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N. Thangappan Vs. Subadra

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Court : Chennai

Decided On : Apr-30-1971

Reported in : AIR1972Mad10; (1971)IIMLJ220

Judge : Ramanujam, J.

Acts : Madras Marumakattayam Act, 1932 - Sections 7, 9, 10-A, 10-B, 50 and 110-B; State Reorganisation Act; Criminal Law Amendment Act, 1883; Code of Criminal Procedure (CrPC) , 1898 - Sections 488(8); Constitution of India - Article 245

Appeal No. : Civil Revn. Petn. No., 184

Appellant : N. Thangappan

Respondent : Subadra

Advocate for Pet/Ap. : Mr. M. K. Nambiar

Judgement :
ORDER

1. The petitioner herein filed an application O. P. No. 436 of 1967 under Section 7 of the Madras Marumakattayam Act 1932, herein after referred to as the Madras Act, for dissolution of his marriage with the respondent on the ground that the respondent was suffering from chronic disease from her childhood and that it was not possible for the petitioner to have a married life with her. That petition was

resisted by the respondent contending that she is not suffering from any disease or illness. She in her turn filed I. A. 4481 of 1968 for permanent alimony at the rate of Rs. 75 per month under Section 10-B introduced in the Madras Act by the Kerala Act 26 of 1958, hereinafter referred to as the Kerala Act, and I. A. 4482 of 1968 for Rs. 200 for the expenses of the litigation. In the application for alimony the petitioner contended that an application for alimony under Section 10-B introduced by the Kerala Act will not lie, as the Kerala Act had no application within the Madras State. The main O. P. for dissolution of the marriage as well as the said applications filed by the respondent for permanent alimony and for the cost of the litigation were disposed by a common judgment. The lower court held that under Section 9 of the Madras Act the petitioner is entitled to have an order for dissolution of the marriage as the petition for dissolution has not been withdrawn within six months after the service of the petition on the respondent.

On the question whether the respondent is entitled to any permanent alimony, it has held that under S. 110-B introduced in the Madras Act by the Kerala Act she is entitled to the same and fixed the rate of permanent alimony at the rate of Rs. 30 per month. The lower court also ordered a sum of Rs. 50 towards legal expenses of the respondent. This revision is, however, directed only against the order passed by the lower court in I. A. 4481 of 1969 directing the petitioner to pay a permanent alimony at the rate of Rs. 30 p. m. to the respondent. Hence the only question that arises for consideration in this revision is whether the respondent is entitled to invoke the provisions in Section 10-B which have been introduced in the Madras Act by the Kerala Legislature.

2. According to the lower court the amendments introduced by the Kerala Act after the reorganisation of States would apply to all the persons who are governed by or entitled to invoke the original Act. The learned counsel for the petitioner questions the correctness of that view. It is contended by Mr. M. K. Nambiar, learned counsel for the petitioner, that the law applicable to the parties herein is only Madras Marumakattayam Act, 1932, as enacted by the Madras Legislature, that the subsequent amendments made by the Kerala Legislature in that Act in its application to certain areas which are now in Kerala State but originally formed part of the composite State of Madras, cannot be made applicable to the residuary

State of Madras, that the amendments introduced by the Kerala Legislature will be operative only within the State of Kerala and not in relation to persons residing within the State of Madras and governed by the provisions of Madras Act as passed by the Madras Legislature. It is pointed out that so far as Madras Act is concerned it does not make a provision for any permanent alimony being granted by a court in a proceeding for dissolution of marriage, that the new right created by Section 110-B introduced by the Kerala Act cannot be operative in the Madras State, and that the Madras Act without the said amendment alone will be applicable in that area.

3. It is seen that before the enactment of the Madras Marumakattayam Act, 1932, by the Madras Legislature the personal law of the Hindus who were governed by the Marumakattayam was mostly customary, that it was for the first time that the customary law relating to marriage, guardianship, intestate succession, family management and partition was codified under that Act and that the Act has been made applicable to all Hindus in the then Presidency of Madras who are governed by the Marumakattayam law of inheritance and to all Hindus outside the said Presidency governed by the said law in respect of the properties within it. Even after the States Reorganisation Act 1956, the said Madras Act continues in force and applies to all Hindus in the present State of Madras, who are governed by the Marumakattayam law of inheritance, and all Hindus outside that State, governed by that law in respect of properties within the State. Under Sections 119 and 120 of the States Reorganisation Act, the Madras Act which is a law made by the composite State continues to apply to those areas which were originally in the composite State of Madras but subsequently added to the Kerala State, with such modifications and adaptations which the Kerala Legislature might think fit to make.

In this case after the Reorganisation Act the Kerala Act introduced Ss. 10-A and 10-B to the Madras Act in its application to the areas within the Kerala State. The Kerala Legislature, of course, has the power to legislate in respect of persons and properties within the State of Kerala and continue to be governed by the Madras Act even after the States Reorganisation Act. But it has no power to legislate in respect of persons and properties within the State of Madras and governed by the Madras Act as passed by the Madras Legislature. Therefore, when the petitioner

filed an application under Section 7 of the Madras Act seeking to enforce his rights under the Madras Act in the lower court, the respondent cannot invoke the rights conferred under Section 10-B which have been introduced by the Kerala legislature in respect of (1) Hindus in the State of Kerala who are governed by Marumakattayam law of inheritance or (2) Hindus outside that State governed by that law in respect of properties within that State. Section 50 of the Madras Act provides that the provisions of the Act will not affect any rule of Marumakattayam law, custom or usage, except to the extent expressly laid down in that Act. The learned counsel for the petitioner seems to be right in his contention that there being no rule m of Marumakattayam law either by custom or usage recognising a right of the wife to get permanent alimony in the case of dissolution of marriage, the respondent cannot enforce a provision which was not in the Madras Act as passed by the Madras Legislature and assert her rights to get a permanent alimony based on the amended provisions in Section 10-B introduced by the Kerala Act.

4. Section 10-B of the Kerala Act 26 of 1958 in so far as it is relevant for the purpose of this case is set out;

'Permanent alimony and maintenance: (1) Any Court exercising jurisdiction under this Chapter may on application made to it for the purpose by either the wife or the husband, as the case may be order that the respondent shall while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as having regard to the respondent's own income and other property, if any, the income and the other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent'.

As already pointed out the right to get a permanent alimony was not recognised either by custom and usage or under the Madras Act as passed by the Madras Legislature. Such a right was for the first time, conferred by the said statutory provision made by the Kerala Legislature.

4-A. In Kochunni v. States of Madras and Kerala, : [1960]3SCR887 the Supreme Court has laid down that the Madras Marumakattayam Act of 1932, where under the members of the Malabar towards were given a right to enforce a partition of tarwad properties or to have them registered as impartible as provided by the Madras Legislature in 1955 will not have extra territorial operation so as to effect the sthanis or their estate in Kerala State in respect of properties situate in the quondam Cochin State. In Jagir Kaur v. Jaswant Singh : [1964]2SCR73 , the scope of the words 'reside' and 'last resided' in Sec. 488(8) Cri. P. C. came to be considered, and it was held that the words must be understood with some limitation so that the jurisdiction conferred by that section does not extend to places outside India, as otherwise the operation of the section would extend to areas over which the Indian Legislature has no legislative control, and that when Section 488(8) speaks of a District, where a person last resided with his wife, it can only mean 'Where he last resided with his wife in any district in India other than Jammu and Kashmir.'

The principle laid down by their Lordships of the Supreme Court in that case is that the law made by a legislature should have operation only within the territories over which it has legislative control, and that even if the legislative provision purports to be wide in its amplitude, it has to be understood in a limited sense, so as to have operation within its territories. In this case the Kerala Act 26 of 1958, which brought in certain amendments to the Madras Marumakattayam Act of 1932, cannot be said to have amended the Madras Act in its application to Madras State. The amendment can have a limited operation restricted to the areas within the Legislative control of the Kerala Legislature. If the amendments introduced by the Kerala Act is deemed to be operative in all places, where the Madras Marumakattayam Act operates, it will mean that the Kerala Legislature is empowered to pass a law in respect of territories not subject to its legislative control. That will normally offend Art. 245 of the Constitution, for the Kerala Legislature cannot make a law having an extra territorial jurisdiction. In Halsbury's Laws of England, Vol. 36, 3rd Edn. at page 429, it is states-

'The persons to whom statutes apply. the persons on whom a particular statute is intended to operate are to be gathered from the language and purview or that

statute (c), but the presumption is said to be that Parliament is concerned with all conduct taking place within the territory or territories for which it is legislating in the particular instance, and with no other conduct (d),. In other words, the extent of a statute (e) and the limits of its application, are prima facie the same (f)'.

In Macleod v. Attorney General of New South Wales, 1891 AC 455, the Judicial Committee had to construe the scope of Section 54 of the Criminal Law Amendment Act, 1883 (46 Vict. 17) which ran as follows:

'Whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage taken place, shall b liable to penal servitude for 7 years.' and their Lordships held that the words 'Whosoever and wheresoever' must be intended to apply to those actually within the jurisdiction of the legislature and that there was consequently no jurisdiction in the colony to try a person for the offence of bigamy alleged to have been committed in the United States of America. Their Lordships were of the opinion that if a wider construction is applied to the statute so as to comprehend all persons all over the world, the statutory provision would have been beyond the jurisdiction of the Colony of New South Wales to enact such a law, that the jurisdiction of that colony to enact a law should be confined with their own territories and that the maxim which has been more than once quoted 'extra territorium jus decidi impune non paretur' would be applicable to such a case. Having regard to the principle that a legislature can make a law so as to have operation within its own territories. the amending law made by the Kerala Act cannot have any operation within the territories of the Madras State, where the Madras Marumakattayam Act of 1932 is applicable, as otherwise the Kerala Legislature would be making a law with extra territories operation, which it cannot do.

5. The learned counsel for the respondent, however, refers to the decision in Venkataraman v. Janaki, 49 MLW 403 : AIR 1939 Mad 595 as supporting his stand that the personal law of the parties will continue to operate wherever they are, an that the parties here being admittedly governed by the Marumakattayam law will be bound by the amending law passed by the Kerala Legislature. In that case, Venkataramana Rao, J. expressed the view that the personal law of a

person in all matters will continue to govern him and that he cannot get rid of it however fixed his determination was and that it must only be done in a mode recognised by law relying on the following passage of Mayne in his book of Hindu Law.

'A man cannot alter the law applicable to himself by a mere declaration that he is not a Hindu. He can only alter his existing status by becoming a member of such a religion as would destroy that status and give him a new one'.

No exception can be taken to the principle laid down in that case that the personal law of the parties cannot be got rid of except by legislation of in a mode recognised by law. But in this case there are two personal laws in operation; one is the Madras Marumakattayam Act of 1932 applicable to all Hindus within its territories governed by Marumakattayam Law of inheritance and the other a different personal law that is other a different personal law that is the Madras Marumakattayam Act 1932, as amended by the Kerala Act, which is in operation only in respect of Hindus living within Kerala State and governed by the Marumakattayam law, If the respondent's contention were to be accepted, all Hindus governed by Marumakattayam law of inheritance will be governed by two pieces of legislation, one made by the Madras Legislature and another made by the Kerala Legislature. Such cannot be the situation. Under Ss. 119 and 120 of the States Reorganisation Act. 1956, the Madras Marumakkattayam Act of 1932 will continue to have operation in territories which have been taken away from the composite State of Madras and added to the Kerala State subject to such adaptations and modifications as may be made by the Kerala Legislature in relation to such territories. Therefore the modifications made by the Kerala Legislature to the Madras Marumakattayam Act of 1932 can have effect only in relation to the territories which have come within its legislative control.

6. On a due consideration of the matter. I am clearly of the view that the rights of parties before me have to be governed by the provisions of the Madras Marumakattayam Act without the amendment made by the Kerala Act, and that the respondent is not entitled to claim permanent alimony on the basis of Section 10-B of the Kerala Act 26 of 1958. The civil revision petition is, therefore, allowed,

but, in the circumstances without costs.

7. Revision allowed.

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