

Sujatha Vs. Jose Augustine

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Court : Karnataka

Decided On : Mar-29-1994

Reported in : II(1994)DMC442

Judge : T.V. Ramakrishnan, J.

Acts : [Indian Divorce Act, 1869](#) - Sections 18

Appeal No. : O.P. No. 16853 of 1993

Appellant : Sujatha

Respondent : Jose Augustine

Advocate for Def. : P.K. Jose, ;Johnson Abraham and ;Babu P. Poulouse, Advs.

Advocate for Pet/Ap. : S. Sreekumar, Adv.

Judgement :

T.V. Ramakrishnan, J.

1. Original Petition is one filed under Section 18 of the [Indian Divorce Act, 1869](#) (for short 'the Act') for a decree declaring the marriage between the petitioner and the first respondent as null and void. Petitioner is the wife and first respondent is the husband. Second respondent is the father of the first respondent.

2. Petitioner was born as a Hindu belonging to Nair community. First respondent belongs to Latin Catholic Community and is employed as a Conductor in a private bus. According to the petitioner, she met the first respondent during her bus journeys to and from her college at Ernakulam where she has joined as a student for pre-degree course. The acquaintance soon became very close as a result of daily meetings. It is her case that first respondent enticed her, exploited her innocence and procured her love fraudulently. While so, it is her further case that in 1989 petitioner who was doing her second year pre-degree course, was coerced to execute an agreement for marriage on 1.11.1989. Thereafter she was made to believe that as per the agreement executed on 1.11.1989 she was married to the first respondent and was bound to stay with the first respondent in his house. Accordingly on 7.11.1989 she was again coerced to accompany the first respondent to his house at Alleppey. On 25.11.1989 petitioner was taken to the Holy Family Church, Pollathai in Alleppey and was made to undergo a ceremony which she understood later as the baptism ceremony. On 30.11.1989 again was taken to the Church and a show of a marriage between her and the first respondent took place in which also she was forced to participate without her free Will. Petitioner has alleged that as a matter of fact her consent for marriage was neither sought for nor has she given her consent for the marriage. Petitioner has further averred that baptism and the marriage alleged to have been conducted in her case are totally invalid and in effective as they were done without her free will and not in accordance with the Canon law governing baptism and marriage. Though after the marriage on 30.11.1989 petitioner has stayed with the first respondent sometime, she left the company of first respondent with effect from 29.8.1990. According to the petitioner she was very much ill treated and tortured during her stay with the first respondent. Petitioner has further averred that on 17.10.1990 she has again got herself converted into Hindu Community since she was told that she has become a Christian by receiving baptism though in fact there was no valid baptism in her case. Petitioner has sought for a declaration of her marriage with the first respondent as null and void on the ground that her consent for the marriage was obtained by force, fraud, coercion and undue influence. She has also contended that the marriage is null and void on account of the fact that the baptism alleged to have been conducted in her case is totally irregular and

illegal as it was conducted not in accordance with the Canon law. Several other averments have also been made to which it is not necessary to refer to in detail in this judgment as the point pressed during argument is only about the validity of the marriage and baptism conducted prior to the marriage.

3. First respondent has filed a counter affidavit on his behalf and on behalf of the second respondent denying all the material allegation in the O.P. and asserting that the marriage between himself and the petitioner was conducted with the petitioner's free consent after conducting baptism in accordance with the usual custom and practice followed by the Latin Catholics. The detailed allegations in the O.P. to the effect that the petitioner was enticed and won over by constant persuasion to be in love with the first respondent and was later induced to enter into a marriage agreement and still later intimidated and coerced into a marriage with him were all denied as totally false. However, the allegations in the petition and the first respondent met each other during her journeys in the bus in which the first respondent was working as a Conductor and as a result of the intimacy they fell in love with each other and got married after the petitioner had undergone a baptism ceremony etc, were not denied. In fact that is the common case of the parties.

4. In proof of the allegations made in the O.P. petitioner has examined herself and two other witnesses are P.Ws. 1 to 3 PW. 2 is the Vicar of the Holy Family Church, S.L. Puram, Pollathai, Alleppey, as on the date on which he was examined in Court. P.W. 3 is the mother of the petitioner. On behalf of the respondents nobody was examined. However, on behalf of the respondents their Counsel has chosen to cross-examine the witnesses examined on the side of the petitioner. Apart from the witnesses examined in the case, the petitioner has produced her SSLC Book as Ext. A-1, copy of the certificate of conversion issued by the Secretary of Viswa Hindu Parishad as A-2 and the original of the petition for dispensation from Proclamation as Ext. A-3. Respondents, on the other hand, have produced Exts. B1 and B1(a) to B1(c) with a view to establish their case that the marriage which took place between the first respondent and the petitioner was one conducted with full consent of the petitioner.

5. The SSLC Book of the petitioner produced as Ext. A-1 would show that the petitioner was born on 31.5.1971 and on the date of the alleged marriage she has completed 18 years of age. Various facts and circumstances detailed in the petition and which are either admitted or not controverted would probabalise that both the petitioner and the first respondent wherein love with each other prior to the alleged baptism and marriage. In fact that is the common case of the petitioner and respondents though the petitioner has got a case that she was really induced to fall in love with the first respondent as a result of fraud and undue influence practised on her by the first respondent. As far as fraud and undue influence alleged to have been practised upon the petitioner for inducing her to fall in love with the first respondent there is practically no reliable evidence in the case. Similarly as regards the intimidation and coercion alleged to have been practised by the first respondent to persuade the petitioner to enter into a marriage agreement on 1.1.1989 and to live with him in his house also, there is total absence of any reliable evidence. As such it is only reasonable to conclude that the petitioner was in love with the first respondent and that emotionally charged condition was doing all that was directed to be done by the first respondent and his friends and relatives with the dominant motive of getting somehow or other married to the first respondent without the knowledge and consent of her mother who was examined as P.W. 3 and any of her other relatives. The various photos contained in Ext. B1 photo album and marked as Exts. B1(a) to B1(e) would substantially support the said conclusion. However, the important question to be decided is whether there was a valid marriage between the first respondent and the petitioner according to law.

6. By birth petitioner was a Hindu belonging to Nair Community. She lived under the case custody of her mother till the alleged baptism and marriage in 1989. The first respondent is on the other hand a Latin Catholic and is elder to the petitioner in age. It is the common case of the parties that the marriage alleged to have been conducted between the petitioner and first respondent was from the Holy Family Church at Pollathai and was according to the rites and customs of the Latin Catholic Community. Even according to the petitioner it was after undergoing the ceremony of baptism that the alleged marriage was conducted from the church. As such the only question to be considered is whether the marriage between the

petitioner and first respondent alleged to have conducted after an attempted conversion of religion by undergoing the ceremony of baptism was in accordance with the law regulating marriages among the Latin Catholic Community.

7. The parties to the marriage admittedly hail from Ernakulam and Alappuzha Districts of the States. There is no case for the parties that the marriage among Latin Christians in the concerned locality as governed by any particular enactment. The decision reported in *Leelamma v. Dilip Kumar* (1992(1) KLT 651) would show that, Indian Christian Marriage Act in force in other parts of the country has not been extended to the areas falling within the jurisdiction of the erstwhile High Courts of Travancore and Travancore-Cochin and that it is the Canon Law that would govern the marriages among the Christians in those areas to which Indian Christian Marriage Act has not been made applicable. In the above decision after a detailed discussion with reference to the decisions of the Supreme Court and the authoritative text books on the subject it has been laid down that to be a Christian one must truly profess the Christian faith. The fact that one has undergone the ceremony of baptism may not by itself be sufficient to hold that one has become a Christian. The fundamental thing to be established before one can be held to be Christian is that the person concerned truly believes in and professes the Christian faith.

8. Counsel on both sides agree that the Canon law governing the sacraments of baptism and marriage relevant for the case are those contained in the Code of Canon Law (for short 'the Code') prepared by the Canon Law Society of Great Britain and Ireland in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society published by Collins for Theological Publications in India, Bangalore. Canon I of the Code in fact says that canons of this Code concern only the Latin Church. Canons included in Part I of the book deals with the sacraments generally. Baptism is discussed under title I of that part. Canon 851 states that the celebration of baptism should be properly prepared. Accordingly :

1. an adult who intends to receive baptism is to be admitted to the catechumenate and, as far as possible, brought through the various stages to sacramental

initiation, in accordance with the rite of initiation as adapted by the Episcopal Conference and with the particular norms issued by it.

2. (omitted).

Canon 865 is to the effect that to be admitted to baptism and adult must have manifested the intention to receive baptism must be adequately instructed in the truths of the faith and the duties of a Christian, and tested in the Christian life over the course of the catechumenate. Canon 866 would state that unless there is a grave reason to the contrary, immediately after receiving baptism an adult is to be confirmed, to participate in the celebration of the Eucharist and to receive holy communion. Canon relating to sacrament of marriage are codified under title VII beginning with Canon 1055 in the Code. According to Canon 1055 the marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to procreation and upbringing of children, has, between the baptised been raised by Christ the Lord to the dignity of a sacrament. Canon 1086 states that a marriage is invalid when one of the two persons were baptised in the catholic church or received into it and has not by a formal act defected from it, and the other was not baptised.

9. An analysis of the principles contained in the above Canons governing baptism and marriage would show that a marriage between a baptised Christian and a person not baptised is void (Canon 1086). The principle laid down in Leelamma's case (1992(1) KLT 651) would show that a person can become a Christian only if it is established that he truly believes in and professes the Christian faith. Baptism if duly administered and received may be an important circumstance to conclude that one has become a Christian. Canon 851 and 865 dealing with the requirements of admission to baptism of adult person would clearly show that the person who is admitted to baptism must have manifested the intention to receive baptism, must be adequately instructed in the truths of the faith and in the duties of a Christian, and tested in the Christian life over the course of catechumenate. If these are the requirements to be satisfied before an adult can be considered as baptised, the evidence on record regarding baptism is totally insufficient to hold

that the petitioner was duly admitted to baptism and received baptism with the required intention and faith in Christianity. The evidence of P.W. 1 would show that she never had faith in Christianity and in its tenets. She has specifically stated that she was not interested in getting converted into Christianity. P.W. 2, the Vicar of the Church, has given evidence only on the basis of the entries made in the records kept by the Church and his evidence is insufficient to establish all the requirements to be satisfied before finding that the petitioner was duly admitted to baptism. There is no evidence to hold that before being admitted to baptism, she was admitted to catchments and was brought through the various stages to sacramental initiation. There is also no evidence to hold that before being admitted to baptism she was adequately instructed in the truths of the faith and duties of a Christian and tested in the Christian life over the course of catchments. The evidence on record would on the other hand show that the baptism ceremony was conducted as an empty formality preceding the marriage ceremony without having proper faith in Christianity and the Christian, way of life. The evidence in the case would further show that she never wanted to live as a true Christian. Her intention in getting converted to Hinduism immediately after parting company with the first respondent would also support the conclusion that the petitioner was not having the required intention to receive baptism and true faith in Christianity at any relevant time. In the circumstances, I am inclined to hold that the petitioner has never become a Christian by faith or by receiving baptism and as such her marriage with the first respondent is void being a marriage between a baptised Christian and a not baptised non-Christian.

10. As such I would hold that the marriage between the first respondent and the petitioner was null and void, and the petitioner is entitled to get a declaration to that effect. Accordingly, it is declared that the marriage between the petitioner and the first respondent is null and void. There will be a decree to that effect.

11. Before parting with this case, I must record that the petitioner's Counsel on her behalf has not fairly and reasonably attempted to establish any other allegations in the petition except those relating to the baptism and the marriage conducted between the petitioner and the first respondent. As such other allegations in the petition, especially those relating to ornaments of the petitioner shall stand as not

pressed or given up.

O.P. is accordingly allowed. No costs.

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