2026:AHC:208216

A.F.R

Reserved on 30.7.2026
Delivered on 6.10.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 91 of 2001

Rajeshwari Devi And Others

.....Appellant(s)

Versus

Hari Shankar Pandey And Another

.....Respondent(s)

Counsel for Appellant(s)	:	A.K.Ray, Anil Kumar Ray
Counsel for Respondent(s)	:	A.N.Bhargava, Giridhary Lal Choudhary, Rajesh Kumar Singh, S.B.Singh, S.K.Chaubey, S.P.Pandey, Vikas Upadhyay

In Chamber

HON'BLE ANIL KUMAR-X, J.

1. This first appeal has been filed against the judgment and decree dated 7.11.2000/21.11.2000 passed by IInd Additional District Judge, Ballia by which the Original Suit No.491 of 1988 (Harishankar Pandey vs. Rajehswari Devi & Ors.) filed by the respondent-plaintiff was decreed.

2. For the sake of convenience, the parties hereinafter shall be referred to by their nomenclature as assigned in the plaint. The appellants are the defendants and the respondent no.1 was the plaintiff in the aforesaid suit.

FACTS

3. Briefly stated, Original Suit No.491 of 1988 was instituted by the plaintiff, Harishankar Pandey, seeking a declaration that defendant no. 1, Smt. Rajeshwari Devi, was not the widow of Late Sri Vindhyachal Pandey, s/o late Sripati Pandey, and that defendant nos. 2 and 3, namely Shiv Sagar and Shiv Kumar, were not the legitimate sons and legal heirs of Late Ram Awadh Pandey.

4. The plaintiff pleaded that Late Sripati Pandey had three sons, namely, Ram Awadh Pandey, Vindhyachal Pandey and Jagat Narayan Pandey.

According to the plaintiff, he was the son of Ram Awadh Pandey. Defendant no. 1, Smt. Rajeshwari Devi, was admittedly the wife of Vindhyachal Pandey. It was pleaded that Vindhyachal Pandey died issueless in the year 1938, whereas his father, Sripati Pandey, died in the year 1962.

5. The plaintiff further pleaded that, subsequently, defendant no. 1 Rajeshwari Devi developed a relationship with Ram Awadh Pandey and that defendant nos. 2 and 3, namely, Shiv Sagar and Shiv Kumar, were born from the said relationship. It was the plaintiff's case that defendant no. 1 thereafter claimed herself to be the legally wedded wife of Ram Awadh Pandey and also remarried. The plaintiff, therefore, disputed the status of defendant no. 1 as widow of Vindhyachal Pandey and the status of defendant nos. 2 and 3 as legitimate sons and legal heirs of Ram Awadh Pandey.

6. It was also pleaded that defendant no. 1 Rajeshwari Devi, in collusion with Ram Awadh Pandey and the proforma defendant Jagat Narayan, got her name recorded as the wife of Vindhyachal Pandey and that defendant nos. 2 and 3 also got their names recorded in respect of the property of Late Ram Awadh Pandey. According to the plaintiff, such entries were contrary to the true facts and conferred no legal right upon the defendants.

7. The plaintiff's claim was also founded upon the assertion that, being a Brahmin widow, defendant no. 1 was not entitled to remarry after the death of her husband, Vindhyachal Pandey, and that, on account of her alleged subsequent relationship with Ram Awadh Pandey, she had lost the status and rights claimed by her as the widow of Vindhyachal Pandey.

8. The plaintiff further questioned the status of defendant nos. 2 and 3 on the ground that they were born out of the alleged relationship between defendant no. 1 and Ram Awadh Pandey and, therefore, according to the plaintiff, could not claim the status of legitimate sons or legal heirs of Ram Awadh Pandey or any right in the property in question.

9. Defendant no. 1 Rajeshwari Devi admitted the pedigree but denied the alleged relationship with Ram Awadh Pandey and claimed herself to be the widow and legal successor of Late Vindhyachal Pandey. She stated

that her name had been mutated in respect of the property left by her husband and that defendant nos. 2 and 3 were the sons of Late Ram Awadh Pandey. Defendant nos. 2 and 3 reiterated the said stand and further pleaded limitation, estoppel, acquiescence and multifariousness. They claimed themselves to be the sons and legal heirs of Late Ram Awadh Pandey and alleged that the suit had been instituted with an intention to deprive them of their share in the property.

10. The learned Trial Court framed five issues, out of which the following two were the principal issues of fact:

> *(i) whether defendant no. 1 continued to have the status of widow of Late Vindhyachal Pandey; and*
>
> *(ii) whether defendant nos. 2 and 3 were the legitimate sons and legal heirs of Late Ram Awadh Pandey or were born out of the alleged relationship between Ram Awadh Pandey and defendant no. 1.*

11. The plaintiff examined himself as P.W.-1, Harishankar Pandey, and one Harihar Chaubey as P.W.-2. He also relied upon the judgment dated 07.05.1963 passed in Case No. 37 under Section 488 Cr.P.C., Mantu Rani Vs. Ram Awadh Pandey, wherein maintenance of Rs.15/- per month was awarded to Mantu Rani after recording that Ram Awadh Pandey had kept Rajeshwari Devi as his concubine and was not maintaining his wife Mantu Rani. The said judgment was affirmed on 01.01.1964 in Criminal Revision No. 38 of 1963, Ram Awadh Pandey Vs. Mantu Rani, by the learned Sessions Judge, Ballia. Defendant no. 1 Rajeshwari examined herself as D.W.-1 and defendant no. 2, Shiv Sagar, as D.W.-2.

FINDINGS OF THE TRIAL COURT

12. Relying principally upon the aforesaid judgment under Section 488 Cr.P.C. and its affirmation in revision, the learned Trial Court held that defendant nos. 2 and 3 were born out of the relationship between Ram Awadh Pandey and defendant no. 1 and were, therefore, not the legitimate sons or legal heirs of Ram Awadh Pandey. It further held that defendant no.1, having entered into the said relationship after the death of Vindhyachal Pandey, had lost her status as his widow. Both the principal

issues were accordingly decided in favour of the plaintiff and the suit was decreed.

SUBMISSIONS ON BEHALF OF APPELLANTS

13. Shri Anil Kumar Ray, learned counsel for the appellants/defendants submitted that the learned Trial Court failed to consider the specific pleas regarding maintainability, limitation, estoppel, acquiescence and multifariousness and did not record appropriate findings thereon. It was further submitted that the effect of the compromise between the predecessors-in-interest of the parties, wherein defendant no. 1 was recognized as the widow of Late Vindhyachal Pandey and defendant nos. 2 and 3 as the sons and legal heirs of Late Ram Awadh Pandey, was also not considered.

14. It was submitted that the parentage of defendant nos. 2 and 3 could not be inferred merely from the allegation that Ram Awadh Pandey had kept defendant no. 1 as his concubine. The possibility of their having been born from the wedlock of Ram Awadh Pandey and his wife Mantu Rani could not be ruled out and the said aspect, along with the entries in revenue and other records showing defendant nos. 2 and 3 as the sons/legal heirs of Ram Awadh Pandey, was not properly considered.

15. Learned counsel further submitted that the plaintiff could not take contradictory stands regarding the subsistence of the marriage of defendant no. 1 with Vindhyachal Pandey and simultaneously seek a declaration denying her status as his widow. It was also submitted that defendant no. 1 had been possessing the property of Vindhyachal Pandey in her own capacity for a long period and, therefore, the plaintiff was estopped by his conduct from challenging her status. The suit was also pleaded to be barred by limitation.

16. Lastly, it was submitted that the learned Trial Court committed an error in placing decisive reliance upon the judgment passed under Section 488 Cr.P.C. The said proceedings were summary in nature and defendant no. 1 was not a party thereto. The findings recorded therein, according to learned counsel, could not conclusively determine the status or parentage of the parties in the present regular civil suit.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Shri Vikas Upadhyay, learned counsel for the respondent-plaintiff, on the other hand, supported the judgment of the learned Trial Court and submitted that the same was based upon the evidence available on record, particularly the judgment dated 07.05.1963 passed under Section 488 Cr.P.C. in Mantu Rani Vs. Ram Awadh Pandey, which was subsequently affirmed in revision.

18. It was submitted that the said judgment, passed during the lifetime of the concerned persons and much prior to the present litigation, recorded a finding that the relationship between Mantu Rani and Ram Awadh Pandey was strained and that Ram Awadh Pandey had kept Rajeshwari Devi as his concubine. According to learned counsel, this contemporaneous judicial finding materially supported the plaintiff's case regarding the relationship between Ram Awadh Pandey and defendant no. 1.

19. It was further submitted that the fact that defendant no. 1 was not a party to the said proceedings did not make the judgment irrelevant, as it was being relied upon for the facts and circumstances recorded therein and not merely as a judgment binding upon her. The subsequent plea regarding the parentage of defendant nos. 2 and 3 was not supported by reliable evidence sufficient to displace the circumstances emerging from the said judgment and the evidence on record.

20. Learned counsel also submitted that the alleged compromise, mutation entries and other records relied upon by the appellants could not confer or establish a legal status contrary to the true facts. The findings recorded by the learned Trial Court were based upon proper appreciation of the evidence and did not call for interference in appeal.

DISCUSSIONS

21. I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

22. The principal questions, which arise for consideration, having regard to the pleadings of the parties, the findings recorded by the learned Trial

Court and the grounds urged before this Court, are as follows:

(i). Whether the declaration sought by the respondent-plaintiff is maintainable within the ambit and scope of Section 34 of the Specific Relief Act, 1963, particularly in view of the nature of the declaration sought and the proviso to Section 34?

(ii). Whether the respondent-plaintiff has adduced the degree and quality of evidence required in law to establish the facts necessary for the declarations sought, particularly regarding the status of Rajeshwari Devi as widow and the legitimacy and parentage of defendant nos. 2 and 3?

(iii). Whether the judgment/order passed in proceedings under Section 488 Cr.P.C., relied upon by the learned Trial Court, was relevant and could have been treated as substantive or conclusive evidence against the parties in the present civil proceedings?

Discussion on Point of Determination No. 1

23. The relief sought by the respondent-plaintiff is essentially one of declaration. It is, therefore, necessary to first examine whether the suit satisfies the requirements of Section 34 of the Specific Relief Act, 1963. Section 34 thereof provides:

> “Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.
>
> Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

24. The provision contemplates a suit where the plaintiff claims an existing legal character or a right in property, such character or right is denied or is under threat of denial by the defendant, and the declaration sought is one recognising the plaintiff’s entitlement to such character or right. The proviso further places a restriction upon the grant of a mere declaration where the plaintiff, being capable of seeking further relief, omits to seek such relief.

25. The requirements of Section 34 may, accordingly, be examined under the following heads:

> (A) whether the plaintiff, on the date of the suit, was entitled to a legal character or a right as to property;
>
> (B) whether the defendant was denying or was interested in denying such character or right;
>
> (C) whether the declaration sought related to the plaintiff's entitlement to such legal character or right; and
>
> (D) whether the plaintiff, being able to seek further relief than a mere declaration, had omitted to seek such relief.

These requirements have to be examined with reference to the pleadings and the nature of the relief actually claimed.

26. The expression "legal character" occurring in Section 34 has been considered by the Allahabad High Court in **Mahabir Jute Mills Ltd. v. Firm Kedarnath, AIR 1960 All 254**, wherein it was observed that a man's "legal character" is the same thing as his status. The Court further explained that a man's status or legal character is constituted by the attributes which law attaches to him in his individual and personal capacity.

27. The concept has also been explained by Holland. According to him, the recognised varieties of status among natural persons include, amongst others, sex, minority, coverture, celibacy, mental or bodily defect, rank, caste and official position, profession, civil death and illegitimacy.

28. Thus, "legal character" is not synonymous with every fact or circumstance which may have some bearing upon the rights of the parties. It denotes a legal status or personal condition recognised by law and attached to an individual in his or her personal capacity.

29. For a person seeking a declaration of legal character, therefore, the following aspects assume significance:

(a). that the plaintiff possesses the alleged legal status or character on the

date of institution of the suit;

(b). that such status or character is constituted by attributes which law attaches to the plaintiff in his individual and personal capacity;

(c). that such status or character is a legal condition of the person and is distinct from a mere factual allegation;

(d). that the defendant is denying or is interested in denying such legal status or character; and

(e). that such denial or threatened denial furnishes the cause of action for the declaratory relief.

30. In the present case, the respondent-plaintiff has sought a declaration that Rajeshwari Devi is not the widow of Vindhyachal Pandey and that defendant nos. 2 and 3 are not the sons of Ram Awadh Pandey. The declarations thus relate primarily to the status of the defendants.

31. The questions whether Rajeshwari Devi is the widow of Vindhyachal Pandey or whether defendant nos. 2 and 3 are the legitimate sons of Ram Awadh Pandey may arise for determination as incidental questions while adjudicating a substantive right in property. Their determination, however, cannot be considered in isolation from the actual proprietary relief claimed by the plaintiff.

32. The plaintiff has alleged that the defendants fraudulently got their names recorded in respect of the property of Late Ram Awadh Pandey, but has not disclosed the particulars, date or nature of such entries. From the written statements, it appears that the entries referred to were mutation entries in favour of the defendants, but there is no specific controversion of the same by the plaintiff. The burden was upon the plaintiff to clearly identify the entries alleged to be illegal and to seek appropriate relief in respect thereof.

33. The manner in which the suit has been framed is also significant. The plaintiff seeks, on the one hand, to displace the legal status of the defendants and, on the other, appears to seek the consequential effect of undoing the mutation entries on the strength of such declaration, without

specifically challenging the relevant mutation proceedings or seeking consequential relief. Such relief cannot be granted indirectly when the necessary consequential relief has not been claimed.

34. In the present case, the plaintiff has not merely sought determination of an incidental question. He has sought a declaration regarding the status of the defendants, while alleging that such status has resulted in entries and claims affecting the property, but has omitted to seek the consequential relief necessary for enforcement of the proprietary right asserted by him. Accordingly, even assuming that the declarations sought have a bearing upon the plaintiff's alleged proprietary right, the suit as framed is hit by the proviso to Section 34 of the Specific Relief Act.

In view of the above discussion, **Point No. 1 is, accordingly, answered against the respondent-plaintiff**.

Discussion on Point of Determination No. 2

35. The next question is whether the respondent-plaintiff adduced the degree and quality of evidence required in law to establish the facts on which the declarations sought by him are founded. Two aspects require consideration: first, the alleged denial of the status of Rajeshwari Devi as widow of Late Vindhyachal Pandey; and second, the allegation regarding the legitimacy and parentage of defendant nos. 2 and 3.

36. So far as the status of Rajeshwari Devi as widow is concerned, the plaintiff, in order to dislodge that status, was required to establish a legally sustainable basis for denying her marriage with Late Vindhyachal Pandey or for showing that the marital relationship had otherwise legally ceased. In the present case, there is no such foundation in the plaintiff's own pleadings. On the contrary, the plaintiff himself admitted that Rajeshwari Devi was married to Late Vindhyachal Pandey, who died in the year 1938. Once the marriage and death of the husband stand admitted, the legal consequence of widowhood follows. There remains no evidentiary basis for the plaintiff to seek a declaration that she was not his widow merely on the ground of an alleged subsequent relationship with another person.

37. The plaintiff cannot, after admitting the marriage and death, seek to

derive a finding contrary to the legal consequence flowing from those admitted facts merely on the basis of an allegation of subsequent illicit relationship. The Supreme Court has consistently held that although inconsistent or alternative pleas may, in appropriate circumstances, be permissible, mutually destructive pleas cannot be permitted to be advanced so as to displace the case already admitted or established. Reference may be made to **Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jajoo, (2009) 5 SCC 713** and **Steel Authority of India Ltd. v. Union of India, (2006) 12 SCC 233**.

38. Even assuming, for the sake of argument, that Rajeshwari Devi subsequently developed an illicit relationship with Late Ram Awadh Pandey, such allegation, by itself, would not divest her of the legal status of widow of Late Vindhyachal Pandey. The status of widow is a legal status arising from marriage and the death of the husband. It cannot be extinguished merely because an individual or even society chooses, according to personal belief, conduct or convenience, not to recognise such status. A legal status can be displaced only by establishing a legally recognised fact having that consequence. Thus, where the plaintiff himself admits the marriage of Rajeshwari Devi with Late Vindhyachal Pandey and his subsequent death, the burden necessary to dislodge her status as widow has not been discharged. The finding of the learned Trial Court to the contrary cannot, therefore, be sustained.

39. The second aspect concerns the legitimacy and parentage of defendant nos. 2 and 3. An allegation of illegitimacy is a serious allegation carrying legal and social consequences. It cannot be established merely by suspicion, allegation or proof of an alleged relationship of the mother with another person.

40. Section 50 of the Indian Evidence Act, 1872 is relevant where the Court has to form an opinion regarding the relationship of one person to another. Such opinion becomes relevant when it is expressed by conduct by a person who has special means of knowledge of the relationship. Thus, a bare assertion regarding relationship does not by itself acquire the evidentiary value contemplated by Section 50. The witness must have the requisite special means of knowledge and the opinion must be expressed through conduct.

41. Section 112 of the Evidence Act also assumes significance where the legitimacy of a child is questioned. Where a person is born during the continuance of a valid marriage, the fact of such birth is conclusive proof of legitimacy unless it is shown that the parties to the marriage had no access to each other at any time when the child could have been begotten. Thus, where the foundational facts attracting Section 112 are established, the statutory presumption cannot be displaced merely by proving an alleged illicit relationship of the mother with another person. The requisite non-access at the relevant time has to be established.

42. Accordingly, where legitimacy is sought to be questioned on the ground that the mother had an illicit relationship with another person, the mere allegation or proof of such relationship is not sufficient. The evidence must establish the foundational facts necessary to displace the statutory presumption, particularly non-access at the relevant time.

43. Tested on these principles, the evidence led by the respondent-plaintiff is wholly insufficient. The plaintiff himself was examined in the year 1997 and was then aged about 58 years, while P.W.-2 Harihar Chaubey was aged about 60 years. The alleged illicit relationship is stated to have existed around the year 1960. Neither witness has been shown to possess any special means of knowledge explaining how the alleged relationship of the year 1960 came within his personal knowledge. More importantly, apart from the testimony of the plaintiff and P.W.-2 Harihar Chaubey, no independent evidence has been adduced. No witness having direct knowledge of the alleged relationship has been produced, nor has any conduct or surrounding circumstance of sufficient probative value been established from which the alleged relationship could reasonably be inferred. The allegation, therefore, remains a bald assertion, unsupported either by direct evidence or by a reliable chain of circumstances.

44. An illicit relationship, if relied upon as a fact having the serious consequence of displacing legitimacy, may be established by direct evidence where available or by reliable circumstantial evidence. In either case, however, the evidence must be of sufficient probative value to establish the fact asserted. Mere repetition of the allegation by the plaintiff and a supporting witness, without any independent or surrounding circumstance of sufficient probative value, cannot discharge

the burden. The same deficiency is evident in relation to the alleged denial of Rajeshwari Devi's status as widow of Late Vindhyachal Pandey. The plaintiff himself admits in his pleadings that Rajeshwari Devi was married to Late Vindhyachal Pandey and that Vindhyachal Pandey died in the year 1938. Once these facts are admitted, her status as widow follows as a legal consequence. No evidence has been adduced to establish any fact recognised in law which could extinguish or displace that status. Even assuming that Rajeshwari Devi subsequently developed an illicit relationship with Late Ram Awadh Pandey, such circumstance would not, by itself, nullify her status as the widow of Late Vindhyachal Pandey.

45. The evidence on record, therefore, falls substantially short of what was required in law. The respondent-plaintiff has neither established any legally recognised basis for denying Rajeshwari Devi's status as widow nor produced evidence sufficient to displace the legal presumption of legitimacy, wherever attracted, in respect of defendant nos. 2 and 3. The mere allegations contained in the pleadings, supported only by the testimony of the plaintiff and P.W.-2 Harihar Chaubey, cannot substitute the degree of proof required for such serious declarations. **Point No. 2 is, therefore, answered against the respondent-plaintiff.**

Discussion on Point of Determination No. 3

46. The learned Trial Court has also placed substantial reliance upon the judgment/order passed in proceedings under Section 488 Cr.P.C. It is, therefore, necessary to examine the evidentiary value and legal effect of such proceedings in the present suit.

47. Section 33 of the Indian Evidence Act, 1872 makes evidence given by a witness in a former judicial proceeding relevant in a subsequent proceeding only when the conditions prescribed therein are satisfied. These include, amongst other requirements, that the proceeding was between the same parties or their representatives in interest, that the adverse party had the right and opportunity to cross-examine and that the questions in issue were substantially the same.

48. In the present case, Rajeshwari Devi was not a party to the proceedings under Section 488 Cr.P.C. Consequently, the evidence

recorded therein cannot be treated against her as though she had participated in that proceeding and had an opportunity to contest the evidence or cross-examine the witnesses. The conditions necessary for attracting Section 33 are, therefore, not established merely by placing the earlier proceedings on record. Nor can the judgment be treated as a judgment in rem under Section 41 of the Evidence Act. Section 41 applies to final judgments of a competent Court exercising matrimonial, testamentary, admiralty or insolvency jurisdiction, where such judgment confers upon or takes away from any person a legal character or declares a person entitled to such character or to a specific thing absolutely.

49. A proceeding under Section 488 Cr.P.C. does not fall within any of the jurisdictions contemplated by Section 41. Its determination, therefore, cannot be treated as conclusive proof of the legal status of Rajeshwari Devi or of the parentage or legitimacy of defendant nos. 2 and 3 in the present civil proceedings. The nature and object of proceedings under Section 488 Cr.P.C. are also significant. The provision was intended to provide a speedy and summary remedy for maintenance to a wife, child or parent unable to maintain himself or herself against a person legally liable to maintain them. The Court exercising such jurisdiction was not called upon to finally adjudicate title, succession, inheritance or proprietary rights between the parties. The findings recorded in such proceedings must, therefore, be understood in the context of the limited purpose for which the proceeding was instituted.

50. It is also a settled principle that a finding recorded by a Criminal Court does not automatically operate as res judicata or as conclusive evidence in a subsequent civil proceeding merely because substantially the same factual question arose before the Criminal Court. The nature and standard of proof in the two proceedings materially differ. The Civil Court is required to independently determine the issue on the evidence legally adduced before it.

51. The distinction is particularly material in the present case. The question before the Court in the present suit was whether Rajeshwari Devi continued to have the legal status of widow of Late Vindhyachal Pandey and whether defendant nos. 2 and 3 were legitimate sons and legal heirs of Late Ram Awadh Pandey. These findings have direct civil

consequences concerning status, succession and property.

52. The fact that, for the limited purpose of proceedings under Section 488 Cr.P.C., the Court recorded that Ram Awadh Pandey had kept Rajeshwari Devi as his concubine could not, by itself, finally determine the civil status of Rajeshwari Devi or the legitimacy and parentage of defendant nos. 2 and 3. The earlier judgment could, at the highest, be considered as a circumstance forming part of the record. It could not be treated as conclusive or binding proof of the matters which the Civil Court was required to independently determine. More importantly, it could not substitute for the evidence which the respondent-plaintiff was required to adduce in the present suit.

53. The learned Trial Court, therefore, erred in placing such evidentiary weight upon the proceedings under Section 488 Cr.P.C. as to treat the findings therein as determinative of the status of Rajeshwari Devi or the legitimacy and parentage of defendant nos. 2 and 3.

Point No. 3 is, accordingly, answered in favour of the appellants.

CONCLUSION

54. On a cumulative consideration of the aforesaid discussions, the suit as framed was not maintainable within the scope of Section 34 of the Specific Relief Act, particularly in view of the proviso thereto. The respondent-plaintiff, having alleged that the defendants had obtained entries or documents affecting the property in question, did not seek the consequential relief necessary to enforce the proprietary right asserted by him.

55. Even otherwise, the respondent-plaintiff failed to establish by legally admissible, cogent and sufficient evidence the facts necessary for the declarations sought. The admitted marriage of Rajeshwari Devi with Late Vindhyachal Pandey and his death in the year 1938 were sufficient to establish the foundation of her status as widow. No legally recognised fact capable of extinguishing or displacing that status was proved.

56. Likewise, the allegation that defendant nos. 2 and 3 were born out of an illicit relationship between Rajeshwari Devi and Late Ram Awadh

Pandey remained substantially a bald allegation, supported only by the testimony of the plaintiff and P.W.-2 Harihar Chaubey. No satisfactory direct evidence or reliable chain of circumstantial evidence was produced. The evidence was also insufficient to establish the foundational facts necessary to displace the statutory presumption of legitimacy, wherever attracted.

57. The judgment passed in the proceedings under Section 488 Cr.P.C. could not be treated as conclusive or binding proof of the aforesaid matters. Rajeshwari Devi was not a party to those proceedings; the conditions of Section 33 of the Evidence Act were not satisfied; the judgment did not fall within Section 41 of the Evidence Act; and the limited and summary nature of proceedings under Section 488 Cr.P.C. could not substitute for the proof required in the present civil suit. The findings recorded by the learned Trial Court, therefore, cannot be sustained.

58. Accordingly, the first appeal is **allowed**. The judgment and decree 7.11.2000/21.11.2000 passed by learned Trial Court in Original Suit No.491 of 1988 (Harishankar Pandey vs. Rajehswari Devi & Ors.) are hereby set aside and the suit filed by the respondent-plaintiff is dismissed.

59. In the facts and circumstances of the case, the parties shall bear their own costs.

60. Let the trial court’s record be returned forthwith.

(Anil Kumar-X,J.)

October 6, 2026
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