

Allahabad High Court

Smt. Varsha Sharma @ Suman vs Ajay Sharma And Another on 4 September, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD A.F.R. Neutral Citation No. - 2025:AHC:156257 Court No. - 35 Case :- FIRST APPEAL No. - 812 of 2022 Appellant :- Smt. Varsha Sharma @ Suman Respondent :- Ajay Sharma And Another Counsel for Appellant :- Durga Prasad Tiwari, Sunil Kumar Shukla Counsel for Respondent :- Vidit Narayan Mishra Hon'ble Sandeep Jain, J.

1. The instant appeal under Section 96 C.P.C. has been filed by the plaintiff-appellant Smt. Varsha Sharma @ Suman against the judgment and decree dated 17.09.2022 passed by the court of Additional Civil Judge (S.D.) Gautam Budh Nagar in O.S. No.668 of 2015, Smt. Varsha Sharma @ Suman Vs. Ajay Sharma & others, whereby the plaintiff's suit for declaration that she is the second legal wife of late Mukesh Sharma, has been dismissed by the trial court on the ground that the suit is not maintainable because the plaintiff is seeking declaration of her matrimonial status, which can only be granted by a Family court, constituted under the Family Courts Act, 1984.

2. Brief factual matrix is that the plaintiff-appellant filed a suit with the averments that her husband Mukesh Sharma was earlier married to a woman named Rekha, and from that wedlock, the defendants were born. Thereafter, Smt. Rekha died, after which the plaintiff-appellant and Mukesh Sharma willingly solemnized marriage, according to Hindu rites and rituals on 12.03.2011 and thereafter, lived together. No child was born from this wedlock. Unfortunately, her husband Mukesh Sharma expired on 21.03.2014, leaving behind movable and immovable property of approximately Rs.30 crores in which, she and the defendants had equal 1/3rd share. It is the case of the plaintiff that in order to usurp the property of her late husband, the defendants has refused to accept her as the legal wife of Mukesh Sharma. The plaintiff further averred that during her lifetime, Mukesh Sharma had acknowledged her to be his legal wife and had accordingly, opened joint bank accounts in different banks, in which defendant No.1 Ajay Sharma was also made nominee.

3. It was further submitted that in Aadhaar card and other documents, she was shown to be the legally wedded wife of Mukesh Sharma. The plaintiff submitted that since, the heirs of late Mukesh Sharma have refused to accept her as the legally wedded wife of the deceased, as such, there is no other alternative, but to seek declaration from this Court regarding her matrimonial status. With these submissions, it was prayed that:-

(i) By a decree of declaration granted in favour of the plaintiff, against the defendants, she be declared the second legal wife of late Mukesh Sharma;

(ii) The cost of the suit be also awarded to the plaintiff against the defendants;

(iii) Any other relief, which the Court, deems fit and appropriate may also be granted to the plaintiff, against the defendants.

4. The defendant No.1 Ajay Sharma filed his written statement in the trial court, in which he denied the plaintiff's allegations and submitted that the plaintiff is a fraudulent woman, who worked as a maid in his house situated in Baraula, for which she was paid salary. The plaintiff has not filed any documents to prove that she is the legally wedded wife of late Mukesh Sharma. The plaintiff wants to usurp the movable and immovable property of the deceased, who is not the legally wedded wife of his father. It was further averred that he has lodged several criminal cases against the plaintiff. The plaintiff has forged and fabricated several documents. The plaintiff never remained the legally wedded wife of his father. With these submissions, it was prayed that the suit be dismissed with special cost.

5. On the basis of the pleadings of the parties, the trial court framed the following issues:-

(i) Whether the plaintiff is the legal wife of late Mukesh Sharma, after the death of his first wife Rekha Sharma?

(ii) Whether the suit is not maintainable?

(iii) Whether the suit is undervalued?

(iv) Whether the court fees paid is insufficient?

(v) Whether the plaintiff is entitled to get any other relief?

6. In the trial court, the plaintiff examined Varsha Sharma as PW-1 and Pramod Kumar as PW-2 and the defendant No.1 Ajay Sharma was examined as DW-1 and Om Prakash as DW-2. Besides the above oral evidence, documentary evidence in the form of photo copies of PAN card, Family register, passport of late Mukesh Sharma, certificate issued by Gram Pradhan, bank account statements, photo copy of voter list, photo copy of FIR in criminal cases, photo copy of insurance policies, etc. were submitted before the trial court.

7. During trial, defendant No.2 Ankita Sharma died on 01.10.2015.

8. The trial court while disposing the issue no.1 & 2 concluded that since the plaintiff has asserted that she is the legal wife of late Mukesh Sharma, as such, a declaration is required regarding her matrimonial status, which can only be granted by the Family court. The trial court came to the conclusion that only the Family court is competent to grant the desired relief to the plaintiff.

9. In view of this, issue no.2 regarding the maintainability of the suit was decided against the plaintiff, in favour of the defendants. The trial court came to the conclusion that the plaintiff cannot be granted any relief by this court and as such, the plaintiff's suit was dismissed, aggrieved against which, the plaintiff-appellant has filed the instant appeal.

10. Learned counsel for the appellant submitted that the trial court has legally erred by dismissing the suit on the issue of lack of jurisdiction. Learned counsel for the appellant further submitted that if, the trial court was of the opinion that the suit is not legally maintainable, then simply, the plaint should have been returned to the plaintiff, for presentation to the competent court of jurisdiction under Order 7 Rule 10 CPC. He further submitted that the trial court could not have examined the merits of the case.

With these submissions, it was prayed that the impugned judgment and decree of the trial court be set aside, and the trial court be ordered to return the plaint to the plaintiff, for presentation to the competent court of jurisdiction.

11. Per contra, learned counsel for the respondent submitted that the trial court has not committed any legal error in dismissing the suit because the declaration of matrimonial status can only be granted by the Family court, constituted under the Family Courts Act, 1984. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed.

12. I have heard learned counsel for the parties and perused the record.

13. It is apparent that the plaintiff is claiming herself to be the second legal wife of late Mukesh Sharma. It is the plaintiff's case that after the death of Mukesh Sharma's first wife Rekha Sharma, she had solemnized marriage on 12.03.2011 with Mukesh Sharma according to Hindu rites and rituals and thereafter, they lived together. The plaintiff submitted that the legal heirs of late Mukesh Sharma are not accepting her as the legally wedded wife of late Mukesh Sharma, as such, the plaintiff has sought declaration from the court that she be declared the second legal wife of late Mukesh Sharma.

14. Section 7 of the Family Courts Act, 1984 reads as under:-

"7.Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.--The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:--

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

15. The Apex Court in the case of Balram Yadav vs. Fulmaniya Yadav (2016) 13 SCC 308, while discussing the jurisdiction of the Family courts, held as under:-

"7. Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws."

16. Order 7 Rule 10 C.P.C., reads as follows:-

"10. Return of plaint- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."

17. The Apex Court in the case of EXL Careers & Another vs. Frankfinn Aviation Services Private Limited, (2020) 12 SCC 667 (By 3 Judges) held as under:-

"15.Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648], referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co.[1929 SCC OnLine PC 3 : (1928-29) 56 IA 128 : AIR 1929 PC 103] , Amar Chand Inani v. Union of India (1973)1SCC115, Hanamanthappa v. Chandrashekharappa (1997) 9 SCC 688, Harshad Chimanlal Modi [Harshad

Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] and after also noticing Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502], arrived at the conclusion as follows: (Modern Construction case , SCC p. 654, para 17).

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same"

"Joginder Tuli [Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502] was also noticed in Harshad Chimanlal Modi (2) [Harshad Chimanlal Modi (2) v. DLF Universal Ltd., (2006) 1 SCC 364] but distinguished on its own facts."

18. It is apparent from the law laid down by the Apex Court in Balram Yadav(supra) that the relief of declaration of validity of marriage or the matrimonial status of any person can only be granted by the Family court, as such, the trial court lacked jurisdiction to decide the suit and in view of this, the trial court has not committed any illegality in coming to the conclusion that it lacked jurisdiction to decide the plaintiff's suit.

19. It is also apparent from the law laid down by the Apex Court in EXL Careers & Another(supra) that where the court lacked jurisdiction, then plaint has to be returned in view of the provisions of Order 7 Rule 10 CPC, to enable the plaintiff to present it before the court having competent jurisdiction. In the instant case, after concluding that it lacked jurisdiction, the trial court has erred in dismissing the suit and, in not returning the plaint to the plaintiff, for presentation to the competent court of jurisdiction, and this illegality committed by the trial court, needs to be rectified in this appeal.

20. It is also apparent that the court of appeal or revision may also direct, after setting aside the decree passed in a suit, the return of the plaint for presenting it before the court of competent jurisdiction.

21. Accordingly, the appeal is partly allowed. The impugned judgment and decree of the trial court dated 17.09.2022, in so far, as the rejection of the whole suit is concerned, is set aside. The finding of the trial court that the suit is not maintainable for lack of jurisdiction, is upheld.

22. The trial court is directed to return the original plaint to the plaintiff in accordance with the provisions of Order 7 Rule 10 CPC, for presentation before the court of competent jurisdiction.

23. However, in the facts and circumstances of the case, there shall be no order as to costs.

24. Office is directed to prepare the decree accordingly.

25. Office is also directed to send back the original trial court record.

Order Date :- 04.09.2025 Himanshu (Sandeep Jain, J.)

Disclaimer: These contents are provided for informational/educational purposes only and are not official court-certified copies. For any legal or official use, please refer to certified records from the concerned court.

By downloading and using these documents, you agree that the platform, its developers, and publishers shall not be held responsible for any loss, claim, or consequence arising from the use of such content.