

Rafiuddin Vs. Zubedabi

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Court : Karnataka

Decided On : Jan-17-1966

Reported in : AIR1968Kant155; AIR1968Mys155

Judge : Somnath Iyer and ;Ahmed Ali Khan, JJ.

Appeal No. : R.A. 29 of 1958

Appellant : Rafiuddin

Respondent : Zubedabi

Judgement :

Somnath Iyer, J.

(1) In the City of Belgaum there lived a person named Ibrahim Soudagar who according to the evidence, belong to a respectable family and exercised the profession of an excise contractor. It appears that he was a person of more than ordinary affluence. He died in the year 1912. Ibrahim left behind him a widow Hafizabi. Through that wife he had a son Jamaluddin, and, Jamaluddin had a son and two daughters named respectively Rafiuddin, Hafizabi and Khatijabi.

(2) In the year 1957, a certain Zubedabi made an application for the grant of letters of administration in respect of the estate of her husband Saifuddin. Zubedabi claimed to be the only heir to the estate of Saifuddin. To this application caveats

were entered by Rafiuddin and his two sisters who it may be recalled, were the children of Jamaluddin who was the son of Ibrahim through his wife Hafizabi.

(3) The caveators contended that Saifuddin was also the son of Ibrahim through his wife Tarabi and that in the estate of Saifuddin they were entitled to a $\frac{4}{3}$ share as residuaries.

(4) Zubedabi contended that Tarabi was not the wife of Ibrahim and that her husband Saifuddin was only an illegitimate issue of the concubinage between Ibrahim and Tarabi, and that in consequence, the caveators would not be entitled to share in the estate of Saifuddin.

(5) The Civil Judge found against the caveators on the question whether Tarabi was the wife of Ibrahim. His finding was that between Ibrahim and Tarabi there was no marriage and that Saifuddin was not the issue of any such wedlock. So he granted the letters of administration to Zubedabi as prayed for by her, and the caveators appeal.

(6) It is not disputed before us that Saifuddin was the son of Ibrahim, although the controversy surrounds the question whether he was the offspring of the marriage between Ibrahim and Tarabi. It is also not disputed that If Tarabi was the wife of Ibrahim the caveators would be entitled to a $\frac{3}{4}$ share in the estate of Saifuddin. It is also not controverted that if he was not, this appeal has to fail since the caveators would be entitled to no share in the estate of Saifuddin. So, the only question which this appeal poses is whether Tarabi was the wife of Ibrahim.

(7) The evidence produced in support of the allegation that Ibrahim and Tarabi were married spouses is both oral and documentary. Similarly Zubedabi gave evidence that there was no such marriage and produced other documents supporting her allegations.

(8-15) (After discussing evidence his Lordship proceeded). Normally speaking, if Saifuddin was calling himself the son of Ibrahim Soudagar, the fact that he called himself in that way as long ago as in the year 1913, would have constituted some important piece of evidence in favour of the allegation of the caveators. Similarly

the fact that Ibrahim and Tarabi cohabited together for a long period of time would have normally raised the presumption that Tarabi was the wife of Ibrahim and that their union did not have for its source any concubinage. But it is obvious, that in the circumstances, the fact that Saifuddin called himself the son of Ibrahim Soudagar can be of very little use to the caveators, having regard to the extremely belated stage which Saifuddin commenced calling himself so.

(16) It is equally plain that in the case before us there can be no presumption that Tarabi was the wife of Ibrahim, not even from the fact that Ibrahim and Tarabi were cohabiting together over a long tract of time. It is true that if a man and a woman are proved to have been having cohabitation over a long period of time, that cohabitation would produce a presumption that they were married spouses. But, if the woman with whom there was such cohabitation is proved to be a public woman, that presumption would be unavailable. The presumption of marriage arises from the fact that normally speaking no man cohabits with a woman who is not his wife over a long period of time. But, if the woman is a public woman or a prostitute, the fact that someone cohabited with her can constitute extremely slender foundation for any presumption of marriage.

(17) That was the view expressed by the Privy Council, in *Ghazanfr Ali Khan v. Mt. Kaniz Fatima*. (1910) 36 Ind App. 105 (PC) with which we respectfully agree

(18-24) (After discussing evidence his Lordship further proceeded). However that may be, we are of the view that the Civil Judge was right in coming to the conclusion that Ibrahim did not marry Tarabi and that she was only his mistress and that Saifuddin was the illegitimate issue of the concubinage.

(25) We dismiss this appeal. In the circumstances we make no direction as to costs.

(26) Appeal dismissed.