

K. Mathialagan Vs. Mala Devi

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Court : Chennai

Decided On : May-03-1988

Reported in : I(1990)DMC448; I(1991)DMC111

Judge : Srinivasan, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 7A; Tamil Nadu Hindu Marriage (Amendment) Act, 1967

Appeal No. : A.A.A.O. No. 32 of 1985

Appellant : K. Mathialagan

Respondent : Mala Devi

Advocate for Def. : R. Gandhi and ;M. Kandasami, Advs.

Advocate for Pet/Ap. : T.R. Mani and ;R. Jothi, Advs.

Disposition : Appeal dismissed

Judgement :

Srinivasan, J.

1. Though the appearance of Senior counsel for the appellant resulted in illuminating arguments on an interesting question of law, after going through the records, I found that the question of law did not arise in this case. I will refer to it in

detail after setting out the facts which brought the appeal to this court.

2. The respondent herein filed a petition under Section 9 of the Hindu Marriage Act, praying for a decree for restitution of conjugal rights. No doubt, the prayer goes a little further and seeks a direction to the appellant herein to go and live with her. It is rather curious to pray for a direction to the husband to go and live with the wife as in this State, normally, the wife goes and lives with the husband wherever he is and not the other way about. Any way, the frame of the prayer does not affect the merits of the case.

3. The averments found in the petition were that the respondent married the appellant according to the Hindu Sastric rites and customs prevailing in the community and the marriage took place in the residence of the respondent's father at Chinnathirupati on 27-1-1980. The petition went on to state that as the appellant was employed in a firm attached to the Salem steel plant, he found it convenient to live in the house of the respondent's father instead of going to his office from his native village and he had also taken a room for rent in a lodging house at Salem for facilitating higher studies in leisure time. It was stated that the respondent was pregnant by five months. It was alleged that the father and uncle of the appellant had evil intentions and were demanding gold and cash from the respondent now and then and during the absence of her father in or about the second week of February 1981, they persuaded the appellant to leave the residence of her father and vacate the room in the lodge with a view to make him marry another girl if the respondent's father failed to pay a sum of Rs. 10,000, in cash and twenty sovereigns of gold to the appellant apart from the fifteen sovereigns given at the time of marriage. The appellant deserted the respondent from February 1981, and when she protested against his leaving her, the appellant's father beat her mercilessly. The attempt of the respondent's father to bring about a mediation failed and her only remedy was to approach the court for a decree for restitution.

4. In his counter statement, the appellant denied each and every one of the averments made in the petition. According to him, no marriage took place either in Salem or in any other place and the petition for restitution was not maintainable.

5. After the evidence was completed in the case, the respondent filed I. A. 139 of 1983 for amending the petition which was ordered on 24-3-1984. The only amendment was to add the following passage in paragraph-3 of the petition :--

'The respondent tied the thali to the petitioner and thereafter there was exchange of garlands between the respondent and petitioner in the presence of persons present at the marriage ceremony on 27-1-1980 and, therefore, there has been valid marriage between the petitioner and the respondent according to law.'

Thereafter, the appellant filed an additional counter, whereby he denied the tying of thali and exchange of garlands and contended that the amended version was an afterthought in order to suit the evidence.

6. The trial Judge rejected the oral evidence adduced by the respondent and held that the marriage invitation marked as Ex. A-3 was a fabrication. He held that the burden of proving the marriage was not discharged by the respondent and the various letters written by the appellant both before and after 27-1-1980 were not sufficient to prove the marriage. He also relied on the circumstance that a notice was issued on 14-3-1981 through a lawyer and without waiting for a reply, the petition was filed in court on 20-3-1981 itself which created a reasonable suspicion about the alleged marriage. He relied on the absence of any medical evidence to prove that the child born to the respondent was that of the appellant. Consequently, the trial court dismissed the petition for restitution of conjugal rights.

7. On appeal, the Second Additional District Judge, Salem, reversed the conclusion of the trial Court. He found that the following circumstances probalised the case of the respondent. (1) The parties belonged to the same community. (2) The appellant had in all his applications for employment given the address of the respondent's father as his address. (3) The appellant wrote a letter to P.W. 3, the sister of the respondent on 31-1-1980, (marked as Ex. A 16). (4) The respondent paid the fees for the appellant's examination in National College of Commerce, Madurai, on his behalf as evidenced by Ex. A 22. (5) No normal Hindu woman would claim a stranger to be her husband. (6) The motive alleged by the appellant for the filing of the petition was not pleaded in the counter statement. (7) Even the alleged motive will not prompt a man to play with the life of his daughter

and take the risk of spoiling the same. (8) The respondent born in a good family will not fabricate a false case of this type. (9) The oral evidence let in by the respondent is acceptable and the factum of marriage is established thereby. In the result, the learned appellate Judge granted a decree for restitution of conjugal rights in favour of the respondent.

8. Aggrieved thereby, the appellant has preferred this civil miscellaneous second appeal. Learned counsel for the appellant commenced his arguments with the proposition of law laid down by a Division Bench of the Calcutta High Court in *Suryamani Dasi v. Kalikanta Das*, 28 Cal 37 that when in a suit for restitution of conjugal rights, the validity of the marriage itself is disputed, it is not enough to find that the marriage took place, leaving it to be presumed that the rites and ceremonies necessary to constitute a legal marriage in the particular case were performed and that the Court must find specifically what these rites and ceremonies are and whether they were performed. He referred to the statement of law in *Mullah's Hindu Law 15th Edn.*, page 567, paragraph 444 wherein the above proposition is enunciated and the decision of the Calcutta High Court is cited as authority therefor. Mullah refers also to a ruling of the Rangoon High Court in *Ram Piyar v. Deva Rama*, (1923) 1 Rang 129 which followed the Calcutta Bench. Learned counsel drew my attention to the various passages in the same text book and submitted that there can be neither a presumption of marriage nor a presumption of the rites and ceremonies performed in a proceeding for restitution of conjugal rights. According to the learned counsel, the doctrine of *factum valet* cannot be invoked in a case of this nature and it is for the party who asserts the factum of a valid marriage to prove that there was a marriage in accordance with law. Learned counsel went on to cite the following decisions:--

Adhikesavalu Chettiar v. Ramanujam, 32 Madras 512, *Gokalchand v. Parvin Kumari*, : AIR1932 Cal231 and *Deivanai Achi v. Chidambaram Chettiar*, 67 LW 965, *Bhaurao v. State of Maharashtra*, : 1965 CriLJ544 and *Kanwalram v. H.P. Administration*, : 1966 CriLJ472 , *Priyabala v. Sureschandra*, AIR 1971 SC 1153, *Saroja Rani v. Sundareshan Kumar*, 97 LW 177.

In view of the findings of fact in the present case, and in view of the present state of law prevailing in this State after the amendment of the Hindu Marriage Act by Tamil Nadu Act 21 of 1976, the proposition of law stated above and the various decisions cited by the learned counsel do not have any bearing in this case.

9. By Tamil Nadu Act 21 of 1967, Section 7-A was introduced in the Hindu Marriage Act. The Section, in so far as it is relevant, reads as follows :--

'Special provision regarding suyamariyathai and seerthirutha marriages; (1) This Section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthirutha marriage or by any other name, solemnised in the presence of relatives, friends or other persons--

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife, or, as the case may be, her husband, or

(b) by each party to the marriage garlanding the other or putting a ring upon any ringer or the other; or (c) by . the tying of the thali.

2. (a) Notwithstanding anything contained in Section 7, but subject to the other provisions of this Act, all marriages to Which this Section applies solemnised after and commencement of the Hindu Marriage (Madras Amendment) Act, 1967 shall be good and valid in law.

(d) Notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, but subject to Sub-section (3) all marriages to which this Section applies solemnised at any time before such commencement shall be deemed to have been, with effect on and from the date of the solemnisation of each such marriage, respectively, good and valid in law.'

10. Hence, after the amendment in this State, it is sufficient if there is tying of thali or exchange of garlands. If in a case, it is proved that there was tying of thali and exchange of garlands, there can be no question that there is a valid marriage. It is not necessary for the parties in that case to prove that any other ceremony or rite was performed. The argument of learned counsel for the appellant in the present case is that the respondent came to court with a specific case that the marriage was performed according to Hindu Sastric rites and customs. Learned counsel submits that the case of tying thali and exchanging garlands was introduced only by amendment of the petition after the completion of the evidence. According to learned counsel, this is a case of pleading following the evidence and it ought not to have been accepted. No doubt, the criticism of learned counsel for the appellant is, to some extent, justified in as much as the pleadings was amended to bring it in conformity with the evidence. But that does not mean that the evidence led in by the respondent should have been rejected wholesale on the ground of absence of pleading. It has been repeatedly held that any amount of evidence in the absence of pleading is inadmissible. But at the same time, Courts have pointed out that the substance of the pleading can be taken into account and not the form thereof. In the present case, the original petition contained a statement that the respondent was married to the appellant according to Hindu Sastric rites and customs. That pleading is sufficient to cover the tying of thali and exchanging of garlands as such a custom has developed in this State for quite some time and in fact that is the main cause for Tamil Nadu Act 21 of 1967. It cannot, therefore, be contended that in this case, there was no pleading at all to support the evidence at the time when it was let in. At any rate, the amendment of the petition having been allowed, it is deemed to have been part of the original petition from the inception. Hence, the only question to be considered is, whether the evidence let in by the respondent in support of the marriage claimed by her is acceptable.

11. One of the circumstances, relied on by the lower appellate Court, is not only relevant but a very important circumstance to be taken into account while appreciating the evidence in this case. The lower appellate Court is right in holding that no Hindu woman would come forward with a claim that she had been married to a stranger and that she had borne a child for him. There is no doubt that the respondent belongs to a respectable family. Her father is admittedly a man of high

status in the society. He had been a public figure, having been the Secretary at the District level of a political party. Admittedly, he has been having contract, with people in the high strata of society. There is no question of either the respondent or the members of her family suffering from any wants. They are sufficiently rich. They can take care of themselves without depending upon others. It is not as if the appellant is extraordinarily rich or a person of outstanding qualifications to hold whose hand women would vie with each other. It is not suggested at any stage in the case that the respondent is a woman of bad character or illrepute. .When she was in the witness box, no suggestion was put to her that, she had illicit intimacy with any particular person as a result of which she became pregnant. The only motive suggested by the appellant for the institution of the present proceedings is that he had paid a sum of Rs. 5,000 to the respondent's father for the purpose of securing employment for him and when he demanded return of the same as respondent's father did not secure an employment for him, the respondent's father got enraged and planned to tarnish the image of the appellant and harass him by instituting the present proceedings. Apart from the fact that the motive was not even whispered either in the counter statement filed by the appellant or in the additional counter statement filed by him, it is too big a pill to be swallowed. It cannot be believed that when a demand for return of money is made even if it is unsustainable or illegal, a person will be prepared to spoil the life of his daughter by indulging in a litigation like this. Admittedly, the appellant was hot related to the respondent prior the marriage. There is no reason whatever as to why the respondent should choose to claim the appellant as her husband.

x x x(Discussion of evidence omitted.)

12. If two views are possible, on the evidence on record, and if one such view is taken by the final court of fact, then it cannot be interfered with by this Court sitting in second appeal under Section 100 C.P.C. In the present case, even assuming that two views are possible, one of the views having been accepted by the lower appellate Court, I do not think it proper to interfere with the same in this civil miscellaneous second appeal. I do not find any error in the appreciation of the evidence on the part of the learned appellate judge. The circumstances relied on by him are quite relevant and he has rightly accepted the evidence adduced in

support of the respondent. It is established beyond doubt that there was a marriage as alleged by the respondent. There was tying of thali and exchange of garlands. As laid down by Maheswaran, J. in Koodappan v. Kothai Nachirammal, 79 LW 154, such a marriage is valid in view of the Hindu Marriage Act, as amended by Tamil Nadu Act 21 of 1967. Consequently the point of law raised by the learned counsel for the appellant does not arise in this case and the proposition of law laid down by the Calcutta Bench in Suryamokhi Deni v. Kalikanta Das, 26 Cal. 37, does not apply to the present case.

13. In the result, the civil miscellaneous second appeal fails and it is dismissed with costs..

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