

Rakappa Chettiar and anr. Vs. Chockalingam and anr.

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Court : Chennai

Decided On : Apr-19-1963

Reported in : AIR1964Mad126

Judge : Venkataraman, J.

Acts : Hindu Law

Appeal No. : Second Appeal No. 1486 of 1960

Appellant : Rakappa Chettiar and anr.

Respondent : Chockalingam and anr.

Advocate for Def. : T.R. Ramachandran, Adv.

Advocate for Pet/Ap. : N. Srivatsamani, Adv.

Disposition : Appeal dismissed

Judgement :

Venkataraman, J.

1. The defendants are the appellants in this second appeal. The decision of the appeal turns on the question whether Kalyani alias Valliammai, mother of the respondents (plaintiffs), was validly married to Krishnappa Chettiar. The question arises in this way. The first defendant is the legitimate son of Krishnappa Chettiar.

The second defendant is the son of the first defendant. After the death of the first defendant's mother, Krishnappa Chettiar, according to the plaintiffs, married Kalyani alias Valliammai and the plaintiffs were born of that marriage. The marriage is alleged to have taken place in 1934. Krishnappa Chettiar died in 1942. After his death the plaintiffs brought the suit claiming a two-third share in Krishnappa Chettiar's properties.

2. The main defence of the defendants was that contained in the paragraph 6 of the written statement and was formulated in these words:

'Plaintiffs' mother was not married to Krishnappa Chettiar and she was not his second wife. He had casual connection with her and she has been leading a promiscuous life; neither of the plaintiffs were born of Krishnappa Chettiar. They are the offspring of free intercourse and their paternity cannot be sustained.'

3. The learned Subordinate Judge who tried the suit accepted the plaintiffs' case and held that the factum of marriage was proved and that it was also a valid marriage and accordingly the plaintiffs were entitled to a two-third share. This decision was confirmed on appeal by the learned Additional District Judge. Hence this further appeal.

4. There is a plethora of evidence about the factum of the marriage which has been sufficiently described in the judgments of the Courts below, thus there are exhibits A-i and A-z which came into existence before the marriage and contained the terms of settlement for the marriage, exhibit A-j is the Penmuri passed by Subramanian, father of Kalyani, to Krishnappa. According to it he received a sum of Rs. 1650 as present from Krishnappa Chetti to the proposed wife and he undertook to repay that amount in case the marriage did not take place. There is an endorsement in exhibit A-3 after the marriage took place that it did take place and so that undertaking stood cancelled. There is also the evidence of P. Ws. 1, 3, 4 and 5 about the factum of the marriage, P. W. 1 is Kalyani; P. W. 3 is the brahmin purohit who officiated; P. W. 4 is the brother of Krishnappa and P. W. 5 is the village headman. There is also other evidence to which it is unnecessary to refer. Suffice it to say that Sri Gopaiachari, learned counsel who argued the case for the appellants could not and did not dispute the factum of the marriage. But he

contended that the necessary requisites or a valid marriage have not been established.

5. An argument seems to have been addressed before the learned subordinate Judge that the evidence does not show that Saptapati was performed and that since saptapati is a necessary requisite for a valid marriage among Hindus (vide *Deivanai Achi v. Chidambaram Chettiar*, 1955 1 MLJ 120 : AIR 1954 Mad 66 the marriage was not valid. But apart from the fact that this question of Saptapati was not referred to at all in the evidence even by the first defendant, Sri Gopaiachari was alive to the fact that the marriage which took place between Krishnappa Chettiar and Kalyani could not be attacked as invalid on the ground of want of proof of Saptapati, because according to the evidence, on the side of the plaintiffs, the marriage was performed according to the custom of the Nattukonai. Chettiar community to which Krishnappa Chettiar belonged - Kalyani was a Vellata woman. The learned counsel, therefore argued the appeal before me on the footing that even the essentials of a valid marriage according to the custom of the Nattukottai Chetti community have not been proved to have been observed in this case.

According to him, the essentials of such a customary marriage are these: tying of thali; going round the fire; exchange of garlands received from the temples by the spouses; drawing up of Isaikudimanam and the Mamiarseer. Isaikudimanam has been explained by P. W. 2 as a document which is drawn up after the marriage where the names of the married couple and their parents and the customary presents would be entered. This is also the description given in Thurston's History of Tribes at pages 266-67. The Mamiarseer of course is presents given by the bridegroom to his mother-in-law. There is evidence of some of the witnesses on the plaintiff's side that in this case Isaikudimanam was not prepared and the garlands from the temples had not arrived (see the evidence of P. W. 4), It has also been elicited from P. W. 5 that the bridal couple did not go round the fire. But the evidence is consistent that the holy fire was lit up and the thali was tied round the neck of Kalyani Achi by Krishnappa Chettiar himself, the Purohit further states that he performed the Navagrans human. He was the proper person to whom the defendants should have put the question whether the bridal couple went round the fire. I mention this because it is possible that P. W. 5 may have made a mistake in

saying that the bridal couple did not go round the fire. Such a question was not put to P. W. either.

But I am prepared to assume for the purposes of this appeal that the bridal couple did not go round the fire. Now in a matter like this it seems to me that we must distinguish between the essentials of the custom and the non-essentials. It seems to me that the essentials of the custom are the lighting of the sacred fire and tying of thali. The other matters like preparation of Isaikudimanam, the arrival of the garlands and the presents to mother-in-law, seem to me to be non-essentials. This view of mine finds support also in the passage in Thurston's History of Trices at page 266. It is not without significance that even the decision cited by the learned counsel for the appellants, namely, : AIR1954 Mad657 refers only to the tying of thali, the agreement (in this case exs. A-1 and a-2) and the husband as essential requisites of a valid customary marriage. Accordingly I am prepared to hold even, on the evidence in this case that the marriage was valid. I may also add that the decisions clearly establish that once the factum of marriage is proved, the presumption is that it is a valid marriage-see *Moujilal. v. Chandrabati Kumari*, ILR 38 Cal 700 and *Kasinath v. Bhagvandas*, 1947 2 MLJ 301 : AIR 1947 PC 168.

6. No other question was argued before me in this second appeal. It is dismissed but without costs. No leave.

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