Ramalinga Mudali Vs. Natesa Mudali

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Court : Kerala

Decided On : Jun-02-1989

Reported in : AIR1989Ker304; II(1990)DMC229

Judge : P.K. Shamsuddin, J.

Acts : Contract Act, 1872 - Sections 56; Hindu Law

Appeal No. : S.A. No. 261 of 1984-F

Appellant : Ramalinga Mudali

Respondent : Natesa Mudali

Advocate for Def. : N. Viswanatha Iyer, Adv.

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

Disposition : Appeal dismissed

Judgement :

P.K. Shamsuddin, J.

1. The 1st defendant in O.S. No. 1 of 1981 on the file of the Court of Munsiff, Palghat, is the appellant in this Second Appeal.

2. The 1st respondent herein filed a suit for recovery of Rs. 1,000/- as damages from the defendants for breach of contract of marriage. The 2nd defendant is the son of the 1st defendant. The plaintiff and the defendants are Hindus belonging to Mudaliyar Community. According to the plaintiff, the marriage between plaintiffs daughter Kasimony and the 2nd defendant was agreed to be conducted in between 5 and 6.30 A.M. on 11-12-1980 as per customary rites between the plaintiff as guardian of Kasimony and the 1 st defendant as guardian of the 2nd defendant in the presence of the close relatives and neighbours in a ceremony called 'Paranhoon' or 'Nischaya Thamboolam' held in the house of the plaintiff on 20-11-1980, the plaintiff made arrangement for conducting the said marriage on 11-12-1980 and while matters stood so, the 1st defendant informed him through one Murukesan that they had withdrawn from the marriage, that this caused mental agony to the plaintiff and his daughter and the plaintiff is entitled for damages from the defendant.

3. The defendants in their joint written statement contended that there was no agreement to conduct the marriage, that no Nischaya Thamboolam ceremony was conducted as alleged by the plaintiff on 20-11-1980 and the marriage was not decided to be conducted on 11-12-1980, and the matter was only at the stage of proposal.

4. The trial Court decreed the suit finding that the plaint allegations are true and that there was the Nischaya Thamboolam ceremony in which the date of marriage between the son of the 1st defendant and daughter of the plaintiff, was fixed.

5. On appeal in A.S. No. 37 of 1982, the learned Subordinate Judge found that the contract of agreement of marriage was true and the 1st defendant was liable to pay damages. However, the learned Subordinate Judge reduced the quantum of damages to Rs. 500/-. He held that the 2nd defendant was not a party to the agreement and in this view of the matter, the decree against the 2nd defendant was vacated. Aggrieved by the judgment and decree of the Courts below the 1st defendant has filed this Second Appeal.

6. In this appeal, Sri. Chitambaresh, learned Counsel for the appellant contended that the contract of marriage was between the fathers of the boy and girl and the

boy and the girl who were majors were not parties to it and that therefore no claim can be made on the basis for such an agreement. It was also contended that the parties are governed by the Contract Act and not by the Personal Law.

7. There is the concurrent finding of fact by the Courts below that the ceremony of Nischaya Thamboolam was held in the house of the plaintiff and in the presence of relatives it was agreed by the plaintiff and the 1st defendant to conduct the marriage between the daughter of the plaintiff and the son of the 1st defendant on 11-12-1980 and the learned Counsel rightly did not venture to challenge that finding. However, the learned Counsel challenged the decree of the Courts below on the ground that since the contract was between the fathers of the boy and girl, it was not binding on the boy and girl and no cause of action for damages for breach of such contract would arise. In support of this contention, the learned Counsel for the appellant cited before me a decision of the Travancore-Cochin High Court in Pappi Kunjikutty v. Sankaran Kunchan, AIR 1954 Trav. Co. 129. In that case, the contract of marriage was entered into by the mother, of the girl and the defendant and the Court held that since the daughter who was major on the date of the contract had not been made a party to the contract and the contract was also not made by the mother on behalf of her daughter, no claim for damages was enforceable in law and the mother was not entitled to recover damages for mental pain and loss of reputation caused to her by the failure of the defendant to merry her daughter.

8. On the other hand, the learned Counsel for the respondent argued that under the Personal Law the mother was not competent to enter into a contract on behalf of her daughter and therefore the principle laid down there is not applicable to the facts of this case. The learned Counsel for the respondent also invited my attention to the decisions in Purshotamdas Tribhovandas v. Purshotamdas Mangaldas Nathubhoy, (1897) ILR 21 Bom 23 and Venkita Narasimha v. Govindakrishna, 1937 Mad WN 1274, In the first case, the Bombay High Court said :

'The first and main point on which Mr. Inverarity for defendant took his stand is that a Hindu father who has betrothed his daughter in marriage, but declines to force

her to marry against her will, is not liable for any breach of contract, even though the daughter declares that she will not marry at all. This argument is based on the proposition that all contracts of betrothal in Hindu families are subject to the implied condition that when the time for the marriage has arrived, the girl is willing to be married. The contract is to give the girl in marriage : that involves the willingness of the girl to be given. But to ask the Court to accept this proposition is virtually to ask the Court to disregard the precepts of Hindu Law, which treat the marriage of daughters as a religious duty imposed on parents or guardians, and to look at the matter from the purely English point of view, which sees in marriage nothing but a contract to which the husband and wife must be consenting parties. (See the remarks of Sir C. Sargent, C.J., in Dadajee v. Rakhma Bai, (1886) ILR 10 Bom 301). The marriage of Hindu children is a contract made by their parents, and the children themselves exercise no volition. (West and Buhler, P. 908. See also Mayne, Section 88). If this is true of the marriage, it is equally true of betrothal, and there can be no implied condition that fulfilment of the contract must depend upon the willingness of the girl at the time of marriage. There is no trace of such a proposition to be found in the Hindu law books. In Umed Kika v. Nagindas, (1870) 7 Bom HCR 122, Green, J. pointed out that according to the Mitakshara (Ch. II, Section 11, V. 27) a retraction or repudiation of a betrothal is authorized if there be good cause for it, and the only good cause there specifically mentioned is 'if a preferable suitor present himself'. Glover, J., also in the matter of Gunpat Narain Singh, (1875-76) ILR 1 Cal 74, remarks on the same passage that one, if not the only, good cause for retraction of betrothal is said to be the coming of a 'preferable suitor'. There is no mention of unwillingness of the girl to be married. The idea, however consonant with European ideas, is foreign to the policy of the Hindu Law, which vests the girl absolutely in her parents and guardians, and her consent or non-consent cannot be considered by a Court (Grady's Hindu Law, 7).'

The Court then considered the contention based on Section 56 of the Contract Act, IX of 1881 and held :

'Section 56 provides that a contract to do any act, which after the contract is made becomes impossible, becomes void when the act becomes impossible. Messrs. Cunningham and Shepherd in their commentaries on the Contract Act have

pointed out that in these words a rule is laid down in general terms and for all cases, which is declared in the English authorities as exceptional and applicable to particular cases only. They observe that the term here used is simply 'impossible,' and, therefore, it may be supposed that, when the act stipulated for becomes impracticable in the ordinary sense of the word, the contract becomes void. Now applying that principle to the present case, it is not open to defendant to say that it is impossible for him to carry out his contract of giving his daughter in marriage to plaintiff within a reasonable time, i.e., before the end of next Vaishakh. The act is neither impossible in itself, nor impracticable in the ordinary sense of the term. No doubt the defendant says that it is impossible, because the girl declares that she will not marry for three or four years, and defendant declares that she will not listen to his persuasion, and he will never consent to force her, his counsel quoting the remark of West, J., in Shridhar v. Hiralal, (1888) ILR 12 Bom 480 at p. 486 that a girl should not be forced into a marriage that would be odious to her. But here apparently the plaintiff is not odious either to Kamlavanti or to her parents. Though physical force cannot for one moment be thought of, it is no doubt the duty of the defendant, according to the terms of his contract, to use to the utmost his persuasive powers, and his position as parent, in order to induce his daughter to be married. He, like many others, may entirely sympathise with her desire to go on with her education, and her unwillingness, therefore, to be hampered by the ties of marriage, and possibly the cares of maternity. But he, like the Court, must also regard the matter from the strictly legal point of view. The contract to give his daughter in marriage has not become 'impossible,' and, therefore, it has not become void.'

The Madras High Court considered a similar question in the second case cited above. The Court said :

'There are two ways in which the transaction may be viewed, one in which the father may be deemed to act on behalf of his adult son as his agent in the contract; on the other, which in my view is the more correct and complete view, in which the father acts not merely as an agent on behalf of his son but as the head and representative of the joint family of which the son is a member for whose marriage and for all arrangement and expenses connected with it, that family is

responsible. In short, the agreement in such cases is between or on behalf of the respective families of the parties to the marriage. When it is broken, damages of two kinds may naturally result; one, the pecuniary loss, if any, and injury to the feelings and prospects to the bride or bridegroom personally and secondly, the pecuniary loss and the loss to the credit and reputation to the family of the injured party. As I understand, this suit, it is not concerned with the damages, if any, suffered by the plaintiffs daughter but only with the damages suffered by the plaintiff himself as the head of his family and father of the bride.'

XX XX XX XX As already pointed out, the suit is not strictly an action for breach of promise of marriage as known to the English Courts and indeed the parties are not the spouses. The exceptional method of assessing damages applied to such cases is therefore not applicable. The general measure of damages prescribed for all contracts by Section 73 of the Contract Act must therefore be applied -- compensation for any loss or damage caused to the injured party which naturally arose in the usual course of things from the breach or which the parties knew when they made the contract to be likely to result from the breach of it -- compensation for remote or indirect loss not being allowable.'

9. A similar question arose in Kandaswami Naidu v. Kanniah Naidu, AIR 1924 Mad 692. In that case, the contract between the parties was proved. The 1st defendant agreed to give his daughter in marriage to the plaintiffs brother. The Court said (at p. 692) :

'It is well established that on breach of such a contract an action for damages lies. The Mitakshara itself provides that, if a more suitable suitor is found, a man will be justified in breaking off a marriage contract: but I think that it is quite clear that, when that course is pursued, it is also provided that some form of damages can be provided against the father who so changes mind. This is stated to be the law in Umed Kika v. Nagindas Narotamdas, (1870) 7 Bom HCR 122. There is a passage to the contrary in a decision of Beaman, J., in Khimji Vassonji v. Narsi Dhunji, AIR 1915 Bom 300 which I think, is inaccurate and is based, as pointed out in Mayne's Hindu Law at page 118, on a misconception of Mitakshara. Umed Kika v. Nagindas Narotamdas, (1870) 7 Bom HCR 122 is authority for the proposition that,

in such cases, the plaintiff is entitled to recover money actually thrown away and also damage to his credit and reputation by reason of the refusal.

10. The learned counsel for the respondent also invited my attention to several passages in the Law of Damages and Compensation by Kameswara Rao, Vol. 3, Fifth Edition. Paragraph 180 reads as follows :

'180. Marriage laws in India. In India the marriage laws are based upon the usages of the different communities in which the parental control and authority over the disposal of their children in marriage is so strong that it is rarely left to the actual parties to the marriage. Strictly speaking, therefore, there is no such thing as a contract of marriage between the actual parties to it, but its place has been taken up by what is known as 'betrothal' which is arranged and brought about by the parents and guardians of the couple. A remedy by way of specific performance is not open to any party to such a contract but either of the couple may take advantage of the betrothal, and treating it as a contract entered into for his or her benefit, claim damages against any person who has broken it or has procured its breach through malice or misrepresentation and the second party cannot be made liable because he is no direct party to the contract. AIR 1925 Bom 97 Rose Fernandez v. Joseph Gansalves.

xx xx xx The measure of damages in an action for breach of promise of marriage among Hindus has been defined by the Madras High Court in Venkata Narasimha v. Govinda Krishna, 1937 Mad WN 1274. Where a contract is entered into between two Hindus that the daughter of one of them should be given in marriage to the son of the other, the agreement is between or on behalf of the respective families of the parties to the marriage. When such a contract is broken damages of two kinds may naturally result:

(1) the pecuniary loss, if any, and the injury to the feelings and prospects of the bride or bridegroom personally;

(2) the pecuniary loss and the loss to the credit and reputation of the family of the injured party.

A suit by the father of the bride for damages suffered by him as head of the family and as father of the bride is not strictly an action for breach of promise of marriage as known to English Law. The injury sustained by him is distinct and separate from the injury resulting to his son or daughter as the case may be. But the general measure of damages prescribed in Section 73 of Contract Act applies to both.'

11. It is not disputed that under the Hindu Mitakshara Law, the rights of the father of the boy and girl to enter into a contract of marriage has been recognised. If that is the legal position the authority of the plaintiff and the first defendant in entering into an agreement of marriage between the girl of the plaintiff and the son of the 1st defendant cannot be considered to be of no consequence. It is true that in a case where the boy and girl are not parties to the agreement, no action for specific performance of marriage may lie, since the boy and the girl , are not parties to the contract. However, this will not affect the right of the father of the girl in proceeding against the father of the boy who entered into the agreement, for damages. In the circumstances, the decree for damages passed by the lower Court is legal and is not liable to be set aside.

12. The 1st respondent has filed a cross appeal. The lower appellate Court has taken the view that a sum of Rs. 500A for the mental agony and loss of reputation suffered by the plaintiff is reasonable. I do not find any ground to interfere with the said finding.

In the result, the second appeal and the cross appeal fail and they are dismissed. The parties will bear their respective costs.