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Court : Chennai

Decided On : Nov-06-1936

Reported in : (1937)1MLJ192

Appellant : Boodapati Ankamma, Wrongly Described as Nannuru Ankamma in the Decree and Judgment of the Lower Cour

Respondent : Boodapati Bamaneppa

Judgement :

Varadachariar, J.

1. Much as I pity the lot of the unfortunate appellant who had been made a pawn in a discreditable game played by some of her misguided relatives, I do not find any ground on which I can interfere with the decision of the lower Appellate Court.

2. The plaintiff sued for a declaration that the defendant was not his legally wedded wife; and the allegations in the plaint imply either that there was no marriage in fact or in any event it did not amount to a valid marriage. It is common ground that the marriage, if any, took place under abnormal circumstances. The plaintiff was undoubtedly a young man-it makes very little difference whether he was 18 or 20 at the time and the defendant's witnesses agree that the plaintiff's parents who were well-to-do parents were not likely to agree to his marrying the

defendant. It is accordingly the defendant's story that the marriage took place one evening in a stranger's house at a village four or five miles away from the village of the parties. D.W. 1 was the man who brought about the transaction. The defendant and her brother D.W. 5 were the only persons who on the bride's side went to that village in advance. The plaintiff admittedly came to that village in the company of D.W. 1 after the defendant and her brother had reached there, and it is then said that certain rites were gone through. It is also the defendant's story that after nightfall the plaintiff and the defendant returned to their own village, but instead of going to the plaintiff's parents' house, the party returned to the defendant's house where the plaintiff and the defendant lived as man and wife for three days. The suggestion of the defendant is that this suit which was instituted within fifteen days after the events above referred to was instigated by the plaintiff's parents.

3. On the other hand, it is the plaintiff's story that not merely his parents but he himself was never a willing party to this alliance, that the proposal was never mentioned to him till he actually found himself in the house in the neighbouring village that evening, that he was decoyed to that village by D.W. 1 on a representation that he was merely going in search of a lost cow, that when he found himself in that house in the evening he was surrounded by people who had been got ready there beforehand, that it was only then that he was asked to go through a marriage form to which he objected, that he was compelled by some of the people assembled there to sit on the plank, that his hand was seized by D.W. 1 and made to tie the thali round the defendant's neck. He denies that he returned to the bride's house that evening or lived with her as man and wife for three days as alleged.

4. But for the tragic consequences, one may enjoy the humour of the story related by D.W. 1. I cannot help observing that on their own showing D.W. 1 and D.W. 5 have no right to complain if any Court refused to believe that evidence. The District Munsiff came to the conclusion that the marriage was a deliberately planned affair by the plaintiff himself with the help of D.W. 1 and that the plaintiff went through the marriage of his own freewill. On that finding there can be little doubt that the marriage will be valid, whatever defects of ceremonial there might have been and

notwithstanding the objection of the plaintiff's parents to any such alliance. On appeal however the learned District Judge came to a different conclusion.

5. There are portions of the appellate judgment which are open to criticism. If the matter rested merely upon the question of defect of ceremonies, or the omission to go through the round of ceremonies which according to the description in Thurston's book it is usual to observe in Kamma marriages, I should not have been prepared to hold that the marriage is legally invalid. I am also free to confess that the statement in paragraph 15 of the lower Appellate Court's judgment, that circumstances like secrecy, haste, absence of festivities, etc., are invalidating circumstances, is putting the matter too high. At best, they can only be described as suspicious circumstances having an important bearing on the question of fact. But in paragraph 6, the lower Appellate Court has found that the plaintiff could not have with his freewill and consent entered into relationship of marriage with the defendant and that, if at all, there was only a farce of a marriage brought about by fraud or force on the part of D.W. 1 and his partisans. Here again, there is some room for the criticism that the expression 'fraud' or 'force' has been used by the learned Judge, without any clear indication of the elements which in his opinion constituted them, apparently because that expression is found in some of the reported cases bearing upon the question of the invalidity of the marriage. 'Fraud' in the sense defined by the Contract Act is difficult to find in the case. Fraud perhaps in a wider sense may be applied to this transaction i the plaintiff's story is true.

6. Dealing first with the question of fact, I do not feel that it is open to me to consider whether the version of the plaintiff is more likely or the version given by the defendant's witnesses is more likely. The case is according to both sides abnormal and the departure from the customary form of ceremonies will accordingly afford no criterion for decision. It is obvious that the learned District Judge intended to accept the plaintiff's testimony and I cannot say that he ought not to have accepted it. In substance, the story as accepted by the learned Judge seems to me to amount to this (in the words of the summary of the plaint given in paragraph 1 of the first Court's judgment, namely), that, on some pretext, the plaintiff was taken to the neighbouring village by D.W. 1 that D.W. 1 and D.W. 5

had without the plaintiff's knowledge made arrangements there beforehand for some of the formalities of the marriage ceremony, that when the plaintiff found himself in that house he was asked to marry the defendant to which he did not agree and that while this conversation was going on the plaintiff was asked to tie the thali to the defendant which he refused to do, that thereupon D.W. 1 held the plaintiff's hand and made him tie the thali to the defendant, that the plaintiff thereafter ran away from the place to his parent's house. If this is to be taken to be the true version, I am not able to say that the learned Judge was wrong in holding that there was no legal relationship of husband and wife created between the parties by whatever ceremonial gone through at the time.

7. If I were satisfied as to the truth of the defendant's story that after the events of the evening, the plaintiff and defendant did in fact live as man and wife for a period of three days, I should have unhesitatingly upheld the marriage, because at best the plaintiff would have only been a reluctant party to the ceremony and any locus penitentiae that he might have been entitled to on that footing he must be held to have lost by having chosen to live with the lady as husband for a time. Even the learned District Munsiff does not seem to have accepted that version and the District Judge clearly rejects it. So far it is open to me to look into the evidence, I have examined it carefully and I am not satisfied that that part of the story is wholly reliable. The three days' period seems to me to have been suggested by the fact that three days after this incident, the plaintiff joined his father in the execution of certain gift deeds in favour of his sisters. D.W. 1 admits, though D.W. 5 denies, that that very evening the plaintiff's parents were on the track with a view to prevent the marriage if possible. D.W. 1 would have it that the parents came to the defendant's house in the night and rebuked them though D.W. 5 would deny even that. Having regard to the plaintiff's subsequent conduct and the position of the plaintiff's family and the proximity of their house, I find it difficult to accept the defendant's version that the plaintiff was allowed to remain in the defendant's house for three days.

8. Mr. Raghava Rao asked me to say that the plaintiff's evidence at best only shows that he reluctantly submitted to a proposal put before him by D.W. 1 and D.W. 5. I do not think that is a correct statement of the effect of the evidence. The

plaintiff's evidence, if true, implies that his hand was merely moved by D.W. 1 and that the plaintiff by himself had no voluntary part in the matter. Mr. Raghava Rao next contended that even if this should be taken to be the finding of the Lower Appellate Court on the evidence, the Court is not justified in applying to a Hindu marriage the principles of the law of contract and holding the marriage to be inoperative or void. I agree that the Hindu marriage is a sacrament and not a civil contract and that it will not be permissible to apply to a Hindu marriage all the principles of the law of contract, at least for the reason that in most marriages sanctioned by the Hindu Law the infant spouses have no contracting capacity. It seems to me, however, too much to argue from this that even fundamental principles like freedom of consent by some responsible person if not by the spouses themselves, ought to be ignored. I am not for a moment saying that the absence of the parent's consent will always invalidate the marriage. According to the plaintiff's case the plaintiff was never a willing party to the marriage and if on the evidence the Court holds that he never wanted to be a party to the marriage, the mere fact that somebody else caught hold of his hand and made it tie a thali round the lady's neck ought not, it seems to me, to be held to constitute a marriage, because it will be making a travesty of the so-called sacrament.

9. The reported decisions no doubt happen to be instances of objections raised from the point of view of the bride, such as absence of consent by her father and so on, and they have therefore laid stress upon the necessity for the gift of the girl by some competent person. But there is no reason to hold that that is the only possible kind of invalidation. In cases like Khushalchand Lalchand v. Bai Mani I.L.R.(1886)11 Bom. 247; Brindabun Chandra Kurmokar v. Chandra Kurmokar I.L.R.(1885) 12 Cal. 140; Venkatacharyulu v. Rangacharyulu (1890) 1 M.L.J. 85 : I.L.R. 14 Mad. 316, and in the observations of Sir Gurudas Banerji (on pp. 56 and 57 of the 5th edition of his Book on Marriage) a reservation has been made in respect of ceremonial brought about by fraud or force. There is no scope here for the application of the principle of factum valet, therefore this is not a case of a mere violation of some 'directory text'.

10. Mr. Raghava Rao suggested that if one is to apply the principles of the law of contract, fraud or coercion must have been exercised by the other party to the

contract and that it is not the case here. As I am not proceeding on the theory that the law of contract as such is applicable to the present case, I do not feel pressed by this contention. It seems to me that whoever may be responsible for it, if the husband never intended to go through the form which he is compelled to go through as a kind of automaton, he cannot be held to have gone through the marriage at all. In this view, I must hold that the Lower Appellate Court was right in decreeing the plaintiff's suit.

11. The second appeal fails and must be dismissed with costs.

12. I willingly grant leave, in the hope that during the pendency of the appeal the parties will have the good sense to come to some honourable settlement or at least that the appellate Court may find some way of helping the appellant.

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