

Annathai Vs. Murugaiah

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Court : Chennai

Decided On : Mar-31-2000

Reported in : AIR2000Mad356; 2000(2)CTC698; I(2001)DMC104; (2000)IIMLJ294

Judge : P. Sathasivam, J.

Acts : Hindu Marriages Act, 1955 -- Sections 7, 8(2), 9 and 28; [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 100; Hindu Marriage (Tamil Nadu Amendment) Act, 1967-- Sections 6A (1); [Indian Penal Code \(IPC\), 1860](#) -- Sections 494

Appeal No. : Civil Misc., Second Appeal No. 52 of 1997 and C.M.P. No. 16207 of 1997

Appellant : Annathai

Respondent : Murugaiah

Advocate for Def. : Mr. P. Subramaniam for ;M/s Peppin Fernando, Adv.

Advocate for Pet/Ap. : Mr. P. Mani, Adv.

Judgement :

ORDER

1. Petitioner in H.M.O.P.No. 64 of 1992 on the file of Subordinate Judge, Tenkasi is the appellant. She filed the said petition before the sub Court under section 9 of

the Hindu Marriage Act, 1955 for restitution of conjugal rights. On the basis of oral and documentary evidence and after holding that the marriage between the petitioner and the respondent was performed on 27.7.83 according to Hindu rites and customs and she gave birth to a child on 13.10.83, allowed the said petition. Aggrieved by the said order the respondent-husband filed appeal in District Court. Tirunelveli. The lower appellate court set aside the order of the trial court and allowed the appeal, against which the wife has filed the present second appeal before this Court under Section 28 of the Hindu Marriage Act read with Section 100, C.P.C.

2. The case of the appellant is briefly stated, hereunder:- According to her, she is the wife of the respondent herein. Both of them belong to Kulasekaramangalam village. Sankaran Koil Taluk. Prior to their marriage, they lived in the same street. From 1981 to 1983 they loved each other and because of cohabitation she conceived in the month of February, 1983. After prolonged request and after complaint to the police, the marriage was performed between them on 27.7.83 at Pillayar temple in the presence of Village Headman and others. It is further stated that after the marriage, they lived together some time in Kulasekaramangalam, where she gave birth to a male child on 13.10.83. However, the respondent failed to take care of her and even her child. He also demanded Rs.10,000 as well as 10 sovereign of gold as dowry, In such a circumstance, having no other option has filed the petition for restitution of conjugal rights. The same was resisted by the respondent-husband by way of filing counter statement wherein he denied the relationship between himself and the wife as well as the marriage which is said to have taken place on 27.7.83. He denied all the averments made by the petitioner. He also emphatically denied that the child was not born to him and no marriage took place as claimed.

3. Before the trial court, apart from the oral evidence of P.W.1, the Village Headman in whose presence the marriage was performed, was examined as P.W.2 and the Inspector of Police-one Sakthidasan was examined as P.W.3. Village Account Book was marked as Ex.P-1 through P.W.2. The respondent got himself examined as R.W.1 and he also examined one Jones as R.W.2. apart from marking Exs. R-1 to R-8. As stated earlier, though the trial court accepted the

case of the petitioner and passed/granting relief under Section 9 of the Hindu Marriage Act, the lower appellate court dismissed the said petition by allowing the appeal filed by the husband.

4. While admitting the above second appeal on 3.1.1997, this Court has framed the following substantial questions of law:-

(1) Whether the lower appellate Court erred in law and misdirected itself in holding that the marriage between the petitioner and the respondent was not established merely because the marriage was not registered when there is no State enactment which provide for compulsory registration as provided under Section 8(2) of the Hindu Marriage Act, 1955?

(2) Whether the lower appellate Court erred in law and misdirected itself In holding that the marriage between the petitioner and the respondent was not proved though the petitioner has established the factum of marriage as provided under Section 7A (c) of the Hindu Marriage (Tamil Nadu Amendment) Act. 1967'

5. It is the definite case of the appellant that while herself and the respondent herein were living in the same street during 1981 and 1983. They loved each other and because of their close intimacy even before marriage, she became pregnant. It is also her definite case that after persuasion and after making a complaint to the police, the marriage between her and the respondent took place on 27.7.83 at Pillayar temple in the presence of the village Headman. In the petition the appellant herein has specifically pleaded all the above aspects in detail. In her evidence as P.W.1, she deposed thus:-

Even in the cross-examination, she asserted and affirmed what she had stated in the chief-examination Apart from the evidence of P.W.1, the village Headman-Veliah was examined as P.W.2. He also deposed that,

He also deposed with regard to the entries made in the Account Book. The said Account Book has beer marked as Ex, P-1. The Inspector of Police was examined as P.W.3. Even if we eschew in the evidence P.W.3 regarding the marriage, we have the evidence of P.Ws.1 and 2. On the other hand, the husband was examined

as R.W.1, No doubt, he denied the statements made by P.Ws.1 and 2. The other witness examined on the side of the husband is R.W.2. It was he who recorded her statement when she made a complaint to the Legal Aid Centre. In order to show that the petitioner had furnished different dates regarding her male child. R.W.2 was examined. He is nothing to do with the marriage, hence it is unnecessary to consider his evidence.

6. The evidence of P.Ws.1 and 2 are more probable and acceptable. Even though it is stated by R.W.1 that there was no marriage at all on 27.7.83, it is clear that marriage between him and the petitioner-wife was performed on that date at Pillayar Koil in the presence of many persons including the Village Headman, P.W.2. Both P.Ws.1 and 2 deposed that "thali" was tied by the respondent-husband in the presence of P.W.2 and others and thereafter they exchanged garlands. Hence, it is clear that they fulfilled the conditions prescribed under Section 7 of the Hindu Marriage Act. No doubt, the appellate Court after holding that in the absence of any registration of the marriage and in view of different dates regarding the birth of the male child disagreed with the finding of the trial court, allowed the appeal and dismissed the petition filed by the wife.

7. First I shall consider whether there was any marriage on 27.7.83 between the appellant and the respondent and whether the same was proved by the wife?

8. As per Section 7 of the Hindu Marriage Act, 1955, a Hindu marriage can be solemnized in accordance with the customary rites and ceremonies of either party thereto, section 7-A recognises 'suyamariyathai' and 'seerthiruththa' marriages. The special provision recognises the marriage by each party declaring in any language understood by them that each takes the other to be his wife or, as the case may be, her husband, or garlanding each other or putting a ring upon any finger of the other, or by tying of the thali. It is clear that all marriages fulfilling any of these conditions are valid in law. In the case of Mathialagan. K. v. Mala Devi, 1989 (2) L.W. 361 Srinivasan, J., (as he then was) has held that,

'...There was tying of thali and exchange of garlands. As laid down by Maheswaran, J. in Koodappan v. Kothai Nachirammal, 1979 L.W. (Crl.) 154, such a marriage is valid in view of the Hindu Marriage Act. as amended by Tamil Nadu

Act 21 of 1967...'

In Kailasam and others v. Alagammal, 1987 L.W. (Crl.) 156. Padmini Jesudurai, J., has held as follows:-

'...Sec.7A of the Madras Act 21 of 1967 indicates three kinds of valid marriage and Sec.7A (1) (c) include marriage by mere tying of the thali. It is, therefore, clear that tying of the thali without any other ceremony could be a valid marriage. Under Sec.7A (2) (a) it is not necessary that tying of thali should also be accompanied by exchange of garlands. The various sub clauses of Sec.7A (2) are disjunctive. It is also not necessary that there should be any evidence that the marriage was performed as Suyamariyathai or Seerthirutha marriage. It has been so laid down by Maheswaran. J., in Koodappan v. Kothai, 1979 L.W. (Crl.) 154 : 1980 M.L.J.(Crl.) 420. I respectfully concur with the view of the learned Judge. Substantial Justice has been done and requiring illiterate persons to state during evidence technicalities touching upon factaspects of kinds of marriage would negative justice. In the instant case, there is evidence that thali was tied, as required under Section 6A (1) (c) of the Madras Act 21 of 1967. The prosecution, therefore, has established that the marriage between the petitioners 1 and 2 also a valid marriage as required under Sec. 494, I.P.C.'

In Indirani v. Vellathal, 1988 (1) L.W. 358. the Division Bench of this Court (Sathiadev and Sivasubramaniam, JJ.) have held that 'exchange of garlands or putting a ring or tying a thali etc., are traditionally recognised stages of a marriage ceremony, which brings into existence a binding valid marriage.' I have already stated that the wife has specifically narrated and pleaded all the events in her petition and she got herself examined as P.W.1. P.W.2, a respectable Village Headman, corroborated the evidence of P.W.1 in all aspects including performance of the marriage on 27.7.83 between the petitioner and respondent at Pillayar temple in the presence of their relatives. He also deposed that a thali was tied by the bride-groom and they exchanged garlands. Even R.W.1, the husband has admitted that both of them belong to the same community and they lived in the same street. Merely because the complaint said to have been made to the police was not brought to the court, there is no reason to dis-believe the version of P.Ws.I

and 2. The lower appellate Court has opined that due to missing of certain pages in Ex.P-1 and the non-examination of other relatives as witnesses, the case of the petitioner cannot be accepted. I am of the view that the evidence let in on the side of the petitioner is sufficient to hold that the marriage between appellant and respondent was performed on 27.7.83 and the non-availability of certain pages in Ex.P-1 Account Book containing the details as to the marriage between them and gifts offered by several persons will not affect the case of the petitioner. The lower appellate court committed an error in taking a contrary view and rejecting the acceptable evidence placed by the petitioner.

9. Coming to the point with regard to birth of a male child to the appellant in the wed-lock, the lower appellate Court came to the conclusion that the child was not born to them. It arrived at such a conclusion mainly due to the reason that there is discrepancy in the date of birth of the child. The said conclusion cannot be accepted for the following reasons. It is the definite case of the petitioner that because of her close intimacy with the respondents they cohabitated even prior to the marriage and that she conceived in the month of February, 1983. According to her, she gave birth to a male child on 13.10.83. No doubt, in Exs. P-3, P-7 and P-8, the date of birth of the child is mentioned as 27.5.85. In Ex.P-5, the father of P.W.1 has mentioned the date of birth of the child as 4.4.83. Though different dates in regard to the date of birth of the child have been mentioned, a careful perusal of the entire materials would go to show that the case of P.W.1 is more probable and acceptable. Hence, the trial court has rightly concluded that the claim of P.W.1 that she gave birth to a child on 13.10.83 is more probable and acceptable. I am also satisfied that the following circumstances probabilise the case of the petitioner-wife:-

- (i) Both parties belong to the same community;
- (ii) At the relevant time they resided in the same street (opposite house);
- (iii) No normal Hindu woman would claim a stranger as her husband;
- (iv) No motive was alleged by the respondent-husband;

(v) Even the alleged motive has not been substantiated by the husband;

(vi) The oral evidence let in by the wife and P.W.2 being a Village Headman is acceptable and the factum of marriage is established thereby.

Unfortunately, the lower appellate court committed an error in rejecting the acceptable evidence let in on the side of the wife. The circumstances relied on by him are quite irrelevant, it is established beyond doubt that there was a marriage as alleged by the wife. There was tying of thali and exchange of garlands, such a marriage is valid in law in view of Hindu Marriage Act as amended by Tamil Nadu Act 21 of 1967.

10. In *M.M. Chetti v. C. Coomaraswamy Naidu and Sons*, AIR 1980 Mad. 212, Balasubramanian. J., has held that even a finding of fact can be upset in second appeal on the score that there was no evidence to support it or that it was based on a misconception, in *Budhwanti v. Gulab Chand Prasad*, : [1987]2SCR534 . Their Lordships of the Supreme Court have held that in a second appeal a finding on fact even if erroneous will generally not be disturbed but where it is found that the finding is vitiated by application of wrong tests or on the basis of conjectures and assumptions then a High court will be well within its rights in setting aside in a second appeal a patently erroneous finding in order to render justice to the party affected by the erroneous finding. In *J.B. Sharma v. State of M.P.*, : AIR 1988 SC703 , the Hon'ble Supreme Court has held that the appellate court while recording the finding acted on an assumption not supported by any evidence and further failed to consider the entire document on the basis of which the finding was recorded, the High Court was, therefore, justified under Section 100 of Civil Procedure Code to set aside the finding. I have already demonstrated how the lower appellate court mis- construed the evidence on record and erred in rejecting the acceptable evidence let in on the side of the wife. Further, the lower appellate Judge has not given any cogent and convincing reason for reversing the well considered finding of the trial court which had the advantage of noting the demeanor of witnesses. There is absolutely nothing to show that the finding of the trial court is perverse and suffers from any infirmity. The learned Appellate Judge failed to take into consideration the evidence of P.Ws.1 and 2 as well as Ex.P-3

that led to the miscarriage of Justice. On a careful analysis of the entire materials. I have no other option except to come to the conclusion that the patently erroneous finding of the lower appellate court is not sustainable.

11. Under these circumstances, both the substantial questions of law framed are answered in the affirmative and the judgment and decree of the lower appellate court is set aside. The judgment and decree of the trial court ordering the petition filed under section 9 of the Hindu Marriage Act by the wife is restored. Net result, the second appeal is allowed. No costs, C.M.P.No. 16207 of 1997 is closed.

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