

Ramlal Agarwal Vs. Shanta Devi and Others

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Court : Andhra Pradesh

Decided On : Apr-02-1999

Reported in : 1999(3)ALD19; 1999(3)ALT197; I(2000)DMC640

Judge : B. Subhashan Reddy and ;Vaman Rao, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 7(2); Child Marriage Restraint Act, 1976; Child Marriage Restraint (Amendment) Act, 1978;

Appeal No. : LPA No. 107 of 1998

Appellant : Ramlal Agarwal

Respondent : Shanta Devi and Others

Advocate for Def. : Mr. Jayasree Saradhy, Adv.

Advocate for Pet/Ap. : Mr. V. Ravinder, Adv.

Judgement :
ORDER

Vaman Rao, J.

1. This appeal is directed against the judgment of a learned single Judge rendered in CCCA No.91 of 1997 against the judgment of the V Additional Judge, City Civil Court, Hyderabad, in OS No. 1332 of 1994. The suit was decreed by the learned V

Additional Judge. Aggrieved by the said judgment, the defendants filed appeal which was inturn allowed by the learned single Judge.

2. The facts relevant to this appeal may be stated briefly as follows :

The parties in this LPA will be referred to in this judgment with reference to their status in the original suit. The first defendant is the wife of the plaintiff. Defendants 2 and 3 are the parents of the 1st defendant. Defendants 4 and 5 are the daughters of the plaintiff. It is averred that the plaintiff's relation with his wife-1st defendant were strained which resulted in filing OP No.67 of 1990 for dissolution of marriage by decree of divorce. The same was pending on the file of the I Additional Judge, City Civil Court, Hyderabad. The first defendant is under influence of her parents-defendants 2 and 3. The first defendant is acting against the interest of the children.

(i) The plaintiff belongs to Agarwal Community. According to custom of thatcommunity, the marriage of girls are celebrated at an early age. The plaintiff wanted to perform marriage of defendants 4 and 5 as per customary rights and ceremonies. It is a family custom to perform marriage of children as per 'Ram Snehi Sampradha'. The plaintiff being a religious person wants to observe all customary rights prevailing in his family. In order to defeat the rights of the plaintiff, defendants 1 to 3 selected a bride-groom for defendant No.4 without consent of the plaintiff. The rites attached to the marriage can be performed only by the father. The plaintiff is fully competent and capable of discharging his moral religious duties. Defendants 1 to 3 denied the plaintiff's right and they want to perform the ceremonies of marriage of the 4th defendant in accordance with their custom. It is further averred that according to Hindu Marriage Act, the marriage will be valid only when it is performed in accordance with customs prevailing in the family. Hence, the plaintiff filed the suit for the relief of declaration as the plaintiff has got legal right to perform all ceremonies in connection with the marriage of the 4th defendant in accordance with the custom and religious rites prevailing in the plaintiff's family and for the relief of permanent injunction restraining defendants 1 to 3 from performing any ceremonies in connection with the marriage of defendants 4 and 5. It is stated that the customary rites include 'Kanyadanam'

which the plaintiff is entitled to perform.

3. Defendants 1 to 4 filed written statement controverting the averments in the plaint. It is stated that the first defendant is no more the wife of the plaintiff as the decree of divorce was passed in OP No.67 of 1990 filed by the plaintiff. It is stated that the plaintiff never took interest in the welfare of the children and he cannot impose any ancient, out-moded customary rites and ceremonies of the plaintiff's family on defendant No.4. There are no differences in the customary rites and ceremonies of the plaintiff's family and the family of the defendants 2 and 3. It is pleaded that in order to wreck vengeance against defendants 1 to 3 and to harass the 4th defendant, the plaintiff filed the present suit.

(i) It is the case of the 4th defendant that she is a commerce graduate, is a major and is mature enough to decide about her personal affairs with a boy of her choice. Her engagement function was fixed on 24-10-1994 and when she went to invite the plaintiff to attend the said function, he avoided deliberately to meet her. Instead of attending the function and blessing defendant No.4, the plaintiff mischievously indulged himself in frivolous litigation of filing the present suit and obtained the ex parte injunction order but it was suspended by the Honourable High Court in CMP No.16513 of 1994 in CMA No.1372 of 1994. The plaintiff has no right to perform and solemnise the marriage of defendant No.4 in accordance with the customs of the family. The 4th defendant is not prepared to go to the plaintiff's house to take blessing and she has decided to undergo the marriage ceremony in a simple manner as per Hindu Marriage Act. It was thus prayed by defendants 1 to 4 that the suit of the plaintiff may be dismissed with costs.

4. The 5th defendant was added as a party defendant during the pendency of the suit. She also opposed the suit by filing the written statement and contended that she is a major and a graduate and she has a right to marry according to her choice and the plaintiff has no right to interfere with her marriage. She also decided to undergo the marriage ceremony without 'Kanyadan'. Thus, the 5th defendant also prayed that the suit may be dismissed.

5. On these pleadings, appropriate issues, were framed by the learned Additional Judge, City Civil Court, Hyderabad.

6. On behalf of the plaintiff, he himself was examined as PW1 examining one Vijay Kumar Shukla as PW2 and Exs.A1 to A31 have been marked on his behalf. On behalf of the defendants, the 5th defendant has been examined as a solitary witness. On this material, the suit of the plaintiff was decreed by the trial Court. The first appeal was allowed by the learned single Judge and the suit was dismissed. It is this judgment which is now challenged in this appeal.

7. It may be mentioned that the 4th defendant, who is one of the daughters of the plaintiff, has since been married, the question of plaintiff's right to participate in any ceremonies in her marriage does not arise. However, the 5th defendant is yet to be married. The questions arising in this case must be said to be related to the marriage of the 5th defendant.

8. In this case, in the light of the pleas raised and arguments advanced across the Bar, the following questions arise for consideration ?

(i) Whether 'Kanyadan' is an essential ceremony in the customary rites of marriage is prevailing in the community or in the family of the parties ?

(ii) Whether the plaintiff, under the facts and circumstances of the case is entitled to declaration that he is entitled to participate without any hindrance from defendants 1 to 3 in the customary marriage rites prevailing in his family in the marriage of defendant No.5?

(iii) If so, whether such right can be enforced against the consent of the 5th defendant in respect of the whose marriage this question arises and in view of the fact that the 5th defendant is a major

9. The first question arises in view of the fact that the plaintiff filed a suit with a prayer that his rights in performing the marriage of defendants 4 and 5 (now the question relates to only defendant No.5) as per prevailing customary rites in his family including 'Kanyadan' cannot be interfered by defendants 1 to 3. A declaration to that effect is also sought.

9(b) The defendants resisted the claim of the plaintiff on the various grounds including the fact that the plaintiff never took interest in the welfare of his

daughters including defendant No.5. It is also stated that with regard to ceremonies there were no difference between the plaintiff's family and the family of defendants 2 and 3. The subsequent development that while the suit was pending, divorce has been effected between the plaintiff and his wife-defendant No.1 is also cited as a ground for resisting the claim. It is the further case of defendant No.5 that she is a major and mature enough to decide about her personal affairs including her marriage with a boy of her choice. It is stated that when the marriage of defendant No.4 was fixed, the plaintiff was invited to attend the engagement ceremony on 24-10-1994 but the plaintiff instead of attending such function filed the frivolous suit and obtained ex parte injunction which was suspended by this Court.

10. The learned Counsel for the appellant contended that in the 'Brahma form' of marriage among Hindus, which is applicable to parties, the ceremony of 'Kanyadan' is an important rite and every father considers it a privilege to perform 'Kanyadan' of her daughter in her marriage. A discussion of the relevant issue by the learned single Judge would show that in the context of contention on behalf of the respondents herein that in the oldendays when girls used to be married at the tender age of 8 years, there was need for the father to act as a guardian and in such capacity the concept of gift of the daughter in marriage was contemplated. The specific argument that 'Kanyadan' is an important ceremony in a traditional Hindu Marriage performed in 'Brahma form' was stressed by the learned Counsel for the appellant in view of the fact that the learned single Judge observed that the father cannot claim that he has a right to perform 'Kanyadan' of his own daughter inasmuch as the concept of 'Danam' was totally abolished by the Child Marriage Restraint (Amendment) Act of 1978. The learned single Judge referred to the meaning of the word 'Kanyadan' as given in the Judiciary Dictionary by Aiyar which is as follows :

'Kanyadanam : The gift of a bride to a bride-groom by her parent or guardian. It also denotes any present given during marriage to the bride.'

The learned single Judge in this regard observed that gifting of bride to bride-groom had a meaning before 1976 but that meaning is totally lost because of 'Child

Marriage Restraint Act, 1976'. The learned Judge referring to the judgment in Venkata Subbarayudu Chetty v. Tanguturu Venkataiah Shresthi and another, : AIR 1968 AP107 , observed that two ceremonies are essential for solemnisation of the marriage (i) invocation before sacred fire and (ii) Sapatapadi. The learned Judge also referred to the circumstances that while plaintiff wants to perform the marriage of his daughter in accordance with the customs of his family, the fifth defendant wants to get her marriage not in accordance with the customs prevailing in her parents family but in accordance with those prevailing in the family of bridegroom. It was in this background that the learned Judge made an observation at page 14 of the Judgment that 'Kanyadan' is not an essential ceremony in performing of a valid marriage. The learned Counsel for the appellant contended that this observation that 'Kanyadan' is not an essential ceremony of a Hindu Marriage in Brahma form cannot be considered as correct. In N.R. Raghavachariar's Hindu Law, Eight Edition 1987, at page 37 it is stated that 'there are really three stages in the ritual of a Hindu Marriage whether in the Brahma form or in the Asura form, and they are (i) the betrothal, (ii) the formalities including the recital of holy texts before the sacred fire and (iii) the Saptapatigamana. Of these the betrothal, though in some cases celebrated with much ceremony and ostentation, is only a promise to marry and is revocable.' It is further observed that 'even the second stage of the ritual consisting of the invocation before the sacred fire and Kannikadana does not form the operative part of the transaction which is really the completion of the Sapatapadi or the taking seven steps by the bridal pair in the marriage ceremony.' Thus, it cannot be denied that 'Kannikadana' or 'Kanyadana' is an important part of rites of Hindu Marriage in 'Brahma form'. It is a different matter that omission to perform 'Kanyadana' will not result in invalidity of the marriage. In fact, this has been incorporated in Section 7(2) of [Hindu Marriage Act, 1955](#). Thus, the observation of the learned single Judge that 'Kanyadana' is not an essential ceremony of a Hindu Marriage must be construed in the background of the fact the 'Kanyadana' was not considered as an essential condition for the validity of marriage even as per the customary Hindu Law and also as contemplated in Section 7(2) of [Hindu Marriage Act, 1955](#). It cannot be denied that 'Kanyadana' is an important rite and ceremony in a Hindu Marriage unless the custom in a particular community or family recognises different rites for marriage.

It is a different matter that non-performance of 'Kanyadana' would not result in the validity of the marriage. The first question for consideration referred to above is answered accordingly.

11. As rightly observed by the learned single Judge the bride in this case, namely, defendant No.5 is a major. She has the capacity and every right to decide as to in what form her marriage shall take place; whether ceremonies and rites prevailing in her family shall be adopted or if there are different ceremonies prevailing in the family of the bride-groom they shall be adopted. Even assuming that 'Kanyadana' is an important ceremony in a Hindu Marriage and normally a father considers performing 'Kanyadana' not only as a privilege but as an obligation to redeem himself from 'Pitruruna', the plaintiff cannot ignore himself to perform the ceremony against the will of his daughter-defendant No.5 who is a major. It may be mentioned that defendant No.5 in her written statement and otherwise as seen from the record made it clear that she does not desire the petitioner to participate in any ceremonies pertaining to her marriage. In fact, even while this appeal was pending, defendant No.5 was enquired with by this Court and she emphatically reiterated that she does not desire the participation of the plaintiff in the rites and ceremonies pertaining to her marriage. It is, therefore, obvious that the plaintiff cannot claim any legal right to perform 'Kanyadan' in the facts and circumstances of the case and cannot seek the relief of declaration and injunction sought for by him or any direction to enable him to perform the said 'Kanyadana' in 5th defendant's marriage.

12. In the result, the appeal is fit to be and is hereby dismissed. But, under the facts and circumstances of the case, each party shall bear their own costs.