

Neelavva Vs. the Divisional Controller, K.S.R.T.C. and anr.

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Court : Karnataka

Decided On : Apr-19-2002

Reported in : AIR2002Kant347; 2002(5)KarLJ67

Judge : Tirath S. Thakur and ;D.V. Shylendra Kumar, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 7; [Evidence Act, 1872](#) - Sections 7(2), 101 to 104, 112 and 114; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : Miscellaneous First Appeal No. 177 of 1995

Appellant : Neelavva

Respondent : The Divisional Controller, K.S.R.T.C. and anr.

Advocate for Def. : H.R. Renuka, Adv. for Respondent-1 and ;G.S. Khannur, Adv. for Respondent-2

Advocate for Pet/Ap. : R.B. Anneppanavar, Adv.

Disposition : Appeal allowed

Judgement :

D.V. Shylendra Kumar, J.

1. The plaintiff in O.S. No. 29 of 1993 before the Family Court, Bijapur is the appellant in this appeal, being aggrieved by the dismissal of the suit praying for

setting aside the judgment and decree of the Family Court and to decree the suit in her favour.

2. For the sake of convenience, the parties in this appeal will be referred to their respective ranks in the suit. The suit which had been originally filed before the Principal Munsiff, Bijapur and had been numbered as O.S. No. 495 of 1991 and which was transferred later on the establishment of Family Court, Bijapur and renumbered as O.S. No. 29 of 1993 before the Family Court, was for a declaration that the plaintiff along with her minor daughters, are entitled to receive all the benefits that are payable on the death of her husband Somanath Tarapur of Savalgi Village who had been employed by the first defendant-K.S.R.T.C. and was working at Jamkhandi depot and for a consequential permanent injunction to restrain the second defendant, one Smt. Shantha Rao alias Renuka in the matter of receiving such benefits from the first defendant-Corporation.

3. The plaint averments were that the plaintiff was married to one Somanath Tarapur s/o Basanna Tarapur, a resident of Savalgi Village, Bijapur Taluk on 20th May, 1982; that the marriage had been preceded by an engagement ceremony that took place on 13-4-1982 at Shivanagi Village; that after the marriage, the plaintiff and her husband led a happy married life; that two daughters were born out of the wedlock namely, Sunitha in the year 1983 and Anita in the year 1984; that their married life was alright till then, but after this, the husband of the plaintiff took to bad habits, started ill-treating the plaintiff and her children; that he brought Shanta, the 2nd defendant to their house which led to strained relationship between the plaintiff and her husband; that due to such squabbles in the house, they had to move from one neighbourhood to another; that ultimately the plaintiff was forced to leave the marital house and was compelled to have shelter in her parents' house.

4. As her husband had failed to maintain and neglected to look after the plaintiff and her children, the plaintiff had to petition for maintenance in Cri. Misc. No. 59 of 1988 before the Judicial Magistrate First Class, Dharwad and the said petition came to be allowed in the year 1990, awarding a sum of Rs. 250/- in favour of the plaintiff and Rs. 125/- each in favour of the minor children; that her husband died

on 2-9-1991; that the plaintiff was forced to file recovery petition as her husband did not pay the maintenance amount awarded by the Court and subsequent to the death of her husband on 2-9-1991, the second defendant started claiming herself to be the legally wedded wife of her husband Somanath Tarapur and filed a suit in O.S. No. 364 of 1991 against the plaintiffs mother-in-law and had obtained an ex parte decree declaring that the second defendant was the legally wedded wife of the deceased Somanath and that she alone was entitled to receive all the benefits which the employer of deceased Somanath Tarapur would pay to his legal heirs and in view of such a situation, the plaintiff was forced to file a suit for declaration that she alone is the legally wedded wife of the deceased Somanath Tarapur and she and her children are entitled to receive the benefits payable by the employer of her deceased husband and the second defendant was not entitled to lay claim for such benefits.

5. The suit claim was resisted. The first defendant remained neutral in the sense that it would abide by the decision of the Court.

6. The second defendant contested the suit and claimed that she is the legally wedded wife of deceased Somanath Tarapur; that the plaintiff was not the widow of the deceased Somanath Tarapur as alleged in the plaint; that she did not know and does not admit the so-called marriage of the plaintiff with deceased Somanath Tarapur on 20-5-1982 at Shivanagi Village; that it was false to plead so and though the same was not a fact it was only to suit the convenience of the plaintiff; that she did not admit the two daughters of the plaintiff by names Kum. Sunitha and Kum. Anita were born to Somanath Tarapur out of the wedlock with the plaintiff; that the suit averments about the ill-treatment of the plaintiff by the deceased Somanath Tarapur is also false as the plaintiff never resided with deceased Somanath Tarapur as his wife; that the second defendant was married to the deceased Somanath Tarapur as per the customary marriage rites as on 11-9-1983 at Vittal Mandir at Bijapur; that she lived a happy married life with deceased Somanath Tarapur till his death on 2-9-1991; that the order passed in Cri. Misc. No. 59 of 1988 before the Court of Judicial Magistrate First Class, Dharwad awarding maintenance in favour of the plaintiff and her daughters payable by the deceased Somanath Tarapur was neither binding on her nor can it

be said that it has proved the marriage of the plaintiff with deceased Somanath Tarapur; that after the death of Somanath Tarapur, she is the only legal heir to claim the benefits from the employer of deceased Somanath Tarapur being his legally wedded wife; that she was forced to file a suit against her mother-in-law in O.S. No. 364 of 1991 as her mother-in-law, after the death of her son, had produced a false survivorship certificate before the employer of deceased Somanath Tarapur and had sought to take away all the benefits and that her mother-in-law chose to remain absent in the suit filed by her and as such her suit was decreed and that she did not resort to any trickery in obtaining an ex parte decree against her mother-in-law; that the suit claim is false, untenable and without any valid cause of action and was liable to be dismissed, that the suit was liable to be dismissed as the plaintiff was not entitled to get any relief as sought for in the suit.

7. In view of such rival pleadings, the Trial Court framed as many as eight issues which are as under.--

'(1) Does plaintiff prove that she was legally wedded wife of deceased Somanath Tarapur as contended?

(2) Does plaintiff prove that out of the said wedlock she begot two daughters by Somanath as contended in para 7 of the plaint?

(3) Does plaintiff prove that the judgment and decree obtained by defendant 2 in O.S. No. 364 of 1991 is not binding on her?

(4) Does defendant 2 prove her status as legally wedded wife of deceased Somanath Tarapur?

(5) Does plaintiff entitled to claim all the monetary benefits of deceased Somanath on his death?

(6) Does defendant 2 prove her right to claim all the monetary benefits of deceased Somanath as his widow?

(7) Does plaintiff entitled to the relief claimed?

(8) To what order or decree?'

8. The Trial Court answered issue relating to plaintiffs ability to prove that she was the legally wedded wife of deceased Somanath Tarapur in the negative and against the plaintiff and also answered the issue relating to the second defendant's ability to prove that she is the legally wedded wife of deceased Somanath Tarapur in favour of second defendant and as a consequence, held that the plaintiff is not entitled for any relief in the suit and dismissed the suit.

9. The plaintiff had, in support of her case, examined six witnesses besides examining herself and got marked Exs. P. 1 to P. 15. The second defendant examined herself and three other witnesses in support of her case apart from exhibiting documents, Exs. D. 1 to D. 4. The Trial Court examined issue No. (1) in the light of the provisions of Section 7 of the Hindu Marriage Act and being of the view that the plaintiff was required to prove the solemnization of her marriage with the deceased Somanath Tarapur in accordance with the requirements of Hindu Marriage Act and by proving that the marriage has been solemnized and legalised by completion of ceremonies including that the taking of seven steps together by the couple before the sacred fire and tested the evidence let in by plaintiff on the touchstone of such requirements.

10. Section 7 of the Hindu Marriage Act read as under.--

'Ceremonies for a Hindu Marriage.--(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(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'.

11. The learned Trial Judge, in the context of the provisions of Section 7(1) of the Act and in the light of the issue No. (1) framed in the suit, was of the view that the burden of proving that the plaintiff was the legally wedded wife pursuant to her marriage with him was on the plaintiff and it is discharged only when the plaintiff proves that her marriage with deceased Somanath Tarapur was performed in

accordance with the provisions of Section 7(1) of the [Hindu Marriage Act, 1955](#), i.e., as to whether the plaintiff has proved that her marriage was duly solemnized with the deceased Somanath Tarapur with customary rites and ceremonies and the conclusive proof being as to whether the said ceremonies ended with the taking of vow by the couple and taking of seven steps jointly before 'Agni'. The entire evidence placed by the plaintiff was examined as to whether the plaintiff proves this factum to conclude the marriage and answered the issue in the negative and dismissed the suit.

12. Sri R.B. Anneppanavar, learned Counsel appearing for the plaintiff submits that the Trial Court has misdirected itself in understanding the true scope of the suit; that the Trial Court has totally failed in applying the proper tests to determine as to whether the plaintiff has proved that her marriage had taken place with the deceased Somanath Tarapur; that they lived as man and wife and begot children as a married couple and that the Trial Court has totally failed in appreciating the evidence on record; the entire approach of the Trial Court is wrong and that the Trial Court ought to have answered issue No. (1) in favour of the plaintiff and ought to have decreed the suit and should not have dismissed the suit.

13. Sri G.S. Khannur, learned Counsel appearing for the second defendant, on the other hand, supported the judgment of the Trial Court and submitted that the Trial Court was justified in dismissing the suit; that the plaintiff had failed to prove the solemnization of her marriage with the deceased Somanath Tarapur in accordance with the requirements of law; that the Trial Court was bound to dismiss the suit and that the judgment and decree of the Court below does not call for any interference and the appeal be dismissed.

14. Ms. H.R. Renuka, learned Counsel appearing for the first respondent submitted that the Corporation will abide by the decision of the Court and that subsequent to the dismissal of the suit, the Corporation has in fact paid the benefits arising out of the death of Somanath Tarapur in favour of the second defendant and that she has also been provided with employment on compassionate grounds and that she has been working now in the services of the Corporation; that the Corporation would abide by the judgment and decree to be

passed by this Court.

15. In the light of the rival submissions made on behalf of the parties and on a perusal of the judgment and decree, the records of the case and the application of the law governing the issues, the points that arise for determination in this appeal are.--

'1. As to whether the Trial Court has applied the proper legal process in answering issue No. (1) in the suit?

2. As to whether the Trial Court has understood the scope and extent of applicability of the provisions of Section 7 of the [Hindu Marriage Act, 1955](#) to the facts of the present case? and

3. As to whether the Trial Court has examined the evidence on record in the proper perspective?'

16. Section 7 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act', for short), recognises the customary rites and ceremonies of the parties for valid solemnization of a Hindu marriage. It does not necessarily mean that in all Hindu marriages it is only the taking of seven steps by the couple together before the sacred fire that solemnizes the marriage. Section 7(1) reads as under.--

'(1) A Hindu marriage may be solemnized in accordance with the customary and ceremonies of either party thereto'.

17. A customary right may or may not include the taking of seven steps by the couple together before the sacred fire. However, Sub-section (2) of Section 7 reads.--

'(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';

which means that when such customary rights and ceremonies include the taking of the seven steps by the couple together before the sacred fire, the marriage becomes complete and binding when the seven steps are taken. It only means

that after this event, namely, after the taking of the seventh step, the marriage becomes irreversible or conclusive between the parties. There is no scope for going back on the event of marriage when once the parties have gone through this motion. It does not necessarily mean that it is only the taking of seven steps that brings about a marriage and not otherwise. These aspects apart, the contents of Section 7(2) assumes importance in a situation where the dispute between the parties is as to whether the marriage is conclusive by the completion of the taking of the seven steps before the sacred fire, i.e., in the first instance, as in the instant case that the plaintiff if has pleaded that marriage was solemnized in accordance with the customary rites and ceremonies and that such ceremonies included the taking of seven steps jointly by the bride and the groom before the sacred fire and that it had happened and therefore the marriage had become concluded. If the defendant had contested this position, then alone the issue relating to the marriage being proved by demonstrating that the motion of taking seven steps together before the sacred fire has been gone through. The pleading is not that the marriage was solemnized in accordance with Hindu rites and ceremonies including the taking of seven steps together by the bride and the groom in front of the sacred fire. It was not the defence that the marriage was not solemnized or was not performed in accordance with Hindu rites for want of the couple taking the seven steps together in front of the sacred fire. In the light of such pleadings, the issue relating to the proof of the marriage does not involve the question of the plaintiff producing proof by the couple having taken the vow and seven steps together in front of the sacred fire as is indicated in Section 7(2) of the Act.

18. The learned Trial Judge has misdirected himself in examining the entire evidence on record from the angle of the factum of marriage having been proved by or not taking of the seven steps together in front of the sacred fire. The learned Trial Judge has not at all examined the evidence available on record in its proper perspective. The learned Trial Judge has, being unduly obsessed with the phenomenon of the couple taking seven steps together in front of the sacred fire, has totally ignored the true and natural evidence placed before the Court by the plaintiff to prove the factum of marriage as also that the plaintiff and the deceased Somanath Tarapur were living as man and wife for a fairly considerable length of time to beget two daughters and it was because of certain differences between the

couple as the husband had indulged in extra-marital relationship with the other lady; that the marriage broke down and other consequences followed.

19. Plaintiff, in support of her case, had examined herself and had deposed that her marriage took place on 20-5-1982 at Shivanagi Village, her parents' place; that it was preceded by the engagement ceremony evidenced by the marriage settlement deed dated 13-4-1982 as per Ex. P. 3 and several persons who were witnesses to the engagement ceremony had been examined. She has deposed that out of the wedlock, two daughters were born, one in the year 1983 i.e., on 12-7-1983 registered on 14-7-1983 and had produced Ex. P. 1-Birth Certificate of the first daughter Sunitha, in which it was clearly indicated that the parents were plaintiff and Somanath Tarapur. Likewise, the Birth Certificate in respect of the second daughter and born on 19-11-1984 and registered on 21-11-1984 marked as Ex. P. 2 clearly indicated that the plaintiff and the deceased Somanath Tarapur were the parents of the child. The plaintiff had also stated about the reason for breaking down of the marriage after about three or four years and the subsequent developments leading to the filing of the maintenance case in Misc. No. 59 of 1988 before the Judicial Magistrate First Class, II Court, Dharwad and award of maintenance in her favour and in favour of her daughters under Section 125 of the Cr. P.C. by an order dated 18-1-1990 passed in the said Misc. No. 59 of 1988 and marked as Ex. P. 5. The plaintiff had also taken steps by writing letter to her late husband's employer that in view of the award of maintenance in her favour, the amount should be paid from out of the salary payable to the deceased Somanath Tarapur and the application dated 26-6-1989 had been responded to by the employer as per letter dated 5-9-1991 which had been exhibited as per Ex. P. 6. The evidence of the plaintiff and the documents produced in support of the plaint is cogent, natural and narrates the sequence in a truthful manner. In her cross-examination nothing much is elicited to impeach her evidence except for suggesting that the marriage did not take place and that she was deposing falsehood. P.W. 2-Shantha Bai, mother-in-law of the plaintiff has spoken to about the engagement ceremony, marriage, living of the plaintiff and Somanath Tarapur together as husband and wife, their begetting two daughters out of the wedlock, the wayward conduct of Somanath Tarapur after the marriage, his illicit intimacy with other woman, his negligent conduct in not maintaining his wife and children;

as to how she herself took her daughter-in-law and her granddaughters to her house after such neglect by her son and the efforts made by her to conciliate and eliminate the differences. She has denied the suggestion that she is deposing in favour of the plaintiff due to ill-will against the second defendant and that she was not aware of the Court proceedings which the second defendant had instituted against her and that after she came to know about the same, she has taken steps to get the same set aside. She has also deposed in her cross-examination that she has performed the funeral of her son and she was not aware that the second defendant had claimed a sum of Rs. 1,000/- towards funeral expenses on the death of her son. The evidence of P.W. 2 is very crucial and important. It is not disputed that she is the mother of the deceased Somanath Tarapur.

20. P.W. 3-Saheblal is the owner of the house where the plaintiff and her late husband Somanath Tarapur lived as husband and wife as tenants. He has deposed that they were tenants in their house during the year 1984-85; that a child was born to them when they were so living in this house; that the deceased Somanath Tarapur who was the husband of the plaintiff was working as a conductor in K.S.R.T.C. bus; that the plaintiff's husband started the habit of bringing some other lady to the house which was instrumental in quarrels erupting between the two ladies and disturbing the tranquil atmosphere in the house; that he had asked the plaintiff and her husband to vacate their house as they were causing such disturbances and they did vacate in a month after such incident. The testimony of this witness is also not seriously impeached. This witness cannot be said to be an interested witness at all and has spoken to in a natural manner. His evidence clearly shows that the plaintiff and the late Somanath Tarapur were living as husband and wife and it was the entry of the second defendant which was the root cause for all subsequent trouble in the family.

21. P.W. 4-Hanamanthappa is the father of the plaintiff and he has spoken to about the engagement ceremony, about the factum of the marriage having taken place on 20-5-1982 at Shivanagi Village and the rest of the subsequent developments. The evidence is in consonance with the evidence of the other witnesses and fully supports the case of the plaintiff. His evidence is also natural and trustworthy and nothing much has been done in the course of the cross-

examination to discredit this witness and his testimony.

22. P.W. 5-Gundappa, who is a witness to the engagement and the 'yadhi' dated 13-4-1982 and has signed as a witness to the same, has also spoken about the marriage taking place about five weeks after the marriage deed. He is also an independent witness and he has spoken to about the engagement and the marriage.

23. P.W. 6-Siddappa Kondiba Kambar is the grandfather of the deceased Somanath Tarapur on his mother's side. He has deposed that the talk regarding the marriage settlement took place in his house and that at that time, about twelve persons were present and the discussion was reduced into writing as per Ex. P. 3, dated 13-4-1982. He is also a signatory to the exhibit and he has spoken about the marriage taking place on 20-5-1982 at Shivanagi Village and the marriage of Somanath Tarapur took place with the plaintiff, who is from Dharwad. Though this witness could not remember the name, he has identified the plaintiff in the Court hall.

24. It is noteworthy that this witness is also a relative of the deceased Somanath Tarapur and it was in his house that the marriage settlement took place. The evidence of P.W. 5-Gundappa is also to the same effect. This witness also has vividly narrated about the preparation of the marriage 'yadhi' under Ex, P. 3 and has also spoken that the plaintiff and her husband Somanath Tarapur lived as husband and wife in Shivanagi Village itself for about two years after the marriage.

25. The scribe of Ex. P. 3-Sharanappa Bhimappa Inchur has been examined as P.W. 7. In cross-examination, this witness has explained how he wrote the 'yadhi' and under what circumstances, how long it took for him to write the same; that he has not signed it as a witness, but others have signed as witnesses of the 'yadhi'. He has also spoken that the marriage took place at Shivanagi Village in front of the house of Basanna Tarapur; that the name of one of the daughters of the plaintiff is Prathibha and he does not know the name of the other child.

26. The evidence of witnesses examined on behalf of the plaintiff, undisputably leads to the conclusion that the plaintiff and the deceased Somanath Tarapur were

married on 20-5-1982 at Shivanagi Village and was preceded by an engagement ceremony at the same place which had taken place on 13-4-1982 and evidenced as per Ex. P. 3. There is ample material on record to indicate that the deceased Somanath Tarapur and the plaintiff lived as husband and wife, got two daughters out of the wedlock and that marriage did break down because of the intrusion of the second defendant and leading to the plaintiff filing the maintenance case against her husband.

27. In the light of the controversy between the parties and in the light of the prayer that had been sought for in the suit, to hold that the plaintiff has not proved her case that her marriage had taken place with the deceased Somanath Tarapur on 20-5-1982 and to answer the issue No. (1) against the plaintiff, is like missing the woods for the trees. The application of the test of taking of seven steps by the bride and the groom in front of the sacred fire and holding that the plaintiff having failed to pass this test, is nothing short of a mockery of truth and justice. At the first instance, the test does not apply at all to the fact situation of the case. The scope of the provisions of Section 7(2) of the Act has been totally misunderstood by the learned Trial Judge. It is not the requirement of law that the marriage amongst Hindus in which it is not proved that the couple had taken a vow and seven steps together in front of the sacred fire, is no marriage at all, nor can it be said that no marriage is valid in the absence of such proof notwithstanding there being sufficient evidence to prove the marriage otherwise. The provisions of Section 7(2) of the Act can only be understood as laying down and forming the principle that any marriage, where it is pleaded that the taking of seven steps together in front of the sacred fire, is part of the custom, that the conclusion of this event, if proved, will clinch in favour of the person claiming that the marriage has taken place and that it had become binding and concluded between the parties without anything more. What the law says is that if a custom allows and includes many other rituals and rites to be performed even thereafter, i.e., subsequent to the performing of the taking of the seven steps together by the couple in front of the sacred fire, non-performance of such further ceremonies and rituals is of no consequence in determining the validity of the marriage. Notwithstanding such subsequent ceremonies not having taken place, the factum of marriage between the parties becomes binding and complete when seven steps are taken. In this regard, we

can usefully refer to the decision of the Supreme Court in S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Ors. : AIR 1992 SC756 . It was held in this case that the presumption that a marriage had taken place between a man and woman living under the same roof and cohabitation for a number of years, held good having regard to the facts and circumstances of the case and without anything more. The Supreme Court reversed the finding of the High Court that such presumption arising out of the man and woman living together and cohabiting for a number of years leading to the conclusion that they are husband and wife had been destroyed by other evidence, pointed out that the other circumstances and evidence relied upon by the High Court, namely, that the lady's name had not figured in a Will left behind by the father of her husband, that a certain compromise which had been executed in the suit had not mentioned the name of the lady or her children and certain oral testimony of witnesses in the case, not speaking to the relationship of the man and the lady as the husband and wife, is not destructive of the presumption in favour of persons to be husband and wife in view of their long cohabiting as such.

28. Applying the test indicated in this decision, we hold that the evidence on record is not merely sufficient, but overwhelming to hold that the plaintiff had proved that her marriage had taken place with Somanath Tarapur on 20-5-1982 at Shivanagi Village and that she was the legally wedded wife of Somanath Tarapur and that the plaintiff and her two daughters are entitled to receive all the benefits due to the legal heirs of deceased Somanath Tarapur, payable by the employer of her husband after the death of said Somanath Tarapur and due to such legal heirs by the employer of the deceased Somanath Tarapur.

29. We must also mention while parting that the learned Trial Judge had framed issue Nos. (4) and (6) though did not arise for determination in the context of the suit claim of the plaintiff and the relief sought for in the plaint. The question of the second defendant proving that she was the legally wedded wife of deceased Somanath Tarapur did not arise for consideration.

30. However, factually, as the second defendant had pleaded that her marriage with Somanath Tarapur had taken place on 11-9-1983 and as we have found that

the plaintiff has proved that her marriage with deceased Somanath Tarapur had taken place earlier on 20-5-1982, the consequence in law will follow.

31. We also find that O.S. No. 364 of 1991 which had been filed by the second defendant claiming certain relief as against her mother-in-law and to which the plaintiff-appellant was not a party, can neither bind the plaintiff nor can it affect in any way the rights of the plaintiff as a legally wedded wife of deceased Somanath Tarapur. We accordingly answer issue No. (3) as had been framed by the Trial Court, in favour of the plaintiff. As a consequence in law, flowing as a result of our holding, that issue No. (1) has to be answered in favour of the plaintiff.

32. Accordingly, we also answer issue No. (5) in favour of the plaintiff-appellant declaring that the plaintiff and her two daughters are entitled to claim all the monetary benefits accruing on the death of Somanath Tarapur and as his legal heirs. Consequently, issue No. (6) is answered against the second defendant and it is held that the second defendant is not entitled to receive any monetary benefit arising out of the death of Somanath Tarapur and as his widow.

33. In the result, we allow this appeal, reverse the judgment and decree of the Trial Court, decree the suit as prayed for and declare that the plaintiff-appellant and her two daughters are entitled to receive all the benefits of her deceased husband Somanath Tarapur and for a consequential relief of permanent injunction against defendant 2 and restrain her from interfering with the plaintiffs right to receive such benefits from the first defendant.

34. The first defendant-Corporation shall give effect to this judgment and in the light of our findings and conclusions, a decree shall be drawn up accordingly.

35. Appeal allowed with costs throughout.

Tirath S. Thakur, J.

I have had the advantage of going through the judgment proposed by my esteemed colleague D.V. Shylendra Kumar, J. While I agree that the appeal be allowed and the suit filed by the appellant decreed as prayed, I wish to add a few

lines of my own.

2. The facts have been set out in detail in the judgment proposed by brother Kumar. It is therefore unnecessary to recall the same over again. Suffice it to say that the question that falls for consideration is whether the plaintiff-appellant herein had established her case that she was the legally wedded wife of Sri Somanath Tarapur. The Trial Court has held otherwise, primarily on the ground that the evidence adduced by the appellant did not establish the performance of a marriage in accordance with the requirement of the Hindu rites. No evidence regarding saptapadi having been adduced, the marriage could not, according to the Trial Court, be said to have been validly solemnized. That line of reasoning has not appealed to us. The evidence adduced in the case comprised the statement of the plaintiff and the five other witnesses examined by her. From the deposition of the plaintiff and her mother-in-law, P.W. 2-Shantha Bai, it is evident that the plaintiff and late Sri Tarapur had lived as husband and wife and raised two daughters, one born in July 1983 and the other in November 1984. Birth Certificates marked Exs. P. 1 and P. 2 clearly indicate the plaintiff and Tarapur as the parents of both the children. The statement of P.W. 3-Saheblal, who was the owner of the house, where the plaintiff and her late husband resided together as tenants and P.W. 4-Hanamanthappa, P.W. 5-Gun-dappa and P.W. 6-Siddappa, lent considerable corroboration to the version of the plaintiff and that of her mother-in-law that the plaintiff and the deceased were not only married according to Hindu rites, but also that they had resided together as husband and wife and begotten two daughters out of the wedlock. That being the state of evidence, the question is whether a presumption to the effect that the appellant and deceased Tarapur were husband and wife should arise and whether that presumption has been rebutted by the defendant-respondent herein.

3. The legal position in regard to the presumption available in favour of the existence of the marriage is of vintage value. In the case of Mohabat Ali Khan v. Muhammad Ibrahim Khan AIR 1929 PC 135 it was held that law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years. In the case of Mt. Titli v. Alfred Robert Jones : AIR1934 All273 the Court held that the burden would lie on any

party, who asserts that any rites, ceremonies or customs were not observed, to prove not only the omission but also that such rites, ceremonies or customs were absolutely essential and indispensable in the sense that on account of their not being duly performed the marriage itself was void. In the case of Gokal Chand v. Parvin Kumari AIR 1952 SC 231 the Court declared that continuous cohabitation of a man and a woman as husband and wife and their treatment as such for a number of years would raise the presumption of marriage. In the case of Badri Prasad v. Deputy Director of Consolidation and Ors. : [1979]1SCR1 the Supreme Court held thus.--

'A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married few will succeed'.

(emphasis supplied)

4. To the same effect is the Division Bench decision in Smt. Parameshwari Bai v. Muthojirao Scindia : AIR1981 Kant40 . The Court held.

'A man and a woman tied together by wedlock form the least unit of our complex society and whenever a man and woman lived as husband and wife for a fairly long time and were so reputed, law presumes that they are living as husband and wife and not in a state of concubinage. Presumption is both with regard to factum of marriage and legality of it. It is a strong presumption as it goes to the root of the structure of society and the persons who challenge it will have to rebut it by clear, cogent and satisfactory evidence. This burden is heavy on them'.

This position has been reiterated in S.P.S. Balasubramanyam's case, supra.

5. In the light of the above settled legal position, the presumption that the plaintiff and the deceased Tarapur were legally married to each other arose by reason of their long cohabitation and the fact that they had begotten children out of such cohabitation. The burden of proving that the couple was not legally married either because no marriage had in fact taken place or because the alleged marriage was not performed in accordance with the Hindu rites and ceremonies lay upon any person, who disputed their marital status. This was true even in regard to the performance of saptapadi. It was for the party disputing the marital status of the plaintiff and the deceased Tarapur to establish that saptapadi was by the custom applicable to the parties as essential part of the marriage ceremony and that the said requirement had not been satisfied. There is however no such evidence whatsoever either to establish that the marriage ceremonies as per the custom applicable to them include saptapadi or that saptapadi had not in fact been performed so as to render the marriage itself void. As a matter of fact, the Trial Court has erroneously approached the entire issue by insisting that it was the plaintiff, who ought to have established the performance of saptapadi even when it was nobody's case that saptapadi was an essential part of the ceremonies relating to marriage as prevalent in the community to which the parties belong.

6. In the circumstances, therefore, the finding recorded by the Trial Court that marriage had not been proved by the plaintiff cannot be sustained. The appeal therefore ought to succeed and the suit decreed, as prayed for, with costs throughout.

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