

Gracy Vs. Mathiri

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Court : Kerala

Decided On : Jun-16-2005

Reported in : AIR2005Ker314; I(2006)DMC246; 2005(3)KLT412

Judge : Kurian Joseph and; P.R. Raman, JJ.

Appeal No. : A.S. No. 638 of 2001

Appellant : Gracy

Respondent : Mathiri

Advocate for Def. : V. Giri, Adv.

Advocate for Pet/Ap. : K. Jaju Babu and; M.U. Vijayalakshmi, Advs.

Judgement :

Kurian Joseph, J.

1. The validity of a marriage performed in a foreign country between parties, one of whom is an Indian citizen is the issue mainly arising for consideration in this appeal. The law governing the point is Foreign Marriage Act, 1969 (Act 33 of 1969). Appellants are the defendants in O.S.I 140/95 on the file of the Subordinate Judge's Court, Thrissur. The suit was one filed for a declaration that 'the plaintiffs alone are the legal heirs of deceased P.A. Joseph and that the plaint schedule property belongs absolutely to the plaintiffs and consequently to restrain the

defendants by a permanent prohibitory injunction from interfering with the possession and enjoyment of the plaint schedule property'.

2. The facts to the extent relevant are: Sri. George Andrew is the brother of deceased P.A. Joseph. Though there is a daughter by name Alphy Joseph to the deceased P.A. Joseph, her whereabouts are not known for about one and half decades. George Andrew, after divorcing the first wife married the first defendant herein and the children born in that wedlock are defendants 2 and 3. The plaintiffs however disputed the fact of divorce and questioned the validity of the marriage contracted by George Andrew with the first defendant. It is the case of the defendants that since the first defendant could not solemnize the marriage with George Andrew in the Church in Kerala, an agreement for marriage was entered into as per Ext.B1. Thereafter, she was taken to England where they got married in accordance with Section 45 of the Marriage Act, 1949 of England. Attested copy of the entry of marriage thus solemnized under the Marriage Act, 1949 in the Register is Ext.B3. The lower Court rejected Ext.B3 on the ground that it cannot be accepted in evidence as proof of valid marriage between George Andrew and the first defendant, since it does not satisfy the requirements under the Foreign Marriage Act, 1969, for the proof of a valid marriage.

3. The Foreign Marriage Act generally covers the marriages performed abroad where one of the parties alone is an Indian citizen. The act covers mainly four types of factual situations; (1) the marriage solemnized before the Marriage Officer appointed by the Government of India in the foreign country, in accordance with Sections 4, 5, 9, 11 and 13, (2) the deemed solemnization under Section 17, (3) recognition of marriages solemnized under the law of the foreign country where the marriage is performed and the certification thereof under Section 23 read with Section 24 of the Act and (4) marriages solemnized in a foreign country otherwise than under the provisions of the Act.

4. As far as the solemnization of marriage before the Marriage Officer appointed under Section 3 is concerned, the parties have to issue notice under Section 5, the same has to be entered in the marriage notice book, the same has to be published there and in India, the parties have to satisfy the conditions under Section 4 that

neither party has a spouse living, neither party is an idiot or a lunatic, the bridegroom has completed the age of twenty-one years and bride eighteen years at the time of the marriage and the parties are not within the degrees of prohibited relationship, except where the personal law or the custom governing at least one of the parties permits otherwise. The solemnization of the marriage should not be inconsistent with the international law and shall not affect the comity of nations and the same has to be solemnized in accordance with Section 13. Under Section 14, the Marriage Officer has to enter a certificate of the marriage in the specified form in a book called the Marriage Certificate Book. The certificate has to be signed by the parties to the marriage and three witnesses.

5. The second situation is registration of a foreign marriage, where marriage was duly solemnized in a foreign country in accordance with the law of that country between parties of whom one at least is a citizen of India. The procedure is provided under Section 17 of the Act. An application has to be made for the purpose of registration, before the Marriage Officer and the prescribed fee also has to be remitted. For the registration of the marriages already performed according to the law of the country also, the parties have to satisfy the conditions under Section 4. Under Section 17, a certificate has to be entered in the prescribed form and in the prescribed manner in the Marriage Certificate Book and the certificate has to be signed by the parties to the marriage and three witnesses. Once a marriage is thus registered, such marriage shall be deemed to have been solemnized under the Act as provided under Section 17(6) of the Act, from the date of such registration.

6. The third is a situation where the marriage is solemnized under the law of the concerned foreign country. Section 23 provides that if the Central Government is satisfied that the law in force in any foreign country for solemnization of marriages contains provisions similar to those contained in the Foreign Marriage Act, 1969, the Government may, by notification in the official gazette declare that the marriage thus solemnized under the law of the foreign country be recognised by the Courts in India as valid. Section 24 deals with the certification of documents of such marriages. If a party to such marriage solemnized according to the law of the foreign country and which is recognised by the Government of India produces a

copy of entry in respect of the marriage in the marriage register of that country certified by the appropriate authority in that country to be a true copy of that entry, the Marriage Officer appointed in the concerned country under Section 3 of the Foreign Marriage Act, upon payment of such prescribed fees and upon such enquiry and on being satisfied that the copy produced is a true copy of the entry in the Register of that country, he shall certify upon the copy produced before him that 'he is satisfied the copy is a true copy of the entry in the marriage register'. A true translation is also liable to be certified as above. Section 24(2) provides that 'a document relating to a marriage in a foreign country issued under Sub-section (1) shall be admitted in evidence in any proceedings as if it were a certificate duly issued by the appropriate authority of that country'. Section 25 provides that 'Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

7. As far as all the above three factual situations are concerned, i.e., (1) the marriage solemnized in accordance with the procedure under the Act, (2) deemed solemnization as per Section 17 and (3) the certification under Section 23, the evidence is the certification of the Marriage Officer in the foreign country. The only difference in the third situation is that, the certification is on the copy of the marriage certificate of the concerned country. In other words, no attested copy of the certificate of marriage performed in a foreign country, be it attested by a notary, shall be accepted in evidence as proof of valid marriage. The same has to be duly certified by the Marriage Officer appointed by the Government of India in the concerned country.

8. The 4th is a situation covered by Section 27. Section 27 reads as follows:-

'Nothing in this Act shall in any way affect the validity of a marriage solemnized in a foreign country otherwise than under this Act'.

We shall straight away refer to the objects and reasons in respect of Section 27. It is stated that 'this clause, saving marriages solemnized under other laws, has been inserted by way of abundant caution'. Section 27 provides that the Foreign Marriage Act, 1969 does not prohibit marriages between parties, be both Indian

citizens or one be an Indian citizen, being solemnized otherwise than under the provisions of the Act. But once a party claims that his or her marriage was solemnized in a foreign country under the provisions of the Foreign Marriage Act, the proof thereof shall only be as already stated above, viz. either the certificate or the certified copy signed by the Marriage Officer appointed by the Government of India in the concerned foreign country. In such circumstances, it is not necessary to produce the original document and no other proof of the original also is required.

9. As already stated above, the appellant claimed that her marriage was performed under the provisions of the Foreign Marriage Act, 1969 and reliance was placed on Ext. B3 certificate. Ext.B3 is a notarised copy of the certificate copy of entry of marriage issued under the provisions of the Marriage Act. 1949. The entry is made by the Registrar of County of Buckinghamshire in the District of Waikomb in United Kingdom. The original certificate issued by the authorities under the Marriage Act, 1949 was not produced. Learned counsel for the appellant Sri. Jaju Babu placing heavy reliance on Section 27 argued that even under the provisions of the Foreign Marriage Act, the Act itself shall not in any way affect the entry of marriage solemnized in a foreign country. Reference is invited to a Bench decision of Andhra Pradesh High Court in Joyce Sumathi v. Robert Dickson Brodie : AIR 1982 AP389 . The Appellant therein approached the Civil Court for matrimonial reliefs, for a declaration on desertion. That also was a situation of marriage performed in a foreign country. The respondent was a citizen of U.K. But the marriage appears to have been performed before the Marriage Officer of Baharin. The Division Bench noted that there was no evidence to treat the marriage as one solemnized under the Act. To quote from para 7, 'As rightly observed by the learned Chief Judge, City Civil Court, a marriage solemnized under the Foreign Marriage Act has to be registered before a Marriage Officer in accordance with the procedure laid down by Sections 5 to 14 and must ultimately result in the issuance of a certificate of marriage. However no marriage officer appears to have been appointed in Baharin, Saudi Arabia and it is not established that any of the steps envisaged by the above provisions were taken before the marriage was solemnized between the parties so as to treat it as a marriage solemnized under the Act, much less were any steps taken to get the said marriage registered under

Section 17 of the Act so as to attract the deeming provision contained in Sub-section (6) of Section 17. However, merely because the marriage was not solemnized in accordance with the procedure laid down under Section 5 to 14 of the Foreign Marriage Act, the matrimonial reliefs claimed by the appellant herein, who is an Indian citizen, cannot be denied to her under the Special Marriage Act, 1954'. Thus on facts, the Division Bench found that there was no evidence that the marriage in that case was performed under the provisions of the Act. It was in that context it was held that a petition under the provisions of the Special Marriage Act at the instance of the appellant therein was maintainable. The contention of the appellant is that the marriage was solemnized in England under the provisions of Marriage Act, 1949, the law regarding the marriages in England. The contention taken before the Court below was that the solemnization was in accordance with the provisions under the Indian law namely, the Foreign Marriage Act, 1969. Once the case rests on such premises, the party has to produce a certified copy, duly certified by the Marriage Officer appointed by the Government of India in U.K. If it is the contention that Section 27 applies, it is for the appellants to plead and prove the same in accordance with law. Ext.B3 being a copy attested only by a Notary does not satisfy the requirement of Section 24 and hence the Court below rightly rejected the same.

10. At this stage, learned counsel for the appellant sought for a further opportunity. We heard Sri. Giri, learned counsel appearing for the respondents. Having regard to the facts and circumstances of the case, it is only in the interests of justice that an opportunity is given to the appellants. Accordingly, we set aside the judgment and decree in O.S. 1140/1995 and the matter is remitted to the Court below. The parties shall appear before the Court below on 26.9.2005. The Court below shall dispose of the suit as expeditiously as possible, at any rate within three months thereafter. The status quo as obtaining between the parties regarding the possession and enjoyment of the plaint schedule property shall be maintained till the disposal of the suit. Appellants are entitled to refund of one half of the court fee and hence one half of the court fee paid in the appeal shall be refunded to the appellants.

