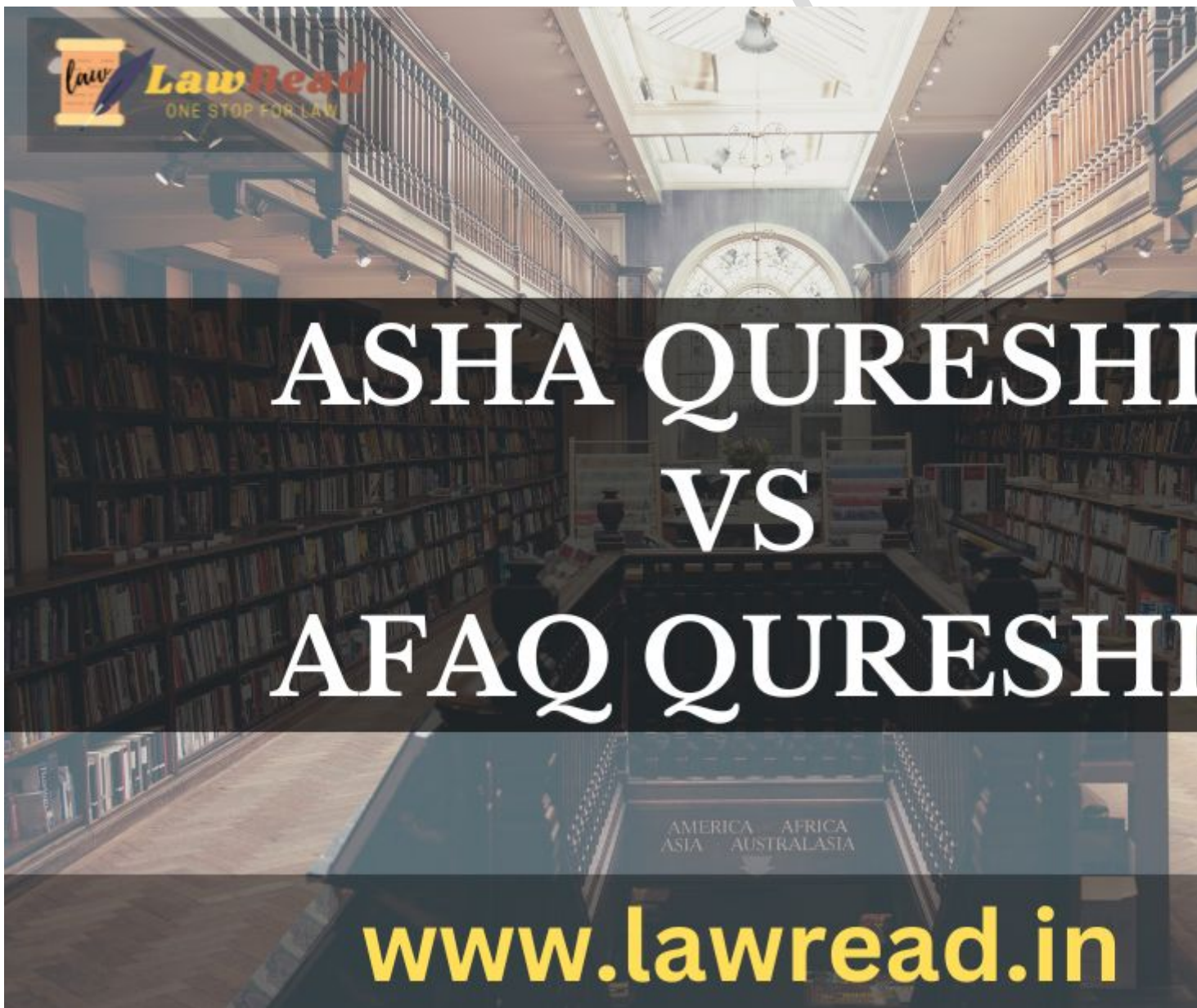


Landmark Judgement

Asha Qureshi v. Afaq Qureshi (2002) | Special Marriage Act Nullity of Marriage



At the time of their marriage, the respondent was unaware that the appellant was a widow from a prior marriage. Fraud is committed when a key fact is suppressed.

Case Title: Asha Qureshi v. Afaq Qureshi

Court: Madhya Pradesh High Court

Citation: AIR 2002 MP 263

Judge: Justice V.K. Agarwal

Context

The contested ruling dated 14.10.1996 issued by the Learned Trial Court was appealed to the Hon'ble High Court of Madhya Pradesh by the disputing parties, the husband and wife, under Section 29 of the Special Marriage Act (Act).

The lower court's decision and decree of nullity, which declared the parties' marriage to be void, are the subject of the contested order dated October 14, 1996.

facts

Asha Qureshi and Afaq Qureshi made the decision to wed in accordance with the Special Marriage Act's legal requirements. In accordance with the legal stipulations included in the Act, **their marriage was formally consummated on January 23, 1990, in Jabalpur.**

For about a year, the couple had a friendly relationship, but as time went on, unanticipated events caused their marriage to deteriorate and they began living apart.

The husband of the respondent, Afaq Qureshi, relocated to the Ld. In response to his petition under Sections 24 and 25 of the Act, the trial court issued a ruling declaring their marriage to be totally void in the eyes of the law. The Respondent's justification for filing such a petition in court is that he didn't realize it was his wife Asha Qureshi's (henceforth referred to as Appellant) second marriage to him until after their marriage. The Respondent's husband was purposefully kept in the dark about the Appellant's prior marriage. According to the Respondent, his wife, Appellant, was previously married to Motilal Vishwakarma, who passed away before to the marriage of the parties involved in this case.

The Respondent further argued before the Hon'ble Court that Asha Qureshi should be a virgin and that it was her first marriage, which was one of the husband's main convictions

prior to their marriage. However, it is alleged that the Appellant deceived the Respondent by keeping this important information from him, and that the Respondent's permission to marry the Appellant was obtained by deception.

The Appellant/wife denied all of the Respondent's accusations, claiming that the Respondent was fully aware that the Appellant was a widow at the time of the couples' marriage. Therefore, his allegation that she deceived him by hiding the truth about her previous marriage is unfounded.

Problem Involved

Whether the appellant/wife married the respondent/husband by deception and concealed the fact that she was a widow at the time of the marriage.

Trial Court Ruling

The Trial Court found that the wife was guilty of using fraud to get the respondent/husband's consent for marriage by hiding important details about her previous marriage. As a result, the Ld. Trial Court granted the husband's request for a decree declaring the marriage null and void.

Decision of the Appellate Court

In order to reach a reasonable conclusion, the High Court considered the following statutory provisions of Special Marriage. The Hon'ble Court cited two statutory provisions—**Section 17** of the Contract Act and Section 25 of the Special Marriage Act—that were pertinent to the resolution of this case.

According to **Section 17** of the Indian Contract Act, actively concealing a fact while knowing or believing it to be true would be considered an exercise of fraud.

The Act's Section 25 specifies the circumstances under which a marriage consummated in accordance with the Act may be declared void. According to one of the requirements, the petitioner may ask the court for a decree of nullity of marriage if they were unaware of the alleged circumstances at the time of the marriage.

A reference to one of the exhibits (referred to as "Exhibit P-1") that the appellant/wife had completed was one of the relevant pieces of evidence that was presented before the Hon'ble High Court. The wife, **her brother Jugal Kishore, and Mohd. Salim signed the legal contract known as "Iqarnama,"** which is exhibit P-1. The Respondent/husband acknowledged throughout the cross-examination that he had known the appellant for around five to six years prior to their marriage being formally consummated, as the Hon'ble Court duly observed. According to the Respondent, the Appellant had defended her single status by citing the lack of responsible family members, but he categorically denied knowing about the

Appellant's prior marriage because his wife had never told him about it.

In contrast to what the Respondent claimed, the Appellant/wife acknowledged that she had been married before getting married to the Respondent, but she claimed to have already told the Respondent that she had been a widow since childhood. However, as she made no mention of informing the respondent/husband of this fact, the appellant/wife's contention was unsupported by any evidence in her pleadings.

The Honorable Appellate Court observed that the Appellant/wife was already married when she married the Respondent/husband, and she failed to tell her husband of this important fact. Therefore, it would be considered fraud to conceal this important information concerning the appellant/wife's prior marriage and her status as a widow at the time of her marriage. **Section 17(4)** of the Indian Contract was cited, stating that it is not necessary for the opposing party to have made an explicit deception in order for fraud to be committed against a party. Fraud would occur if one party actively concealed or suppressed a material fact in order to deceive the other party into entering into a contract.

The Hon'ble High Court of Madhya Pradesh also upheld the Hon'ble Trial Court's ruling that the parties' marriage was null and void due to the aforementioned facts and circumstances. Accordingly, it was decided that the Respondent was entitled to a nullity decree under **Section 25(iii)** of the Special Marriage Act.