the plaintiff/husband that the defendant/ wife after March, 2020, left her matrimonial home and started living with her father pursuant to which societal meeting was called on 14-1-2022 in which customary divorce was granted to them and cash of ₹ 75,000/- along with gold and silver ornaments were given to the defendant/respondent herein. It is the further case of the plaintiff that since the plaintiff's mother and the defendant's mother both are real sisters born out of the wedlock of Gokul Prasad and Urmila, their marriage comes within the degree of prohibited relationship as defined under Section 5(iv) of the Act of 1955 and therefore the plaintiff's marriage with the defendant is void ab initio and as such, decree under Section 11 of the Act of 1955 be granted in his favour and a direction for return of cash of ₹ 75,000/- along with gold and silver ornaments be also issued.

3. The defendant/wife filed written statement admitting the relationship between her mother and the plaintiff's mother that they both are real sisters and setup the plea of custom in paragraphs 2 and 4 of the written statement, however, denied that their marriage comes within the degree of prohibited relationship as defined under Section 5(iv) of the Act of 1955 and such a marriage between daughter and son of sister-sister, brother-sister and maternal uncle-paternal aunt is prevalent in their society which is called as Brahma marriage, it will not come within the degree of prohibited relationship and the plaintiff knew from the beginning that the defendant is daughter of his mother's sister and knowing fully well the said fact, marriage was entered between her and the plaintiff and as such, the application for declaring the marriage void be dismissed.

Issues and Findings therein

4. The Family Court framed following issues and answered the issues as under: -

<u>वाद प्रश्न</u>	<u>निष्कर्ष</u>
01 – क्या आवेदक/याचिकाकर्ता एवं अनावेदिका/प्रत्यर्थी का विवाह प्रतिषिद्ध नातेदारी डिग्रियों के भीतर है ? यदि हां तो	“ हाँ ”
(क) – क्या उभयपक्षों के मध्य शासित रुढ़ी/प्रथा में उन प्रतिषिद्ध नातेदारी के बीच विवाह अनुज्ञात है ?	“ प्रमाणित ”
02 – सहायता एवं वाद व्यय ?	“ कडिका 27 एवं 28 के अनुसार ”

5. On behalf of the plaintiff, the plaintiff has examined himself (Ramshankar Patel) as PW-1, Virendra Kumar Patel as PW-2 and Kundelal Patel as PW-3, whereas, the defendant has examined herself

(Pushpalata Patel) as DW-1, Basant Patel as DW-2, Dayaram Patel as DW-3 and Dhanvendra Kumar Patel as DW-4.

Findings and Judgment of the Family Court

6. The Family Court by its impugned judgment & decree dated 3-1-2024 came to the conclusion that marriage between the plaintiff and the defendant comes within the degree of prohibited relationship, however, held that there is a custom prevalent in the Patel society in which marriage between the parties who are within the degrees of prohibited relationship is permissible and proceeded to reject the application leading to filing of this appeal.

Submission on behalf of the Appellant/Plaintiff

7. Mr. Sushobhit Singh, learned counsel appearing on behalf of the appellant herein/plaintiff, would submit that the Family Court after having held that the plaintiff and the defendant both come within the degree of prohibited relationship as defined under Section 3(g) of the Act of 1955, ought to have granted decree declaring the marriage as null and void, as there is no custom or usage governing each of them which permits such a marriage between the two, as they come within the degree of prohibited relationship under Section 3(g) of the Act of 1955. He would further submit that mere *ipsi dixit* of the alleged custom allegedly proved by Dhanvendra Kumar Patel (DW-4) would not amount to pleading and proving of custom and therefore the impugned judgment & decree be set aside and the marriage be declared null and

void by granting decree in favour of the plaintiff/appellant herein and consequently, the appeal be allowed along with cost.

Submission on behalf of the Respondent/Defendant

8. Mr. Pawan Kumar Kashyap, learned counsel appearing on behalf of the respondent herein/defendant, would oppose the appeal and support the impugned judgment & decree and submit that the Family Court has taken a pragmatic view of the matter after taking into consideration the evidence of plaintiff witness Kundelal Patel (PW-3) who happens to be the former President of Patel Vikas Samiti, Korba, Head Office Korba (Jhagraha) and and defendant witnesses Dayaram Patel (DW-3) and Dhanvendra Kumar Patel (DW-4). He would further submit that such a custom permitting such a marriage in between the children of cousin sisters is permissible, therefore, the impugned judgment and decree deserve to be upheld and the instant appeal deserves to be dismissed.

9. **Points for Determination**

1. Whether the marriage between the appellant/plaintiff and the respondent/defendant falls within the meaning of the degree of prohibited relationship as defined under Section 3(g) of the Act of 1955 and that contravenes Section 5(iv) of the Act of 1955?
2. Whether the custom or usage as defined under Section 3(a) of the Act of 1955 governing each of them permits such kind of marriage between them and whether the same has been pleaded and duly proved?

Legal provision governing Void marriages

10. Section 5 of the Act of 1955 provides Conditions for a Hindu marriage.

It states as under: -

“5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) to (iii) xxx xxx xxx

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) xxx xxx xxx”

11. This Section lays down the conditions for a marriage to be solemnized between two Hindus. If a marriage contravenes any of the conditions specified in clauses (i), (iv) and (v) of this Section, the marriage is null and void under Section 11 of the Act of 1955.

12. Section 11 of the Act of 1955 provides for consequence of contravention of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act of 1955. Section 11, which deals with Void marriages, states as under: -

“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.”

13. A careful perusal of the aforesaid provision would show that this section declares that a marriage solemnised after the commencement of this Act in contravention of any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 shall be null and void. Evidently, as per Section 11

of the Act of 1955, three types of marriages are null and void. *Firstly*, the marriage is void if either party has a spouse living at the time of the marriage; *secondly*, if the parties are within the degrees of prohibited relationship as defined in Section 3(g) of the Act of 1955 unless custom or usage governing each of them permits such marriage; *thirdly*, if the parties are sapindas as defined in Section 3(f) of the Act of 1955 unless custom or usage governing each of them permits such marriage.

14. The Supreme Court in the matter of **Krishnaveni Rai v. Pankaj Rai and another**¹ has also considered Section 11 of the Act of 1955 and held that a marriage is void if the parties to the marriage are within the degrees of prohibited relationship unless the custom or usage governing each of them permits of such marriage, or if the parties are sapindas of each other unless, again, the custom or usage governing each of them permits marriage between the two.

15. Similarly, recently, in the matter of **Sukhdev Singh v. Sukhbir Kaur**², their Lordships of the Supreme Court have held that if Section 5 is read in conjunction with Section 11 of the Act of 1955 and if the parties to the marriage are within the degrees of prohibited relationship, such marriages are void, unless the custom or usage governing each of them permits of a marriage between the two, such marriages are void ab initio and such marriage does not exist at all in the eyes of the law.

16. The expression “degrees of prohibited relationship” has been defined in Section 3(g) of the Act of 1955. It states as under: -

¹ (2020) 11 SCC 253

² 2025 SCC OnLine SC 299

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“(g) “degrees of prohibited relationship” – two persons are said to be within the “degrees of prohibited relationship” –

(i) to (iii) xxx xxx xxx

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;”

17.A focused perusal of the definition contained in sub-clause (iv) of Section 3(g) of the Act of 1955 would show that children of two brothers or of two sisters are said to be within the degrees of prohibited relationship, as in the instant case, mother of the plaintiff and mother of the defendant both are sisters and accordingly, it is within the degree of prohibited relationship which is not only pleaded by the plaintiff but also admitted by the defendant in paragraph 4 of her written statement.

18. The term “custom or usage” employed in Section 5(iv) of the Act of 1955 has also been defined in Section 3(a) of the Act of 1955, which states as under: -

“(a) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;”

19. A careful reading of Section 3(a) of the Act of 1955 would show that there are five ingredients of the aforesaid definition of “custom” and “usage”, they are, *firstly*, it has been continuously and uniformly observed for a long time; *secondly*, it has obtained the force of law among Hindus in any local area, tribe, community, group or family;

thirdly, it is certain; *fourthly*, it is not unreasonable or opposed to public policy; and *fifthly*, in case of a rule applicable only to a family, it has not been discontinued by the family.

20. As such, as noticed herein-above, marriage amongst the prohibited degree of relationship amongst Hindus is prohibited under the Act of 1955 and any such marriage performed after the enforcement of the Act of 1955 would not be a valid marriage. Such marriages can be accepted as valid only when they are protected by any custom or usage existing prior to the enforcement of the Act of 1955.

21. *Consuetudo est lex* (Custom is law) encapsulates the essence of customary law, indicating its force as a binding rule when it gains widespread acceptance and is perpetuated by continuous adherence.

22. According to Mayne's Treatise on Hindu Law & Usage, 18th Edition, page 48, the Sanskrit work for custom which is used by Manu and Yajnavalkya is SADACHARA or the usage of virtuous men. Sadachara has been defined by above text as under: - (p. 48)

“Sadachara.– The Sanskrit work for custom which is used by Manu and Yajnavalkya is SADACHARA or the usage of virtuous men. This term has been defined by Manu himself as “the custom handed down in regular succession from time immemorial among the four chief castes (VARNA) and the mixed races of the country”.³ So SADACHARA or approved usage only means that it should not be contrary to Dharma. No doubt, Gautama says: “the laws of countries, castes and families which are not opposed to the sacred records have also authority”.⁴ Vijnanesvara and Kulluka, commenting respectively on Yajnavalkya and Manu, state that the customs should not be repugnant to the Vedas or the Smritis.⁵ On this point, there is a difference between the religious and the civil

³ Manu, II, 18.

⁴ Gaut., XI, 20.

law in the Smritis and the general requirement that usage should not be opposed to the Vedas and the Smritis is confined to the rules relating to religious observances (ACHARA) and does not apply to the rules of Civil Law (VYAVAHARA) as to which, the texts of Narada, Brihaspati, Katyayana, recognising the force and validity of custom, are decisive.⁶ All that Vijñanesvara and Kulluka must have meant is that custom should not be immoral or criminal or opposed to public policy, in which case, it will cease to be the conduct of virtuous men.”

23. In the matter of **Shiromani and others v. Hem Kumar and**

others⁷, their Lordships of the Supreme Court have held that a custom must be proved to be ancient, certain and reasonable if it is to be recognised and acted upon by Courts of law; and being in derogation of the general rules of law the custom must be construed strictly.

24. The Supreme Court in the matter of **Harihar Prasad Singh and**

others v. Balmiki Prasad Singh and others⁸ has held that in the first instance it is for the plaintiffs to prove the existence of the custom and if they fail to do so they cannot succeed on the basis that the defendants did not succeed in proving that the custom did not exist.

25. In the matter of **Balusami Reddiar, minor by guardian,**

Nagammal and others v. Balakrishna Reddiar, minor, and

others⁹, way back in the year 1956, the Madras High Court relying upon its earlier decision in the matter of **Deivanayaka Padayachi v.**

Muthu Reddi¹⁰, which was of the year 1920, has held that a few

5 Mit, on Yajn., I, 342, 343; Vidyarnavas' trans., 415; Kulluka on Manu, VIII, 41; “The Digest (Mitakshara) subordinates in more than one place the language of texts to custom and approved usage” per Sir Robert Phillimore in *Bhyah Ram Singh v Bhyah Ugur Singh* (1870) 13 MIA 373, 390.

6 Brih., II, 18, 28; Nar., I, 40.

7 AIR 1968 SC 1299

8 (1975) 1 SCC 212

9 1956 SCC OnLine Mad 151 : AIR 1957 Mad 97

10 33 Mad. 342

instances in a community microscopic in nature, cannot constitute a valid custom which a Court of law will recognise and enforce, and observed as under: -

“We have not been shown that the alleged custom is either ancient or certain or reasonable. A few instances in a community microscopic in nature, cannot constitute a valid custom which a Court of law will recognise and enforce. A custom which is abhorrent to decency or morality, however long practised and recognised by a particular community, can find no kind of enforcement by a Court of law. Not one decided case so far as we are aware, has approved of a custom which is contrary to the sacred writings or which puts a premium on incest and immorality.”

26. Further, way back in the year 1970, in the matter of **K. Kamakshi v. K. Mani**¹¹, where marriage of cousins was under challenge, the Madras High Court while dealing with Section 5(iv) of the Act of 1955, has held as under: -

“2. ... The trial Court has failed to see that this evidence was hardly sufficient to establish a custom of allowing marriage in the community between parties within the prohibited degrees. As held in *Saraswathi Ammal v. Jagadambal* MANU/SC/0087/1953 : [1953] 4 SCR 939, the correct approach to a case where a party seeks to prove a custom is what was pointed out by the Privy Council in *Abdul Hussain Khan v. Mt. Bibi Sona Dero* L.R. 45 IndAp 10 : 1917 34 M.L.J. 48 : A.I.R. 1917 P.C. 181. A party who sets up a custom should invariably allege it in the pleading and prove by cogent evidence as to the instances or facts over a reasonably long period, which in effect make out the custom pleaded. Short of this, a custom cannot be the result of a process of approximation or analogy or deduction from other customs prevalent among communities or sections of the people other than that to which the parties in dispute belong. A custom cannot be extended by analogy. It should be established inductively, and not by a priori methods. What period for proving instances should be taken would depend upon the facts in each case. In this case there was no plea of

¹¹ 1970 SCC OnLine Mad 84 : (1970) 2 Mad LJ 477

such a custom which the petitioner wanted to establish at the trial. Further, from one single instance in 1918, no custom could be inferred, much less established. Section 5(iv) of the Hindu Marriage Act of 1955 is clear that a marriage may be solemnised between any two Hindus only if, among other things, the parties are not within the prohibited degrees of relationship, unless the custom or usage governing each of them permits of a marriage between the two. Evidence in this case falls very short of establishing such a custom prior to 1955. Even thereafter, only two instances have been brought to the notice of the Court which would again be insufficient to make out a custom which would relax the condition imposed by Section 5(iv).”

27. The Supreme Court in the matter of **Rathnamma and others v. Sujathamma and others**¹² relying upon its earlier decision in the matter of **Salekh Chand (Dead) by LRs v. Satya Gupta and others**¹³ has held that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that it is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy. It has been observed by their Lordships of the Supreme Court in **Salekh Chand** (supra) as under: -

“21. In *Mooka Kone v. Ammakutti* [AIR 1928 Mad 299] it was held that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that it is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy. It is not disputed that even under the old Hindu Law, adoption during the lifetime of a male issue was specifically prohibited. In addition, I have observed that such an adoption even if made would be contrary to the concept of adoption and the purpose thereof, and unreasonable. Without entering into the arena of controversy whether there was such a custom, it can

¹² (2019) 19 SCC 714

¹³ (2008) 13 SCC 119

be said that even if there was such a custom, the same was not a valid custom.

22. It is incumbent on party setting up a custom to allege and prove the custom on which he relies. Custom cannot be extended by analogy. It must be established inductively and not by *a priori* methods. Custom cannot be a matter of theory but must always be a matter of fact and one custom cannot be deduced from another. It is a well-established law that custom cannot be enlarged by parity of reasoning.

23. Where the proof of a custom rests upon a limited number of instances of a comparatively recent date, the court may hold the custom proved so as to bind the parties to the suit and those claiming through and under them; but the decision would not in that case be a satisfactory precedent if in any future suit between other parties fuller evidence with regard to the alleged custom should be forthcoming. A judgment relating to the existence of a custom is admissible to corroborate the evidence adduced to prove such custom in another case. Where, however a custom is repeatedly brought to the notice of the courts, the courts, may hold that the custom was introduced into law without the necessity of proof in each individual case.

24. Custom is a rule which in a particular family or a particular class or community or in a particular district has from long use, obtained the force of law. Coming to the facts of the case PW 1 did not speak anything on the position either of a local custom or of a custom or usage by the community; PW 2, Murari Lal claimed to be witness of the ceremony of adoption, he was brother-in-law of Jagannath, son of Pares Ram who is said to have adopted Chandra Bhan. This witness was 83 years old at the time of deposition in the court. He did not speak a word either with regard to the local custom or the custom of the community. PW 3 as observed by the lower appellate court was only 43 years old at the time of his deposition whereas the adoption had taken place around 60 years back. He has, of course, spoken about the custom but that is not on his personal knowledge and this is only on the information given by PW 2 Murari Lal. He himself did not speak of such a custom. The evidence of the plaintiff was thus insufficient to prove the usage or custom prevalent either in the township of Hapur and around it or in the community of Vaish.”

28. The Delhi High Court in the matter of **Sharad Dutt v. Kiran**¹⁴, where 43 instances of marriage between parties falling under degrees of prohibited relationship were cited out of which 13 were of prior to 1947 and 30 after partition, the Delhi High Court has held that in order to prove a custom/usage, there should be clinching evidence before the Court, and observed as under: -

“19. From the above, the first requirement to prove a custom/usage is that there should be clinching evidence before the Court to establish that the rule upon which the alleged custom rests had been continuously and uniformly observed for a long time and has obtained the force of law.

28. Marriage amongst the prohibited degree of relationship amongst Hindus is prohibited under the Hindu Marriage Act. Any such marriage performed after the enforcement of the Hindu Marriage Act would not be a valid marriage. Such marriages can be accepted as valid only when they are protected by any custom or usage existing prior to the enforcement of the Act. It is very clear that any marriage prohibited by the Act cannot form the basis of a custom or usage as it would, being prohibited, be an invalid marriage. Thus out of the twelve aforesaid illustrations of marriage proved on record, eleven are post Hindu Marriage Act and only one is pre Hindu Marriage Act. One such illustration of marriage between first cousins amongst the Panch-Jatia Brahmins of District Jhang cannot, in my opinion, form custom of marriages between first cousins amongst Panch-Jatia Brahmins of Jhang. It would, in any opinion, not fulfil the touchstone and the ingredients as detailed at pages 14 and 15 of this judgment.

37. The statements of witnesses on whom reliance has been placed by the learned Counsel for the respondent to prove the alleged custom do not show that they made the statements on the basis of their personal knowledge based on certain facts about the alleged custom. These witnesses do not give the source/sources from which they gathered the relevant information about the existence of the contended custom/usage. No grounds have been given by them on the basis of which the opinion is based. To prove a custom in the present

14 1997 SCC OnLine Del 837

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case, the burden was on the respondent to prove that the alleged custom was being followed continuously, uniformly and since long before 1947 in District Jhang (now in Pakistan). None of these witnesses have stated that they had themselves known the alleged custom having been continuously and uniformly followed from before 1947. Nor they say that they have derived knowledge from any person/ persons, who were alive prior to 1947.

42. Learned Counsel for the respondent also contended that the petitioner-appellant cannot take advantage of his own wrong. He says that the petitioner firstly married the respondent fully well knowing that she was his first cousin and then did not keep her as his wife and now he is claiming nullity of marriage under Section 11 of the Act. According to him, the petitioner-appellant should not now be allowed to take the plea of nullity of marriage. From social point of view, such contention may be found to have some force but when on legal analysis the marriage between the parties is not found to be valid, the petitioner-appellant cannot be refused the prayer made by him in that respect. If the law does not permit a marriage it is to be declared a nullity under Section 11 of the Act.”

Legal Analysis and Reasoning

29. Coming to the facts of the case in light of the aforesaid principles of law, both the points for determination are being considered one by one.

Point No.1

30. It is not in dispute that the plaintiff's mother and the defendant's mother both are real sisters, which has been pleaded by the plaintiff in paragraph 2 of the plaint and admitted by the defendant in paragraph 4 of her written statement. As such, the plaintiff and the defendant are children of two sisters and they clearly fall within the degree of prohibited relationship as defined under Section 3(g)(iv) of the Act of 1955. The finding in this regard has rightly been recorded by the Family

Court that the plaintiff and the defendant come within the degree of prohibited relationship as defined under Section 3(g) of the Act of 1955 and we hereby affirm that finding. The first point is answered accordingly.

Point No.2

31. It is the defendant/respondent herein who has set up the plea of custom that marriage is permissible though the parties are within the degrees of prohibited relationship and thus, it is her burden to establish that such a marriage is permissible for which she had made following pleadings: -

(02) XXX XXX XXX

सही तथ्य यह हैं कि पटेल समाज में भाई-बहन, बहन-बहन, बहन-भाई, मामा-फूफू के पुत्र-पुत्रियों के साथ एक दूसरे को पसंद आने पर विवाह करने का प्रथा हैं जिसे ब्रम्हा विवाह कहा जाता हैं, जो प्रतिसिद्ध नातेदारी की कोटि में नहीं माना जाता हैं। आवेदक को पूर्व से ही जानकारी हैं कि अनावेदिका मौसी की पुत्री हैं। पटेल समाज में बहन-बहन, भाई-बहन, मामा-फूफू के लड़की-लड़का से विवाह करने का प्रथा प्रचलन में होने के कारण आवेदक एवं उसके माता-पिता द्वारा पसंद आने पर विधिवत अनावेदिका के साथ जाति एवं सामाजिक रीति रिवाज तथा हिन्दू धर्म के अनुसार अग्नि के समक्ष सात फेरा लगाकर दिनांक 20.04.2018 को ग्राम बरपाली जिला कोरबा (छ.ग.) में सम्पन्न हुई हैं, तब से आवेदक एवं अनावेदिका विवाहित पति-पत्नी हैं। आवेदक का आवेदन पत्र झुठे तथ्यों पर आधारित होने से सव्यय निरस्त करने लायक हैं।

(04) XXX XXX XXX

सही तथ्य यह हैं कि पटेल समाज में सगी बहन-भाई-मामा-फूफू के पुत्र-पुत्रियों का विवाह करने की प्रथा समाज में प्रचलित हैं। आवेदक के पिता एस.ई.सी.एल. कर्मचारी से रिटायर्ड हुआ है। उन्हें 50 लाख रुपये रिटायर होने पर मिलने के कारण आवेदक पैसे का घमण्ड दिखा रहा हैं और अनावेदिका का बच्चा पैदा नहीं होने का झुठा चरित्र पर शंका आवेदक द्वारा किया जा रहा हैं तथा जेठ हरिशंकर पटेल सबसे ज्यादा शारीरिक व मानसिक रुप से प्रताड़ित करता है।

32. A careful perusal of the pleading made on behalf of the defendant would show that the defendant has only pleaded that in Patel Samaj, marriage between daughter and son of sister-sister, brother-sister and maternal uncle-paternal aunt is prevalent and it is called as Brahma marriage, but

it has not been pleaded that it is continuously and uniformly observed for a very long time and that it has obtained the force of law among Patel Samaj, whereas it is required to be pleaded and established that such a custom permitting marriage between the parties of degrees of prohibited relationship is prevalent in their society and they are continuously and uniformly observing the said custom for a fairly long time and that it has obtained the force of law and that they are protected by the custom or usage existing prior to the enforcement of the Act of 1955 by observing the said custom for a long time in the Patel Samaj. Such a pleading in terms of Section 3(a) of the Act of 1955 is absolutely missing in the written statement filed by the defendant before the Family Court. The only pleading made on behalf of the defendant is that marriage between daughter and son of sister-sister, brother-sister and maternal uncle-paternal aunt is prevalent and permissible in their Samaj and it is called as Brahma marriage and alternatively, it was also pleaded that such a marriage between the two like daughter and son of brother-brother and sister-sister does not fall within the degree of prohibited relationship.

33. In this regard, the statements of three defendant witnesses may be noticed herein in which the Family Court has placed heavy reliance to hold that in Patel Samaj, such a custom is prevalent, they are, Basant Patel (DW-2), Dayaram Patel (DW-3) and Dhanvendra Kumar Patel (DW-4).

34. Basant Patel (DW-2), aged about 57 years, has stated that such a marriage between the parties of degrees of prohibited relationship is permissible in their society and it is branded as Brahma marriage. He has further stated in paragraph 10 that the Patel Samaj does not recognise the marriage between the parties who come within the degrees of prohibited relationship and it is a societal offence. He has also stated that marriage between the present plaintiff and the defendant was permissible because they both are of different Gotras.
35. Similarly, next witness Dayaram Patel (DW-3), aged about 73 years, has reiterated that such marriage does not come within the degree of prohibited relationship. As such, except reiterating the facts as stated by Basant Patel (DW-2), Dayaram Patel (DW-3) has not stated anything further and he did not say that such a custom is being followed continuously and uniformly for a long time and it has obtained the force of law and they are protected by the custom or usage existing prior to the enforcement of the Act of 1955. He has only stated about the present status that such marriage is presently being made and it does not come within the degree of prohibited relationship, which is of no help to the defendant.
36. Last witness is Dhanvendra Kumar Patel (DW-4). He was the Member of Patel Samaj of Chhattisgarh State. He has stated that marriage between daughter and son of brother-sister, sister-sister, sister-brother and maternal uncle-paternal aunt is permissible in their society and it does not come within the degree of prohibited relationship. He has

further stated that he himself has married the daughter of his mother's sister. He also did not say that such a custom is being followed continuously and uniformly for a fairly long time having obtained the force of law and was existing prior to the commencement of the Act of 1955. Therefore, his statement has no evidentiary value.

37. Consequently, on the basis of the aforesaid discussion, it is quite vivid that pleading relating to custom in terms of Section 3(a) of the Act of 1955 is absolutely missing. There is no specific pleading that such a custom is continuously and uniformly observed for a long time and it has obtained the force of law among Patel samaj. Merely saying that at present it is being followed would not be a valid marriage, as after coming into force of the Act of 1955 with effect from 18-5-1955, marriage between children of two sisters comes within the degree of prohibited relationship defined under Section 3(g)(iv) of the Act of 1955 and consequently, it comes within the purview of Section 5(iv) of the Act of 1955 and as such, the custom or usage governing each of them has neither been specifically pleaded in the written statement nor duly established by leading clinching evidence. Therefore, the Family Court is absolutely unjustified in rejecting the application seeking declaration of marriage between the parties as null and void after having held that marriage between the plaintiff and the defendant comes within the degree of prohibited relationship under Section 5(iv) of the Act of 1955. The defendant has failed to competently plead and establish that such a custom or usage governing each of them permits such a marriage between the two and as such, they come within the degree of prohibited

relationship. In our opinion, the impugned part of the decree holding that such a custom or usage governing each of them permitting such a marriage between the two in their society comes within the degree of prohibited relationship, is neither pleaded nor established. Consequently, this part of the decree is hereby set aside. Marriage between plaintiff – Ramshankar Patel and deceased – Smt. Pushpalata Patel solemnized on 20-4-2018 is declared void under Section 11 of the Act of 1955, as it was performed in contravention to Section 5(iv) of the Act of 1955.

Issue of Permanent Alimony

38. Now, the question of permanent alimony comes in.

39. The Supreme Court in **Sukhdev Singh** (supra) has considered the issue as to whether a spouse of a marriage declared as void by a competent Court under Section 11 of the Act of 1955 is entitled to claim permanent alimony and maintenance under Section 25 of the Act of 1955 and their Lordships held in paragraph 28 that such a spouse is entitled for permanent alimony by observing as under: -

“**28.** Accordingly, we answer the questions as follows:

- a.** A spouse whose marriage has been declared void under Section 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and
- b.** Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the

1955 Act, the court is not precluded from granting maintenance pendente lite provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary.

40. Since there is no pleading with regard to permanent alimony and affidavit has only been filed by the plaintiff, not by the defendant, in light of the decision of the Supreme Court in the matter of **Rajnesh v. Neha and another**¹⁵, instead of granting the aforesaid relief, we leave it for the defendant to claim permanent alimony under Section 25 of the Act of 1955 before the jurisdictional Family Court in accordance with law, if so advised and it is made clear that we have not expressed any opinion on the merits of the matter.

Conclusion and Relief/Cost

41. Marriage of the plaintiff namely, Ramshankar Patel and the deceased namely, Smt. Pushpalata Patel solemnized on 20-4-2018 is declared void invoking Section 11 of the Act of 1955, as it was solemnized in contravention to Section 5(iv) of the Act of 1955. The issue of permanent alimony is kept open to be raised by the defendant in terms of the decision of the Supreme Court in **Sukhdev Singh** (supra), if so advised, before the jurisdictional Family Court.

42. The appeal is allowed to the extent indicated herein-above. But there will be no order as to cost(s) in this appeal.

¹⁵ (2021) 2 SCC 324

43. Before parting with record, we express our gratitude and appreciation to Mr. Rahul Tamaskar, Advocate, who appeared as *amicus curiae* and in short notice, has prepared the case and made submission.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Sanjay Kumar Jaiswal)
JUDGE

Soma