

Leelamma Vs. Radhakrishnan

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Court : Kerala

Decided On : Feb-02-2005

Reported in : 2005(2)KLT212

Judge : V. Ramkumar, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 29(2)

Appeal No. : S.A. No. 423 of 1995

Appellant : Leelamma

Respondent : Radhakrishnan

Advocate for Def. : S.P. Aravindakshan Pillai, Adv.

Advocate for Pet/Ap. : V. Giri, Adv.

Disposition : Appeal dismissed

Judgement :

V. Ramkumar, J.

1. The plaintiff in O.S. No. 114/85 on the file of the Munsiff's Court, Cherthala, is the appellant in this second appeal. The said suit was one for partition and separate possession of the plaintiff's one half share over one item of immovable property described in the plaint A Schedule. The plaintiff also prayed for partition

and separate possession of her half share over the plaint B Schedule movables in case the plaintiff's contention that they exclusively belong to the plaintiff is not upheld.

2. The case of the plaintiff can be summarised as follows: The plaint A Schedule property belonged to Sanku Kumaran who died on 27.2.1984. After the death of Sanku Kumaran the plaint A and B Schedule properties are in the possession of the plaintiff. The plaintiff is the second wife of the said Sanku Kumaran and the defendant is the son born to Sanku Kumaran in his first wife. The marriage between Sanku Kumaran and his first wife was divorced through Court on 31.1.1962. The plaintiff and the defendant are in joint possession of the plaint A Schedule property. Since the defendant is causing unnecessary troubles to the plaintiff, she is no more desirous of continuing the joint possession. Hence the suit for partition of the plaint A Schedule property into two equal shares and allotment of the plaintiff's half share to the plaintiff. The movables described in the plaint B Schedule properties exclusively belong to the plaintiff and deceased Sanku Kumaran had no rights over the same. In case the Court finds that the said items are also partible, the plaintiff may be given her half share over the same as well.

3. The suit was resisted by the defendant contending inter alia as follows: The suit is not maintainable. The suit properties are not partible. The plaint A Schedule property absolutely belonged to deceased Sanku Kumaran who was also the owner of the movables found in the plaint A Schedule building. The case of the plaintiff that she is the second wife of deceased Sanku Kumaran is false. There was no marriage between the plaintiff and Sanku Kumaran as alleged. The plaintiff is not entitled to the reliefs prayed for. This defendant is the sole legal representative of Sanku Kumaran. Sanku Kumaran was residing alone in his house after divorcing his first wife. The plaintiff was a servant staying in the house of Sanku Kumaran and attending to his family affairs. They have never resided as man and wife. The claim of the plaintiff that she is in joint possession of the A Schedule property along with the defendant is false. The plaintiff merely continued her residence in the house of deceased Sanku Kumaran after his death with the assistance of certain elements in that locality. The plaintiff is liable to be evicted from the building. This defendant is entitled to recovery of possession of the

properties from the plaintiff. The plaintiff had, by undue influence exercised on Sanku Kumaran, appropriated Rs. 27,500/- from him which was received by him from the Toddy Workers' Welfare Fund. Similarly, a sum of Rs. 11,500 had been deposited by Sanku Kumaran in the bank in the name of the plaintiff. The suit properties are not liable to be partitioned as alleged.

4. By an additional written statement the defendant further contended that the plaintiff did not have sufficient means to purchase the movables mentioned in the plaint B Schedule and that those movables absolutely belonged to Sanku Kumaran.

5. The learned Munsiff framed seven issues for trial. On the side of the plaintiff two witnesses were examined as P.Ws.1 and 2, of whom P.W. 1 is the plaintiff herself, and 11 documents were got marked as Exts.A1 to A11. On the side of the defendant he examined himself as D.W.1. No documentary evidence was adduced by the defendant.

6. The learned Munsiff, after trial, as per Judgment and Decree dt. 30.6.1986 upheld the contentions of the plaintiff and passed a preliminary decree for partition in respect of the plaint A Schedule property as prayed for. On appeal by the defendant as A.S. No. 18/1993, the learned Additional Subordinate Judge, Alappuzha, as per judgment and Decree dt. 30.9.1994 reversed the findings of the Trial Court and dismissed the suit with costs. It is the said appellate decree which is assailed in this second appeal by the plaintiff.

7. At the time of admitting this second appeal, notice on the following substantial questions of law was ordered:

'(i) Does not the fact of long co-habitation as husband and wife by Sanku Kumaran and plaintiff raise presumption of valid marriage between them?

(ii) When a document is executed between 2 persons evidencing an already taken place marriage according to the religious customs and usage, cannot the document be presumed to be true and correct in its statements in the absence of any evidence to the contra?

(iii) When Sanku Kumaran has himself declared before the Civil Supplies authorities that the plaintiff is his wife and ration cards are so obtained, do not they establish a valid marriage between Sanku Kumaran and plaintiff.

(iv) What is the legal effect of describing a person as wife in documents or instruments executed by the husband himself ?

(v) What is the legal effect of describing the plaintiff as the wife of Sanku Kumaran in the ration card, electoral card and voters list?

(vi) When strangers filed suit against a man and another woman describing her as the wife, is it not evidence that the public also recognise them as husband and wife?'

8. I heard the learned counsel appearing for both sides.

9. Assailing the judgment and decree passed by the lower Appellate Court, the learned counsel appearing for the appellant/plaintiff made the following submissions before me. The parties are Ezhavas of Cherthala. The plaint A Schedule property admittedly belonged to Sanku Kumaran who died on 27.12.1984. The marriage of Sanku Kumaran with his first wife had been dissolved on 31.1.1962 as evidenced by Ext.A2 order in O.P. No. 27/62 (EAP), Munsiff's Court, Cherthala. The Trial Court has found that there was a customary marriage between the plaintiff and Sanku Kumaran as evidenced by Ext.A1 agreement dt. 10.9.1974. In Ext.A3 voters list of Mararikulam Assembly in the year 1983, the plaintiff is shown as the wife of Sanku Kumaran. Similarly, in Ext.A4 electoral Card dt. 22.2.1985 and Exts.A5 and A6 ration cards for the years 1980-1985 and 1982 respectively, the plaintiffs name is entered as the wife of Sanku Kumaran who is shown as the head of the family. Ext.A7 is a copy of the plaint filed by some neighbours against Sanku Kumaran and the plaintiff on 3.4.1984. In that also the plaintiff is described as the wife of Sanku Kumaran. The recitals in Ext.A1 to which Sanku Kumaran is also a party should not be ignored. As held in *S.P.S. Balasubramanyam v. V. Suruttayan* ((1994) 1 SCC 460), long co-habitation as man and wife may raise a presumption of marriage. Hence the lower Appellate Court was not justified in reversing the findings of the Trial Court.

10. I am afraid that I cannot agree with the above submissions. The parties are admittedly Ezhavas of Cherthala Taluk. It is true that the marriage between Sanku Kumaran and his first wife was dissolved as per Ext.A2 order dt. 31.1.1962 of the Munsiff, Cherthala, which Court continued to have the jurisdiction to do so in view of Section 29(2) of the [Hindu Marriage Act, 1955](#). In a case where the alleged second marriage is disputed, long co-habitation as man and wife, even if true, or the description of the plaintiff as the wife of Sanku Kumaran in the ration card, voters list, or by the local people cannot come to the rescue of the plaintiff to contend for the position that a valid marriage has to be presumed. Moreover, the plaintiff, examined as P.W.1, confessed that it was she herself who informed the authorities that she is the wife of Sanku Kumaran. Ext.A7 plaint and copy of the alleged order of injunction are uncertified copies which should not have been admitted in evidence. So is the case with Ext.A3. The essentials of a valid marriage applicable to the parties according to their customary rites has to be pleaded and proved. This is a case where the defendant who is admittedly the son born to Sanku Kumaran in his first wife has emphatically denied the alleged marriage between the plaintiff and Sanku Kumaran. According to him the plaintiff was only a domestic servant of Sanku Kumaran residing along with him and continuing to cling on to the house even after his death. When the factum of marriage is disputed, even registration of the marriage either under the Hindu Marriage Act or under the Special Marriage Act, cannot constitute proof of a valid marriage (see Jolly Das v. Tapan Ranjan Das (1995 (1) KLT (SC) (SN) 9), Shaji v. Gopinath (AIR 1995 Mad. 161) and Anita Marginie v. Annadurai (1992 II MLJ 11)). The plaint does not contain the date, month or even the year of the marriage. It was only at the stage of evidence that the plaintiff, examined as P.W.1, came out with a case that the marriage was on 10.9.1974. P.W.2 who was examined as an independent witness to prove the marriage was admittedly not an invitee for the marriage. No doubt, he would say that his parents were invited and he was representing them. He came out with the exact number of persons who attended the marriage as 29 from the groom's side and 8 from the bride's side. It must be remembered that the alleged marriage was on 10.9.1974 and P.W.2 was giving evidence more than 10 years after the marriage. On the date of the marriage he was only 21 years old. Still he gave the number of participants for the marriage

with mathematical exactitude. In fact, he was merely repeating the figures mentioned by P.W.1, the plaintiff, who first gave the exact numbers of the invitees from either side. The lower Appellate Court which is the final court of facts was not impressed by the testimony of these witnesses. P.W. 1 is none other than the plaintiff herself. Apart from the fact that she is an interested witness, she would say that the marriage took place on 10.9.1974 at 10 a.m. at Elanjamkulangara Temple and that on the same day at 10.45 a.m. Ext.A1 marriage agreement was executed and registered before the Sub Registry Office, Cherthala, which is admittedly 10 kms. away from the temple where the marriage was allegedly solemnized. It must be remembered that in 1974 the transport facilities in that area were not as they are today. It was physically impossible for the couple to reach the Sub Registry Office within 45 minutes of the marriage after covering 10kms. to get Ext.A1 agreement prepared, executed and registered. The aforementioned temple is one which belongs to a Nair family and the lower Appellate Court has observed the improbability of an Ezhava couple getting married in such a temple. The admitted non-involvement of the local S.N.D.P Sakha, of which the parties were members, has also been taken note of by the lower Appellate Court.

11. It is a well-settled proposition of law that a valid marriage can be established only by proving the essentials of marriage according to the customary rites of the parties. The evidence already on record does not instill confidence in the Court so as to uphold the plea of marriage set up by the plaintiff. The lower Appellate Court was fully justified in finding fault with the Trial Court which was carried away by the recitals in Ext.A1 which by themselves do not prove a valid marriage. Moreover, if one goes by the recitals in Ext.A1, it would appear as though both Sanku Kumaran and the plaintiff were residing for long as man and wife. The plaintiff has no case that she and Sanku Kumaran were residing as man and wife even before Ext.A1 karar. Going by the evidence of P.Ws.1 and 2, they had got married only 45 minutes prior to the registration of Ext.A1 agreement and it was an arranged marriage. It was after considering all these materials that the lower Appellate Court, which is the final court of facts, came to the conclusion that the plaintiff has failed to establish the alleged marriage between herself and Sanku Kumaran. This is a pure finding of fact from which none of the substantial questions of law formulated in the memorandum of second appeal arises for determination and

even if they arise, they are only to be answered against the appellant and I do so.

The result of the foregoing discussion is that this appeal is devoid of any merit and is accordingly dismissed. The parties shall bear their respective costs in this appeal.

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