

Bai Ramkore Vs. Jamnadas Mulchand

Bai Ramkore Vs. Jamnadas Mulchand

SooperKanoon Citation : sooperkanoon.com/336507

Court : Mumbai

Decided On : Jul-01-1912

Reported in : (1912)14BOMLR766; 17Ind.Cas.95

Judge : Narayan G. Chandavarkar, Kt., Acting C.J. and ;Batchelor, J.

Appeal No. : Appeal No. 1 of 1912

Appellant : Bai Ramkore

Respondent : Jamnadas Mulchand

Judgement :

Narayan G. Chandavarkar, Kt., Acting C.J.

1. The suit, which has led to this appeal, was brought by the respondent, to recover from the three appellants damages incurred by him on account of the giving away in marriage of his niece, Mangli, a minor, by appellants Nos. 1 and 2 to appellant No. 3, in contravention of the betrothal of the girl to one Hiralal, settled by the respondent, as her lawful guardian.

2. The respondent is the paternal uncle of the girl. By a will of her father he and a brother of his were authorised to get the girl married. Accordingly, the respondent (the other brother having died) betrothed the girl to one Hiralal. But appellants 1 and 2, who are respectively mother and maternal uncle of the girl, gave her in marriage to appellant 3.

3. The respondent complains that in consequence of that marriage he was unable to perform the contract of betrothal into which he had entered with Hiralal; that Hiralal demanded Rs. 2,000 as damages for the breach; and that the dispute was finally settled by an award of arbitrators under which he had to pay Rs. 1,000 to Hiralal as damages.

4. This sum he claims in his plaint from the appellants.

5. The respondent bases his claim upon his right to give the girl in marriage, Narayan G. Chandavarkar, Kt., Acting C.J. under the Hindu law, under the will of the girl's father, and (3) in virtue of a custom of the caste to which the parties belong.

6. The right claimed under the Hindu law arises out of a text of Yajnyavalkya adopted by Vijnaneshvara in the Mitakshara and by Nilakantha, author of the Vyavahara Mayukha, in his Samskara Mayukha. According to that text, the persona entitled to give a girl in marriage are, ' the father, paternal grandfather, brother, kinsman (sakulya), and mother,' in the order stated. It follows from this text that the paternal uncle of the girl (who in this case is the respondent) had the right to give her in marriage before the mother. But to entitle the respondent to damages from the mother for having given the girl in marriage so as to exclude his right, regard must be had to the nature of the right itself and it must be established that the right is absolute and exclusive. The text only deals with the bare right to give a girl in marriage. Under the Hindu law, when her father dies, leaving her mother, the mother becomes the legal guardian of the girl. The text cited above does not deprive the mother of this right of guardianship but only specifies who can make a gift of her in marriage. The . paternal male relations of the girl are placed above the mother for the purposes of that gift, because women are dependent and moreover they cannot perform certain ceremonies essential to or usual in a marriage. Even when, in default of paternal male relations, the mother makes the gift, she has to employ some one of her caste, to act on her behalf at the marriage and perform the ceremony of giving which is called kanyadana. This is well-explained in the Dharma Sindhu: ' where the mother has to give her daughter in marriage, she herself must perform the ceremony of nandi shraddha.

All other ceremonies she must get performed by a Brahmin:' See also to the same effect Sir Gurudas Banerjee's Hindu Law of Marriage and Stridhan, 2nd Edition, p. 45. The text of Yajnyavalkya does not say that the mother is to have no voice at all and may be altogether set at naught where there are paternal male relations of the girl, competent to give her in marriage. Had that been the intention of the Hindu law, there would have been express texts to that effect. We cannot infer such intention, by mere implication, because that would lead to very undesirable results, especially in the present state of Hindu society. In that case, any distant male relation of the girl on the father's side might give her in marriage, whether he be interested in her and whether he be really anxious for her welfare or not, without consulting, and having regard to the wishes of, the person most interested, that is, the mother, who is the natural guardian of the girl. In the absence of the authority of express texts binding on us, the Hindu lawgivers should not be held to have contemplated the total exclusion of the mother from her right as guardian to be consulted as to the choice of a husband for her daughter. This view is substantially supported by the judgment of the Madras High Court in *S. Namasevayam Pillay v. Annammai Ummal* (1869) 4 M. H. C. R. 339; and it is a conclusion which fits in with the principle of the judgment of this Court in *Shridhar v. Hiralal Vithal* ILR (1887) 12 Bom. 480. Any other conclusion would be highly prejudicial to the best interests of Hindu family life and to the welfare of minor girls, whose marriages are made in many cases the source of profit by greedy relations.

7. The respondent also claims his right under the will of the girl's father. The provision in the will, giving the right, is merely to the effect that the respondent and his brother, to whom the testator devised his property, should get the girl married (parname) by expending money out of the testator's property with due regard to his status. The right under the will is no more than the right under the Hindu law and is, therefore, subject to the same limitations. Whether, if the testator had enlarged that right and removed the limitations by his will, it would have been a valid provision legally enforceable is a question which does not arise in the present case ; and, therefore, we refrain from expressing any opinion on it.

8. The respondent further asserts his right under a custom of his caste. But that right also, according to the allegation, is the same as that under the Hindu law and

is, therefore, governed by the same considerations.

9. The nature of the right claimed by the appellant being not absolute but of a qualified character, and there being no allegation in the plaint that before betrothing the girl to Hiralal, he had consulted her natural guardian, i. e., her mother, and chosen the bridegroom with due regard to the interests of the girl and the mother's wishes, it follows that he had no right to enter into the contract and consequently he has no cause of action as against any of the appellants.

10. On these grounds the order of remand of the lower appellate Court must be reversed and the decree of the Court of first instance, dismissing the suit with costs, must be restored with the costs of this appeal and of the appeal to the District Court on the respondent.

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