

Chennamma Vs. Dyana Setty

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Court : Karnataka

Decided On : Jun-11-1952

Reported in : AIR1953Kant136; AIR1953Mys136

Judge : Venkataramaiya and ;Balakrishnaiya, JJ.

Acts : Mysore Hindu Law Women's Rights Act, 1933 - Sections 23; [Constitution of India](#) - Articles 14 and 15; Hindu Law; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 113; Madras Hindu Bigamy Prevention and Divorce Act, 1949; Bombay Prevention of Hindu Bigamous Marriages Act, 1946; Indian Penal Code (IPC), 1960 - Sections 497

Appeal No. : Civil Referred Case No. 3 of 1951-52

Appellant : Chennamma

Respondent : Dyana Setty

Judgement :

ORDER

1. This is a reference under the Proviso to Section 113, Civil P. C. by the Munsiff of Nanjangud seeking opinion of this Court on the following question:

'Whether Section 23 (b) and (c) of the Act to amend the Hindu Law as to the rights of women and in certain other respects (Act 10 of 1933) is invalid or inoperative by virtue of Article 15 of the Indian Constitution?'

2. The reference is said to have become necessary as the learned Judge while dealing with a suit for maintenance by a Hindu woman against her husband on the ground that he has kept a concubine, considered that Section 23 of the Act relied upon is repugnant to Article 15 of the [Constitution of India](#) which forbids discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The reason given for this view is that the Act in which the section appears is applicable only to a section of people who follow the Mitakshara school of Hindu Law and not to all persons such as, Hindus subject to Dayabhaga etc., Muslims, Christians or Parsees. The parties to the suit in which the question is raised have not appeared though served with notices. The point for examination is whether the ground on which the Act is held to be invalid in the order of reference is correct.

3. The citizens of India are not governed by the same laws in all matters. There are personal laws governing marriage, succession etc., amongst Hindus which are different from those of others. Likewise the Muslims, Christians and many others have laws of their own. Custom which varies from place to place has in some cases attained the force of law. If universal application is the test of a law not being discriminatory, then personal laws should all be regarded as invalid on account of these being applicable only to persons of particular class. This is not however the criterion to brand a law with discrimination. If between one person of the same class and another there is scope for making arbitrary difference in the application of the law, then it may be open to attack; but when the law applies to one and all of a class alike and the Act in question does not provide for or permit any distinction being made in its application to all persons subject to Mitakshara system of Hindu Law and everyone of such persons is bound by it, the criticism of its being discriminatory cannot stand. With respect to legislation prohibiting bigamy in Madras and Bombay amongst Hindus similar contentions were raised but negatived: See the Madras Hindu Bigamy Prevention and Divorce Act (6 of 1949) and the Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946) which are applicable only to Hindus in those respective States as the Mysore Act is in Mysore and yet these are held to be valid: See -- 'Srinivasa Aiyar v. Saraswathi Ammal', : AIR1952 Mad193 (A) and -- 'State of Bombay v. Narasu Appa Mali', : AIR1952 Bom84 (B). Section 497, Penal Code was also impugned as being invalid

in -- 'Yusuf Abdul Aziz v. State', : AIR1951 Bom470 (C) on the score of discrimination between man and woman in regard to the offence of adultery but the Court held it was valid. As observed in -- 'State of Bombay v. F. N. Balsara', AIR 1951 SC 318 at p. 320 (D) the 'classification is bound to produce some inequality to a certain degree but that would not be enough to invalidate a law so long as the law deals equally with the members of a well defined class.' So, the inequality between Hindu women governed by the Mitakshara system and other women as regards circumstances under which maintenance may be claimed from their husbands is not sufficient to treat Section 23 of the Act as offending Article 15 of the Constitution. The following statement in -- 'Charanjit Lal v. Union of India', : [1950]1SCR869 (E) though made with reference to Article 14 is also pertinent.

'If the law deals equally with all of a certain class it is not obnoxious and it is not open to the charge of a denial of equal protection on the ground that it has no application to other persons, for the class for whom the law is made is different from other persons and therefore there is no discrimination amongst equals.'

4. The answer to the question therefore is that Section 23 of Act 10 of 1933 is quite valid and operative and that it does not offend Article 15 of the [Constitution of India](#).

5. Reference answered.

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