

Rency Mathew Vs. Bharath Kumar

Rency Mathew Vs. Bharath Kumar

SooperKanoon Citation : sooperkanoon.com/1232149

Court : Karnataka

Decided On : Jun-29-2020

Judge : B.V.Nagarathna and Ravi V Hosmani

Appeal No. : MFA 1050/2015

Appellant : Rency Mathew

Respondent : Bharath Kumar

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE29H DAY OF JUNE 2020 PRESENT THE HONBLE MRS. JUSTICE B.V. NAGARATHNA AND THE HONBLE MR. JUSTICE RAVI V. HOSMANI M.F.A.No.1050 OF2015(FC) BETWEEN: RENCY MATHEW D/O. MATHEW AGED ABOUT36YEARS, R/AT.NO.513, 17TH MAIN, 39TH CROSS, JAYANAGAR, 4TH BLOCK, BENGALURU - 560 069. APPELLANT (BY SRI. MUNISWAMY GOWDA S G, ADVOCATE) AND: BHARATH KUMAR S/O.R.J.UDAY KUMAR AGED ABOUT40YEARS R/AT.NO.37, 3RD CROSS, SHATIVANA, KODIGEHALI, BENGALURU - 560075. RESPONDENT (RESPONDENT SERVED AND UNREPRESENTED) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION191) OF THE FAMILY COURTS ACT, AGAINST THE

JUDGMENT

AND DECREE DATED:

18. 11.2014 PASSED IN O.S.No.33/2014 ON THE FILE OF THE 4th ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BANGALORE, DISMISSING THE SUIT. 2 THIS APPEAL COMING ON FOR HEARING, THIS DAY, NAGARATHNA J., DELIVERED THE FOLLOWING:

JUDGMENT

Sri. Muniswamy Gowda S.G., learned counsel has appeared for the appellant through Video Conference. There is no representation on behalf of the respondent although he was served on 18.1.2016.

2. The appellant is the wife, who has filed this appeal, assailing the judgment and decree dated 18.11.2014 in O.S.No.33/2014 passed by the IV Additional Principal Judge, Family Court, Bengaluru. By the said judgment and decree the suit filed by her for declaration of her marriage solemnized with the respondent on 12.12.2005 as void, was dismissed. Hence, this appeal.

3. Succinctly stated, facts of the case are that appellant and respondent were married in terms of Hindu customs and rites on 12.12.2005 at Balaji Samudhaya 3 Bhavan, Subramanyanagar, Bangalore. Admittedly, appellant is a Christian by faith, while respondent is a Hindu. Nevertheless, their marriage was solemnized as per Hindu rites and customs. However, thereafter the said marriage was registered under Chapter-III of the Special Marriage Act, 1954 (hereinafter referred to as Act for the sake of convenience). It appears that the parties lived together for some time at Bengaluru. Thereafter several differences arose between them and there were constant quarrels between them. As a result, appellant left the matrimonial home in January 2013. Subsequently, she contacted an advocate for seeking divorce, who advised her that the marriage between herself and respondent herein was per se a void, as there cannot be a valid marriage between a Hindu and Christian under the provisions of the Hindu Marriage Act, 1955. Hence, she filed the suit seeking for a declaration that her marriage with the 4 respondent/defendant was void. Her prayer in the suit is extracted as under: a) Declare that the marriage solemnized between the parties as per Hindu rites and customs on 12th December 2005 at Balaji Samudaya Bhavan, Subramanyanagar,

Bangalore and registered on 25th November 2006 before the registrar of marriages Yelahanka vide certificate No.12/06-07 as void marriage.

4. In response to the suit summons and court notices, respondent herein appeared, filed his written statement and consented that the marriage between himself and the appellant/plaintiff in the suit was per se void and that the certificate issued under the provisions of the Act was not proof of a valid and subsisting marriage; that he was following Hinduism, while appellant was a follower of Christianity. Hence he consented for decreeing the suit.

5. On the basis of the pleadings, the Family Court raised the following issues:

5.

1) Whether the defendant proves that the marriage certificate issued by the Marriage Officer is not a valid one?.

2) What order or Decree?.

6. In order to substantiate her case, appellant /plaintiff examined herself as P.W.1. She produced three documents, which were marked as Ex.P.1 to P.13; while respondent/defendant did not lead any evidence.

7. On the basis of the evidence on record, the Family Court answered issue No.1 in the negative and dismissed the suit. Being aggrieved, this appeal has been preferred.

8. We have heard learned counsel for the appellant and as noted above, respondent is served and unrepresented.

9. Appellants counsel drew our attention to Chapter-III of the Act, which deals with the registration of a marriage celebrated in other forms. He contended that even 6 if the marriage has been performed under the provisions of the Hindu Marriage Act, 1955, (Hindu Marriage Act for short) nevertheless on the conditions mentioned under Section 15 of the Act, such a marriage could be registered. However, he contended that though certain conditions are mentioned under Section 15 of the Act, it is necessary that there should be a valid marriage in the

other forms of marriage namely, as in the instant case, under the provisions of the Hindu Marriage Act, before such a marriage would have the stamp of validity under chapter- III of the Act. That in the instant case, the parties belonging to Christian and Hindu faith, could not have married under the provisions of the Hindu Marriage Act. Such a marriage is ex facie invalid. Therefore, the appellant herein sought a declaration that the marriage was invalid, null and void. Learned counsel for the appellant contended the suit was filed under Section 9 of the Code of Civil Procedure (CPC). The Family Court ought to have taken note of the said 7 aspects and granted the said declaration. Instead, the Family Court considered the instant case under Section 24 of the Act and held that the marriage cannot be declared as null and void, which is erroneous. He submitted that the suit was not filed for seeking nullity of marriage under the provisions of the Act, instead, the suit was filed, seeking a declaration that the marriage performed under the provisions of the Hindu Marriage Act was null and void. Such a declaration ought to have been given having regard to Sections 5 and 7 of the Hindu Marriage Act, which deals with solemnization of marriage between two Hindus and the conditions for such a marriage and the ceremony for a Hindu Marriage. Also there is no provision under the Hindu Marriage Act to seek such a declaration. Therefore, the judgment of the Family Court may be set aside and the relief sought for by the appellant herein may be granted. In this regard, learned counsel for the appellant placed reliance on the judgment of the High Court of Judicature at 8 Calcutta in the case of Lagna Bhattacharjee Vs. Shyamal Bhattacharjee, reported in AIR1975 Cal 6.

10. Having heard learned counsel for the appellant, the following points would arise for our consideration: i) Whether the Family Court was right in dismissing the suit filed by the appellant herein?. ii) What order?.

11. The narration of the facts and contentions above would not call for reiteration except highlighting the fact that the appellant/plaintiff is a Christian by faith, while respondent/defendant is a Hindu by faith. Admittedly, both parties solemnized their marriage under the Hindu Marriage Act. Section 7 of the said Act which deals with ceremonies of a Hindu Marriage, reads as under: Section 7 of the Hindu Marriage Act, reads as under: 7. Ceremonies for a Hindu Marriage.- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of

either party thereto. 9 (2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken. Before a Hindu Marriage could be solemnized under Section 7 of the said Act, there should be compliance with Section 5 of the Hindu Marriage Act, which deals with the conditions for a Hindu Marriage. The same reads 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) Neither party has a spouse living at the time of the marriage; ii) At the time of marriage, neither party.- (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or 10 (c) has been subject to recurrent attacks of insanity; (iii) The bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage; (iv) The parties are not within the degree of Prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two; (v) The parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two; 12. A reading of Section 5 of the Act would make it clear that a marriage solemnized between two Hindus only could be a Hindu Marriage. Such a marriage would be valid if the conditions mentioned under Section 5 of the Act are fulfilled. Therefore, there are twin conditions, which have to be complied with under Section 5 of the Hindu Marriage Act: firstly, two persons, who seek solemnization of marriage under the provisions of the Hindu Marriage Act, must and should be Hindus; it is not enough that one of them is a Hindu. Both parties ought to be Hindus. 11 Secondly, there must be compliance with the conditions mentioned under Section 5 of the Act, so that there would be a valid Hindu Marriage. On fulfilling the aforesaid conditions, a Hindu Marriage could be solemnized in accordance with Section 7 of the Hindu Marriage Act.

13. In the instant case, admittedly, appellant is a Christian and respondent is a Hindu by faith. Therefore, they could not have got married under the provisions of the Hindu Marriage Act. Ex-facie, there is non-compliance of Section 5 of the said

Act even though they may have undergone the ceremonies as per Section 7 of the said Act. In the instant case, the solemnization of the marriage between the two parties is not by two Hindus, but by a Christian and by a Hindu. In the circumstances, there is no Hindu Marriage performed between the parties herein under the provisions of Section 5 of the Hindu Marriage Act in the eye of law. Even if the parties had undergone ceremonies as stipulated under Section 7 of the Act, nevertheless, it 12 cannot be termed as Hindu Marriage, as both parties are not Hindus. In the circumstances, the marriage solemnized between the parties is not a Hindu Marriage in the eye of law. It is in the above circumstances, the appellant herein sought for a declaration that the said marriage was a void marriage by filing the suit. But, the Family Court has not appreciated the aforesaid facts and has taken note of Ex.P.3, which is a document of registration under Section 16 of the Act and has dismissed the suit.

14. Section 16 of the Act finds a place in Chapter III, which deals with registration of marriage celebrated in other forms. Section 15 and 16 of the Act read as under:

15. Registration of marriages celebrated in other forms.- Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:- 13 a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since; b) neither party has at the time of registration more than one spouse living; c) neither party is an idiot or a lunatic at the time of registration; d) the parties have completed the age of twenty-one years at the time of registration; e) the parties are not within the degrees of prohibited relationship: Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and f) the parties have been residing within the district of the Marriage Officer for a period of not, less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.- Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner 14 as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

15. One of the conditions to be fulfilled under Section 15 of the Act is, there must be a ceremony of marriage performed between the parties and they have been living together as husband and wife ever since. The expression ceremony of marriage has been performed must be interpreted in light of Section 7 of the Hindu Marriage Act. There must not only be a solemnization of marriage according to the customary rites and ceremonies by the parties thereto, but the two parties to the marriage must be Hindus and they must follow the conditions as stated in Section 5 of the Hindu Marriage Act. It is only then that there would be a valid Hindu Marriage. As to the definition 15 of a Hindu, Section 2 of the Hindu Marriage Act must be read and it is extracted as under for immediate purpose: 2. Application of Act.- (1) This Act applies,- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj; (b) to any person who is a Buddhist, Jaina or Sikh by religion, and (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.- The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion; (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or 16 Sikh by religion and who is brought up as a member of tribe, community, group or family to which such parent belongs or belonged; and (c) any person who is a convert or re-convert to the Hindus,

Buddhist, Jaina or Sikh religion. (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs. (3) The expression "Hindus" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

16. Thus, if there is a valid Hindu Marriage, such a marriage could be registered under Section 15, Chapter-III of the Act, provided the conditions stipulated under Section 15 of the Act are also complied with. Thus, a valid Hindu Marriage is a condition precedent for registration of such a marriage under Chapter III of the Act. When there is no valid Hindu Marriage, registration under the provisions of 17 Chapter-III and issuance of certificate would not serve any purpose, nor can it give a stamp of validity to an invalid Hindu Marriage. Such a marriage is termed as invalid marriage or no marriage in the eye of law much less a Hindu Marriage.

17. On a cumulative reading of the relevant provisions of the aforesaid Acts, it becomes clear that a Hindu Marriage is valid only when two Hindus marry in terms of Section 5 read with Section 7 of the Hindu Marriage Act. Such a marriage would be valid provided the conditions of Section 5 of the Act are complied with. Even though there is solemnization of marriage between two parties as per Hindu customary rites and ceremonies, if, one of the parties is not a Hindu and even if the other conditions under Section 5 of the Hindu Marriage Act are fulfilled by them, nevertheless, it would not be a Hindu Marriage in terms of Section 5 of the Hindu Marriage Act. If the marriage under the provisions of Hindu Marriage Act 18 is not a valid Hindu Marriage as there is no compliance with Section 5 of the Act, then such a marriage would be null and void or an invalid Hindu Marriage or no marriage in the eye of law.

18. Of course, under Section 11 of the Hindu Marriage Act, nullity of the marriage could be declared, if there is contravention of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Further, if there is violation of the conditions

specified in Clause (ii) of Section 5 of the Act, such a marriage is voidable marriage as per Section 12 of the Hindu Marriage Act. The Hindu Marriage Act does not prescribe nullity or voidness of marriage solemnized between two parties, if one or both of whom are not Hindus, even if they fulfill other conditions of Section 5 of the said Act. But, Section 5 stipulates that it is only when both the parties are Hindus, they could get married under the provisions of Hindu Marriage Act and such a marriage would be a Hindu Marriage. The said condition, namely, that both parties to a Hindu Marriage must be Hindus, is the substratum or foundation of a Hindu Marriage. In other words, even if one of the parties to a marriage is a non-Hindu, it would not result in a Hindu marriage, even if the ceremonies as per Section 7 of the Hindu Marriage Act are performed and all conditions under Section 5 are satisfied. In fact, such a marriage would be no marriage in the eye of law. Further, Hindu Marriage Act applies only to Hindus. In such a situation, no certificate under Sections 15 and 16 of the Act can be issued. The issue herein is not merely one of form but of substance. Thus, Sections 15 and 16 of the Act must be interpreted in a manner that when the marriage in other forms, such as a Hindu Marriage, is a valid marriage then a certificate of registration of such a marriage under the Act could be issued. 20

19. In this regard, reference could also be made to Section 18 of the Act, which deals with effect of registration of marriages under the Chapter and the same reads as under: 18. Effect of registration of marriage under this Chapter. - Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents: Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents. 21 It is also in the aforesaid position of law, that the appellant filed

the suit for declaration that her marriage with the respondent was null and void, as she is a Christian by faith and respondent is a Hindu by faith and both parties not being Hindus, there was no Hindu Marriage as per Section 5 of the Hindu Marriage Act. The aforesaid position has not been appreciated by the Family Court, instead the Family Court dealt with the case under Section 24(1) of the Act, which deals with void marriage under the Act. Section 24 of the Act would apply when any marriage solemnized under the provisions of the Act is a nullity. Section 25 deals with voidable marriages solemnized under the provisions of the Act. Though the Family Court has referred to Section 24 of the Act, it has not fully appreciated the same. Section 24 of the Act reads as under: 24. Void marriages.- (1) Any marriage solemnized under 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 - 22 (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or (ii) The respondent was impotent at the time of the marriage and at the time of the institution of the suit. (2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15: Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

20. Sub section (1) of Section 24 deals with nullity of a marriage solemnized under the provisions of the Act. But, sub - section (2) states that section 24 would not apply to any marriage deemed to be solemnized under the Act within the meaning of Section 18 but the Registration of any such marriage under Chapter -III may be declared to be of no effect if the registration is in contravention of any 23 of the conditions specified in Clause (a) to (e) of Section 15 of the Act. Section 18 is subject to Section 24 of the Act. The provision is relevant for the purpose of this case.

21. Therefore, even on a reading of Section 24 of the Act, the appellant herein could have sought for a declaration that the certificate of registration issued under

Section 16 of the Act was of no effect under the provisions of the Act, as in the instant case, the marriage between the parties had been registered under Chapter-III of the Act, but was solemnized under the provisions of the Hindu Marriage Act.

22. While reading Section 15 of the Act, it is clear that one of the conditions is, a ceremony of marriage had been performed between the parties and they had to live together as husband and wife before registration of that marriage could be made under that Section. We have already interpreted the expression a ceremony of 24 marriage in the light of Section 5 read with Section 7 of the Hindu Marriage Act. There could be a valid ceremony of marriage only when Sections 5 and 7 of the said Act are complied with. When there is no valid marriage under the Hindu Marriage Act, there would be no valid registration of the marriage under Chapter-III of the Act, as in the instant case, where both the parties to the marriage not being Hindus, there is non-compliance of Section 5 read with Section 7 of the Hindu Marriage Act.

23. Therefore, the Family Court was not right in observing that the appellant/plaintiff had failed to make out the grounds under Section 24 of the Act. As per sub - Section (2) of Section 24 of the Act, the marriage in the instant case was performed under the provisions of the Hindu Marriage Act but in contravention of Section 15 of the Act also, as there was no valid ceremony of Hindu marriage inasmuch as both the parties herein were not Hindus. In this context, it is necessary to mention that the suit filed by 25 the appellant/plaintiff was having regard to Section 9 of Code of Civil Procedure, 1908 and not one filed under the provisions of Hindu Marriage Act. We have already noted that there is no provision under the said Act, to seek nullity in a case of marriage being solemnized when both parties are not Hindus. Even under sub - Section 2 of Section 24 of the Act, registration of marriage under Chapter-III could be declared to be of no effect if registration was in contravention of any of the provisions specified in Clause (a) to (e) of Section 15 of the Act. In the instant case, there was also contravention of Section 15 of the Act as discussed above.

24. Further in the instant case, the marriage between the parties was not solemnized under the provisions of the Act. It was solemnized under the provisions of the Hindu Marriage Act, only a registration was sought under Chapter-III of the Act, which deals with registration of Marriage, celebrated in other forms. 26 Therefore, the Family Court misguided itself in the application of the provisions of the Act and has erroneously dismissed the suit.

25. In Smt. Lagna Bhattacharjee (supra), it has been observed that Section 24 of the Act makes a clear distinction between a marriage solemnized under the Act and the marriage deemed to be solemnized under the Act within the meaning of Section 18. That marriages celebrated in other forms cannot be declared null and void under the provisions of the Act, though such marriages may have been registered under the provisions of the Act. The only remedy available to a spouse when such a marriage is celebrated in other forms and is registered under the Act is to seek a declaration that the said marriage is of no effect if sufficient grounds exist thereof. Thus, the marriage celebrated in the other forms would continue unless they are declared null and void in accordance with law. 27

26. In this regard, we refer to the judgment of the Madhya Pradesh High Court in the case of Sanjay Mishra Vs. Miss Eveline Job reported in AIR1993 Madhya Pradesh 54, wherein at paragraph No.22, it is stated that registration of a marriage performed under the provisions of the Hindu Marriage Act as per Chapter-III of the Act would be applied only where the marriage is valid; that any certificate issued under the provisions of the Act for registration of marriage performed in any other form would be valid only when it is found that there is a valid marriage in that particular form in accordance with the applicable law. It has been observed that mere issuance of certificate of registration under Section 15 of the Act would not validate the marriage in view of Section 24(2) thereof.

27. The appellant/plaintiff had filed the suit seeking declaration that her marriage solemnized with the respondent/defendant as per the Hindu rites and customs 28 on 12.12.2005 at Balaji Samudhaya Bhavan Subramanayanagara, Bengaluru and registered on 25.11.2006 before the Registrar of Marriages, Yelahanka vide certificate No.12/06-07 as a void marriage. In substance, the plaintiff has sought a

twin declaration that the marriage under the provisions of the Hindu Marriage Act was an invalid marriage and consequently, to declare that the registration of such a marriage under the provisions of the Act was also null and void. That is how the prayers sought for by the plaintiff have to be appreciated and moulded in the instant case.

28. For the aforesaid reasons, we set aside the judgment and decree of the Family Court and allowed this appeal. Consequently, we declare that the marriage solemnized between the appellant/plaintiff and respondent/defendant on 12.12.2005 at Balaji Samudhaya Bhavan, Subramanayanagara, Bengaluru as invalid and null and void. Consequently, the registration of the said marriage on 25.11.2006 before the Registrar of Marriages, Yelahanka vide certificate No.12/06-07 is also null and void. In the result, the appeal is allowed. The suit filed by the appellant is decreed in the aforesaid terms. No costs. Registry to draw a decree in the aforesaid terms. Sd/- JUDGE Sd/- JUDGE Psg*

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com