

Sreekumar Vs. Prema

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Court : Kerala

Decided On : Feb-19-1976

Reported in : AIR1977Ker94

Judge : Gopalan Nambiyar and; Balakrishna Eradi, JJ.

Acts : Madras Marumakkathayam Act, 1933 - Sections 4

Appeal No. : A.S.A. No. 8 of 1975

Appellant : Sreekumar

Respondent : Prema

Advocate for Def. : P.P. Ananthanarayana Iyer, Adv.

Advocate for Pet/Ap. : Govind Bharathan and; K.L. Varghese, Adv.

Disposition : Appeal allowed

Judgement :

Gopalan Nambiyar, J.

1. We are unable to share the view taken by the learned Single Judge in Section A. No. 416 of 1973 (Ker) against the judgment in which this appeal has been preferred. The second appeal arose out of an application filed under the Madras Marumakkathayam Act, by the husband, for dissolution of marriage, against his

wife, under Section 7 of the Madras Maru-makkathayam Act. The application was dismissed by the Munsiff, allowed on appeal by the District Judge, whose judgment was set aside by the learned Single Judge of this Court, restoring the order of the Munsiff. Although no specific objection was taken either before the Appellate Judge or in second appeal to the maintainability of an appeal, or second appeal, the learned Judge has recorded that these would probably be maintainable in the light of the principle of the decision in Adaikappa Chettiar v. Chandra-sekhara Thevar, AIR 1948 PC 12. As no question of the maintainability of the present appeal was urged before us, we have proceeded on the footing that the appeal is maintainable.

2. On the merits, we regret that we are unable to endorse the learned Judge's view. The District Judge on appeal, noticed that the petitioner-husband had deposed in his evidence that the marriage had been performed in accordance with the custom of the community (Thiyyas of Cannanore and Tellicherry) to which both parties belonged and which was governed by the Madras Maru-makkathayam Act. This aspect of the testimony of P. W. 1 was not challenged in cross-examination, and there was no rebuttal evidence contra on the side of the counter-petitioner, the wife. The learned Single Judge took the view that in cross-examination P. W. 1 had admitted that the marriage was performed in accordance with the vedic rites accompanied by Sapthapathi, This, we are afraid is not a correct way of understanding the deposition of P. W. 1. His statement was that on the occasion of the marriage, there was a Homam by the Santni of Peralasserri Temple, for the purpose of propitiating some serpents, and that the marriage was performed in front of the fire lit for the purpose of Homam. We do not understand how this statement in the deposition can in any way detract from the clear statement made by P. W. 1 that the marriage was performed in accordance with the customary ceremonies On the other hand, it is only to make out that in addition to the customary ceremonies, there was also a Homam for propitiating serpents. This would not detract from the requirements of Section 4 of the Madras Maramakkathayam Act which reads as follows:

'4 (1) Save as provided in Section 5, the conjugal union of a Mammakkathayi female with--

(i) a male belonging to the same community as such female or

(ii) a male not belonging to such community and whether a Mammakkathayi or not, shall be deemed for all purposes to be a legal marriage if--

(a) the parties to the union are not related to each other in such degree of consanguinity or affinity that conjugal union between them is prohibited by any custom or usage of the community to which they belong or either of them belongs, and

(b) the union--

(i) was openly solemnised in accordance with the customary ceremonies, if any, prevailing in the community to which the parties belong or either of them, belongs, before the date on which this Act comes into force, or

(ii) is so solemnised in accordance with such ceremonies on or after the date on which this Act comes into force and, where either or both the parties are minors, with the consent of the guardian or guardians of such minor or minors; or

(iii) was registered as a marriage under the Malabar Marriage Act, 1896, before the date on which this Act comes into force.

(2) A conjugal union between minors or between a minor and major which would otherwise be a valid marriage under Sub-section (1) shall not be deemed to be invalid merely on the ground that the consent of guardians or guardian of such minors or minor was not obtained to the union.

(3) Notice of every marriage contracted on or after the date on which this Act comes into force shall be given by such person, to such authority, in such form and within such time as may be prescribed. Failure to give notice shall be punishable with fine which may extend to fifty rupees but such failure shall not invalidate the marriage or affect the legal rights of the parties to, or the issue of such marriage.'

3. We are aware of the judgment of a learned Judge of this Court in *Govindan Nair v. State*, 1971 Ker LJ 674 = (1972 Cri LJ 122) to the effect that the requirement of Section 4 of the Madras Marumakkathayam Act and the proof of the customary

ceremonies enjoined thereby cannot be regarded as having been satisfactorily established unless the party concerned has expressly deposed that there was presentation of cloth by the male to the female. No doubt, that was in relation to a Nair marriage under the Travancore and Cochin Nayar Act in almost similar language, and in connection with a criminal case. The learned Judge observed:

'The mere fact that some ceremonies were performed at the Guruvayoor temple will not make it a valid marriage recognised by the community unless the vital features of the function are proved by evidence.'

Earlier, the learned Judge observed :

'To render his evidence acceptable to prove the marriage it is necessary that he should speak to the relevant details regarding the ceremony. This he does not do and he was not able to do also. About the ceremony as such all that he would swear is: 'Jaathi Sambradaayavam naathu anussariche A-1, A-2 vine kallayaannom kazhicha.' He was content with this omnibus statement and what exactly he meant by 'Jaathi sambradaayavum naattundappa anusaaricne' has not been made clear. The most important requirement so far as a Nair marriage (the parties are Nairs governed by the Nair Act) is concerned the presentation of cloth to the female by the male '!'..... So unless there is material to show that cloth was openly presented by the male to the female, it cannot be said that a valid conjugal union has taken place So also in the present case, all that P. W. 6 would swear to is that the marriage took place according to the custom of the community. That is not sufficient. There must be evidence before court to show that the second marriage was a valid one and in accordance with the religious and customary rites obtaining, in the community.'

The learned Judge stressed that cloth-giving by the male to the female was of the essence of the customary Marumakkathayam marriage. If the observations are meant to suggest that the witness should expressly state from the box that there was presentation of cloth by the male to the female, we cannot accept that as correct law. We think the requirement of the law would be satisfied by a statement of the type made by P. W. 1 that the marriage was performed in accordance with the Marumakkathayam custom; especially when, as in this case, the said

statement has not been effectively challenged. The customary rites of a Marumakkathayam marriage are simple and well-known. That being so, we are satisfied that in the instant case, the petitioner-husband has proved a marriage in accordance with the requirements of Section 4 of the Madras Marumakkathayam Act and was therefore entitled to have the dissolution ordered by the court under Section 7 of the Act. The direction to that effect granted by the appellate court was correct and the learned Judge was wrong in reversing the said judgment.

4. We allow this appeal, set aside the judgment of the learned Single Judge and restore that of the learned District Judge. There will be no order as to costs.

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