

Zacharias Vs. Joseph

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Court : Kerala

Decided On : Nov-01-1990

Reported in : I(1991)DMC530

Judge : Shamsuddin, J.

Acts : Travancore Christian Succession Act - Sections 5 and 28; Dowry Prohibition Act; State (Laws) Act, 1951; Indian Succession Act

Appeal No. : A.S. No. 366 of 1984

Appellant : Zacharias

Respondent : Joseph

Advocate for Def. : T.P. Varghese, Adv.

Advocate for Pet/Ap. : T.R. Raman Pillai and; T.R. Ramachandran Nair, Advs.

Disposition : Appeal dismissed

Judgement :

Shamsuddin, J.

1. Plaintiffs in OS No 402 of 1980 on the file of the Sub-Court, Kottayam, are the appellants. The suit is for the share of the 2nd plaintiff out of the properties of the defendants or for recovery of Rs. 10,000/- with interest.

2. 1st plaintiff is the husband and the 2nd plaintiff is the wife. 1st defendant is the father and the 2nd defendant is the mother of the 2nd plaintiff. It is the plaintiff's case that at the time of the marriage of the 2nd plaintiff, defendants promised to pay Rs. 20,000/- in satisfaction of her claim for share and out of the said amount Rs. 10,000/- was paid by way of ornaments and the remaining Rs. 10,000/- was due from the defendants. Suit is for recovery of the said amount.

3. In the written statement filed by the defendants, they contended that the entire sthreedhanam was paid at the time of marriage of 2nd plaintiff and that no amount was due to the 2nd plaintiff by way of sthreedhanam.

4. On a consideration of the evidence in the case, the court below found that there is no evidence to show that any amount is payable by way of sthreedhanam to the 2nd plaintiff. In that view of the matter, the court below dismissed the suit.

5. In this appeal, learned counsel for the appellants has challenged the finding of the trial court. Learned counsel heavily relied on letters Exts. A1 and A4 produced in the court below and also the oral testimony of P.Ws. 1 to 3 to substantiate that the balance of sthreedhanam amount was not paid to the 2nd plaintiff. The court below considered the letters and found that those letters are hardly sufficient to establish that any amount was due to the 2nd plaintiff from the defendants by way of sthreedhanam. P.Ws. 1 and 2 stated that at the time of marriage the defendants promised that a sum of Rs. 20,000/- would be paid to the 1st plaintiff on behalf of the 2nd plaintiff as sthreedhanam out of which Rs. 15,000/- was meant for ornaments and Rs. 5,000/- as sthreedhanam. They also deposed that the defendants gave ornaments worth Rs. 10,000/- but did not pay the balance of Rs. 10,000/-. As against this defendants 1 and 2 who were examined as D.Ws. 1 and 2, deposed that two weeks prior to the marriage, Rs. 15,000/- was paid to the father of the 1st plaintiff, and that one week prior to the marriage a sum of Rs 5,000/- was also paid. In the circumstances, it is difficult to find that an amount of Rs. 10,000/- more is due from the defendants to the 2nd plaintiff by way of sthreedhanam.

6. This apart, it is highly doubtful whether such a claim is sustainable in view of the provisions contained in the Dowry Prohibition Act. Under Section 28 of the

Travancore Christian Succession Act, Sthreedhanam due to a daughter shall be fixed at one-fourth the value of the share of a son or Rs. 5,000/- whichever is less. Sthreedhanam is defined in Section 5 of the Act as meaning and including any money or ornaments or in lieu of money or ornaments, any property, movable or immovable given or promised to be given to a female, or on her behalf, to her husband or to his parent or guardian by her father or mother, or after the death of either or both of them, by any one who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother.

7. A Division Bench of this Court in *Mary v. Cherchi and ors* (1980 KLT 353) observed that reading the provisions of the Christian Succession Act and the Dowry Prohibition Act together where payment is made or property is given on the occasion of the marriage to a female, entitled to a share under the Succession Act that may be capable of being understood only as handing over of her share in the estate at the time of marriage and as such is not a consideration for marriage. Since according to Section 28 of the Travancore Christian Act, Sthreedhanam due to a daughter shall be fixed at one fourth the value of the share of a son or Rs. 5000/- whichever is less, and the definition of sthreedhanam takes in ornaments also. The plaintiffs are not entitled to claim anything more as even according to them Rs. 10,000/- worth ornaments was given at the time of marriage. Further the Supreme Court in *Mary Roy and Ors v. State of Kerala and Ors* (1986 KLT 508) held that the Travancore Christian Succession Act stood repealed on the coming into force of Part B State (Laws) Act, 1951 and Chapter II of Part V of the Indian Succession Act became applicable and that intestate succession to the property of members of the Indian Christian Community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the Indian Succession Act. It is not possible to treat the streedhanam allegedly promised as in lieu of share for the reason that Christian Succession Act stood repealed on coming into force of Part B States (Laws) Act and the 2nd plaintiff would be entitled to shares in the estate of her father on intestacy.

The forgoing discussion would show that there is no merit in the appeal and it is accordingly dismissed. There will be no order as to costs.

